

1 SAN FRANCISCO, CALIFORNIA, JUNE 2, 2005 - 9:05 A.M.

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3 ADMINISTRATIVE LAW JUDGE MALCOLM: We'll please
4 come to order.

5 MIKE BURKE,

6 MICHAEL NELSON,

7 JODY LONDON, and

8 SEAN CASEY

9 resumed the stand and testified further as follows:

10
11 ALJ MALCOLM: Mr. Buchsbaum, you may continue.

12 MR. BUCHSBAUM: Thank you, your Honor. I just
13 have a few clarification questions.

14 CROSS-EXAMINATION (resumed)

15 BY MR. BUCHSBAUM:

16 Q If you'll turn to the tariff Section G.1.

17 MR. COMO: Which tariff is this, which proposed
18 tariff?

19 MR. BUCHSBAUM: I think --

20 WITNESS LONDON: Mr. Casey's.

21 MR. BUCHSBAUM: Q I hope it's Mr. Casey's,
22 because I'm looking at a red-lined version of our G 1.

23 WITNESS LONDON: A Yes. And you're on page 11 of
24 31?

25 Q I'm not on Mr. Casey's. I'm on the provision
26 relating to CCA customer eligibility.

27 A Mm-hmm.

28 Q And my questions really go in into two areas.

1 One is -- and let's go to the first one where a customer
2 is under a commodity contract obligation with the
3 utility for some definitive term. Is it the CCA's
4 position that that customer should receive a notice and
5 be subject to automatic opt-in unless they affirmatively
6 elect out?

7 WITNESS CASEY: A No. That's isn't the CCA's
8 position. It is a more complex position.

9 If you go on in our tariff -- well,
10 unfortunately it might not be in this section.

11 WITNESS BURKE: Section 3.

12 WITNESS CASEY: No, that's direct --

13 Q I'm looking here, it says customers with a
14 utility commodity term obligating them to remain on
15 utility bundled service are eligible for CCA service.

16 WITNESS CASEY: A Right.

17 Q So this is the case, as I understand it, of
18 some customer that's under a three-year obligation with
19 the utility or something along those lines under
20 the direct access bundled service return rules. And the
21 question is, are these folks in the automatic opt-in
22 process according to the CCA's proposal?

23 WITNESS CASEY: A According to our proposal,
24 they're only in the automatic process if the CCA -- if
25 the tariff terms, if the rate schedule, for want of a
26 better term, if the rate schedule that the CCA offers is
27 identical to that offered by the utility.

28 And the best example I can give is demand

1 response programs, which I think all three of
2 the utilities have. If a CCA can offer an equivalent
3 demand response program, then that customer is deemed to
4 be eligible for the automatic enrollment. And in fact,
5 then it's the role of the utility to inform the customer
6 of the consequences of not opting out. But, however, it
7 will be the responsibility of the CCA to offer a
8 tariff -- I shouldn't say that every term and every
9 condition will be identical, but that in large part it
10 will be identical to what the utilities are offering.

11 I might say this is of particular concern to
12 the City and County of San Francisco and might be to
13 other potential CCAs because the -- PG&E in particular
14 has become rather aggressive with their demand response
15 programs. And it's foreseeable that a year or two from
16 now when San Francisco moves into CCA implementation, we
17 could find a considerable portion of the business load
18 is our own demand response programs of one kind or
19 other, and therefore are not available to the CCA in the
20 automatic enrollment process but would actually have to
21 be persuaded, if you like, to leave their demand
22 response program and shift to the CCA. And to be quite
23 blunt about it, that's quite an uphill battle for some
24 CCAs to try to attain.

25 That's why this particular point is of such
26 concern and such interest to CCAs because it could be
27 such a considerable amount of load.

28 I'm going on and on, but that's the idea.

1 Q I'll just leave the rest to briefs. But I'll
2 just note your provision, which you explained in quite a
3 bit of detail what your concerns were --

4 A Yes.

5 Q -- the actual provision in the CCA tariff is
6 two sentences and doesn't go into that kind of detail.
7 Would you agree with that?

8 A I hope there's somewhere -- I'm trying to
9 remember if there's somewhere else in the tariff where
10 we did explain that. And I can't pinpoint it right now,
11 but I thought -- if not in the tariff, then certainly in
12 my testimony.

13 Q Okay. We can leave the rest for briefing.

14 On the direct access situation, I was looking
15 at provision G.3. And now, these are customers, they're
16 currently being served by a direct access provider, they
17 might be subject to penalties for switching. Are they
18 part of the automatic enrollment or do they have to
19 affirmatively opt-in?

20 Because I see the utility tariff said direct
21 access customers shall not be included in the automatic
22 enrollment process. That's crossed through. And then
23 the next sentence says that there needs to be a positive
24 election. And I just don't understand what your
25 proposal is there.

26 A The proposal is that the direct access
27 customers would have to make a positive election. They
28 are not eligible for automatic enrollment, yes.

1 Q Thank you.

2 Moving on quickly to the notice provision.
3 I don't know if any of were you here when Mr. Huard
4 asked Mr. Florio a question about the notifications
5 being reviewed by the Public Advisor, and Mr. Florio
6 commended the CCAs for their -- for providing that kind
7 of review.

8 And I was just reviewing the provision
9 actually, and when I saw the notifications must be
10 reviewed by the Public Advisor for the accuracy of any
11 utility information, you're not suggesting by that
12 provision -- and I'm looking at --

13 WITNESS LONDON: Would it be H.4.e.

14 WITNESS NELSON: H.4.e.

15 WITNESS BURKE: H.4.e.

16 Q Yeah. H.4.e. You're not suggesting there that
17 the Public Advisor have any role in confirming
18 the accuracy of any CCA information?

19 In other words, the way that's written, it
20 says notifications must be reviewed by the Public
21 Advisor to ensure the accuracy of any utility
22 information.

23 And I guess my question is, I think -- I don't
24 mean to imply that anybody is being sneaky or anything
25 here, but I think the only point you're making is that
26 the utility information would be reviewed, not any other
27 information. Is that your point or did I misread that?

28 WITNESS LONDON: A I can see where it would be

1 appropriate to insert the word "of any utility and CCA
2 information" in that provision.

3 The point is that the Public Advisor, we
4 believe, should be the arbitor of what goes in those
5 customer notices if there's a dispute about them. It
6 should be a notice that's developed by the CCA, and then
7 the Public Advisor provides advice and assists the CCA
8 in making sure that it is, you know, in accordance with
9 whatever comes out of this proceeding that we're in
10 right now. But it's not a notice that is reviewed by
11 the utility.

12 Q Could it be the accuracy of any information
13 included in the notice that's --

14 A That could work as well.

15 Q Thank you.

16 My last clarification question involves
17 the circumstance where you have new residents moving in,
18 and I understand there's quite a bit of turnover in
19 San Francisco.

20 Mr. Casey, do you know roughly what the
21 turnover is in accounts in San Francisco or --

22 WITNESS CASEY: A Yes. I have been informed by
23 PG&E that it's approximately 25 percent of accounts,
24 residential and small business accounts turn over each
25 year.

26 Now, just to clarify that though, I'm still a
27 little unclear whether that is -- whether that is new
28 accounts or whether that is a portion of that -- maybe a

1 significant portion of that is accounts that merely
2 transfer within the city to another address.

3 Q But it's fair to say, is it not, that there's
4 likely to be some degree, some degree of significant
5 turn over in accounts through the process of the CCA
6 having been formed and then subsequent events occur in
7 subsequent years as you move on?

8 A Certainly, yes.

9 Q Yeah. So I'm trying to understand your view
10 on the notice that should be provided to new customers
11 moving in.

12 A (Nods)

13 Q Could someone explain this particular tariff
14 provision. It's K.b and c, and it seems to say
15 that basically the notice could be provided at any time;
16 it doesn't have to be provided within the 60-day window.
17 Many of the protections that otherwise apply in
18 the statute, which you believe is only start up, don't
19 necessarily apply to the move-in situation. Because
20 it's such a significant number of people, I want to know
21 what your position is.

22 A The position that we have is that the start up
23 of CCA is -- does have to conform, obviously and of
24 course, to the four notices. And thereafter, it is
25 within the purview of each CCA as to how they notify and
26 the timing in which they notify new customers of an
27 opt-out choice.

28 However, this tariff does not attempt to

1 restrict or place limitations on how any particular CCA
2 wishes to develop that policy. My understanding is that
3 would be developed as part of the implementation plan
4 for the CCA.

5 Certainly, it would be my advice to
6 the City and County of San Francisco that the spirit of
7 the law is that there should be an opt-out opportunity
8 for new customers to go to bundled service, but we've
9 not worked out the details about the timing and so forth
10 over that.

11 Q Well, I'm just trying to ask -- I'm sorry.
12 I was trying to ask -- I probably didn't do it very
13 well -- a very specific question.

14 Is the CCA, under your proposal, subject to
15 any specific requirements regarding notification to
16 customers and opt-out for move-in situations? Are they
17 subject to a specific requirement in the tariff or under
18 the CPUC rule?

19 A No, they are not. The only requirement
20 they're subject to in the tariff is that they shall be
21 given an opportunity to opt-out. There's no specifics
22 tied to that opportunity.

23 Q And let me ask you one other thing about
24 the opportunity to opt-out.

25 Are you saying that the opportunity to opt-out
26 must be without exit fee or could it include an exit
27 fee?

28 A Oh.

1 WITNESS NELSON: A Exit fee from who?

2 Q From the -- I'm sorry. That's a good
3 clarification. I was meaning from the CCA.

4 A To the customer departing?

5 Q Yeah. Because it's important for your
6 resource planning --

7 WITNESS CASEY: Yes, yes.

8 Q -- that you might want to do that. And I
9 don't want to preclude -- I want to understand what your
10 proposal is.

11 A Right. I cannot obviously speak for other
12 cities. I can only speak again for what I -- for what
13 this tariff proposes.

14 Q Does the tariff -- I'm really asking a very
15 specific question.

16 A Right.

17 Q Does the tariff say that the opt-out right in
18 a move-in situation is without penalty -- is -- you
19 cannot impose an exit fee? Because I think you might
20 want to do it. I want to know what your --

21 A I understand.

22 Q -- provision is.

23 A Yes.

24 I know it does not say anything about an exit
25 fee being imposed upon an opt-out situation. And I
26 think the spirit -- and I can't speak again for other
27 cities -- but for this tariff, the spirit of the opt-out
28 is that it would come without penalty.

1 Q But that's not in your tariff?

2 A That is not in the tariff, no.

3 And that's an omission of the tariff --

4 WITNESS NELSON: A It's not in the statute
5 either. I mean, if you look at the AB 117 and its
6 provisions --

7 Q I'm really -- I'm just trying to clarify what
8 the rule is

9 A Sure.

10 Q I'm not trying to argue the point.

11 A No.

12 Q What I -- I want to illuminate for the
13 Commission what the proposal is.

14 WITNESS CASEY: Yes.

15 WITNESS NELSON: Right. I understand.

16 Q The proposal is that an exit fee could be
17 imposed on a new move under your proposal.

18 A I think the proposal is that it's up to,
19 as Mr. Casey stated earlier, that's up to the CCA once
20 it's established.

21 MR. BUCHSBAUM: That's all the questions I have,
22 your Honor. Thank you.

23 ALJ MALCOLM: Thank you, Mr. Buchsbaum.

24 Mr. Montoya.

25 MR. MONTOYA: Oh. Give me a second here.

26 CROSS-EXAMINATION

27 BY MR. MONTOYA:

28 Q Mr. Buchsbaum just asked you some questions

1 regarding automatic enrollment. And as I understand it,
2 right now the language provides for automatic
3 enrollment -- the language in your tariff provides for
4 automatic enrollment even where those customers have a
5 special commodity contract. Is that correct?

6 WITNESS NELSON: A Yes, that's correct.

7 Q But you indicated, I think, a willingness to
8 provide -- or possibly change that language. Is that a
9 fair characterization?

10 A Well, it's a struggle to change that sort of
11 language because there's two different parallel tracks
12 at play here. Obviously, the statute, as you can all
13 read it, says the CCA has to provide for universal
14 access. So to that extent, universal access would
15 include customers that may be under a commodity-specific
16 contract with the utility.

17 And what we've proposed is that it's incumbent
18 upon the utility or the direct access provider to reach
19 out to its customer or remind them of their contractual
20 obligations despite the fact that that customer, under
21 universal access, should get the notification that says,
22 You may participate in this service; but if you choose
23 not to, please opt out.

24 Q But isn't it a problem if the tariff seems to
25 indicate that a contract -- I mean, a customer with,
26 say, a three-year commodity contract if they returned to
27 bundled service from DA would allow a CCA to come in and
28 essentially automatically enroll that customer?

1 I mean, that's the way the language reads.

2 Isn't it problematic? I mean --

3 A I don't believe it's problematic because
4 the process is universal. It sets up a process where it
5 says you get two notifications within a 60-day period
6 and you have two opportunities to opt-out of this
7 service. Should you fail to do so, you will be
8 enrolled.

9 WITNESS LONDON: A Then they are going to get two
10 more.

11 WITNESS NELSON: A With a no-penalty return to
12 the service they were on.

13 It's a difficult issue, I admit to you,
14 because there's a contractual obligation that's
15 independent from the universal access obligation.

16 Q Couldn't you simply have language that says if
17 you're on a commodity contract, then you're not subject
18 to automatic enrollment?

19 A I don't think you could, because wouldn't I be
20 depriving that customer the opportunity to look at the
21 economic breach of its contract?

22 I mean, that customer could say, Hey, got a
23 great rate with the CCA, it's economically beneficial to
24 me to breach my utility contract and go with them.

25 Q But if you have another rule of the Commission
26 or a law that says you have to remain on bundled service
27 for three years, are you suggesting that can be
28 breached?

1 A No. I'm suggesting that if -- what we're
2 speaking of in the initial part of our dialogue is a
3 utility-specific commodity contract.

4 If you're now talking about a switching rule
5 which requires a three-year minimum commitment for a
6 direct-access return, and if they fail to opt-out within
7 the 120-day period, then they will be subject to
8 whatever the Commission laws are attendant to that
9 behavior.

10 Q If I could turn you to page 8 I believe of
11 your proposed tariff. And this is at the end of section
12 26. You've added two sentences from the utility -- or
13 to the utility's proposed tariff language that
14 indicates: However, an internal utility-generated CCASR
15 will not be required for customers who newly locate
16 within a CCA jurisdiction or who relocate within a
17 CCS -- excuse me, that's now A, isn't it -- CCA
18 jurisdiction. Do you see that?

19 WITNESS LONDON: A Yes.

20 Q Now, if the utilities followed the
21 instructions of that sentence, because there was no
22 CCASR generated by the utility, as I understand
23 the system, a customer who newly locates or relocates
24 within a CCA jurisdiction will be placed on bundled
25 service. Is that what you intended?

26 WITNESS NELSON: A I don't think they'd be placed
27 on any service if a CCAS --

28 Should there be a CSR in there? Right.

1 So if there's no DASR or C-C-A-S-R, CCASR as
2 you're calling it, then they won't be enrolled in
3 anyone, I don't think.

4 Q I can make the representation as to our
5 internal -- utility's internal process that utilizes a
6 CCASR to make that switch. And --

7 A Right.

8 Q -- if there's no CCASR from a system
9 standpoint, the switch won't -- I mean, the switch to
10 CCA won't occur; they'll stay on bundled service?

11 A I think it depends. If it's an original
12 enrollment, there wouldn't be a CCASR because an
13 original enrollment means someone moves from Ohio to
14 California, that original enrollment would be under
15 whatever the protocol the utility develops to put
16 someone directly into the CCA service.

17 WITNESS LONDON: The customer will basically
18 establish two accounts. It will establish one with the
19 CCA as a provider and one with the utility for its
20 transmission and distribution service, because, as we've
21 discussed, the customer is a customer of both the CCA
22 and the utility.

23 Q So you're saying CCASR is not necessary in
24 your opinion?

25 WITNESS NELSON: A I think that it's in the
26 context of the switching rules for new move-ins, people
27 that have never taken service from either the CCA or the
28 utility, whatever the protocol that's developed between

1 the utility, whatever that switching function is, and
2 the CCA is what should apply.

3 Q Well, I'm a little confused, because
4 the following sentence in that same section says, These
5 customers will be enrolled as CCA customers and the
6 utility will inform the CCA via the CCASR process.

7 A They don't seem to make sense when read
8 together, do they?

9 Q No

10 A I agree.

11 WITNESS CASEY: A If I could clarify or attempt
12 to clarify.

13 The concern here was that, as Mr. Buchsbaum
14 said, with the 25 percent turnover rate, CCAs could
15 incur considerable annual costs just for new customers
16 moving in for CCASR service, if you like, or CCASR fees.

17 And in attempting to think this proposition
18 through, it seemed to me in particular, and perhaps to
19 other members of the panel, that, in fact, at the time
20 of first service, a customer is calling the utility to
21 say, I'm going to take service at such and such a
22 location, and if they're automatically enrolled in the
23 CCA, then surely there is a method within the internal
24 administration of the utility where the utility does not
25 have to generate a CCASR for that, they don't have to
26 generate a CCASR to put them on bundled service. So why
27 should they have to generate a CCASR to put them on CCA?

28 Now, it does follow, however, that there's

1 going to be a method for the utility to communicate with
2 the CCA about this new customer. That's where the CCASR
3 comes in. It's an attempt to reduce, if you like,
4 the operational costs for the CCA.

5 Q But you do understand that the utility has an
6 obligation to that customer coming in. Its system is
7 going to be set up such that that customer gets service
8 and gets service --

9 A Of course.

10 Q -- quickly.

11 A Of course.

12 Q And so all you're saying is that the, I guess,
13 the process has to work with the utility's system to
14 make sure that that customer gets service from
15 the utility or if that customer wants to get service
16 from the CCA, that it's able to do so?

17 A No. The customer is automatically enrolled in
18 the CCA. Let's be clear about that.

19 Q Oh, that's right. You were talking with
20 Mr. Buchsbaum, and they're automatically enrolled when
21 they relocate --

22 A Right.

23 Q -- and they could receive notice at some
24 subsequent period that's unknown; correct?

25 A That's correct, yes. They will receive
26 notice -- an opt-out notice at some subsequent period
27 that will obviously be reasonable.

28 Q Obviously. Is there a reasonable provision in

1 your tariff --

2 A There is not--

3 THE REPORTER: I'm sorry you're going too fast.

4 MR. MONTOYA: I'm sorry. It's my fault. I had
5 too much coffee.

6 THE REPORTER: Would you please reask your
7 question.

8 MR. MONTOYA: Q Would you be opposed to inserting
9 a reasonableness provision within the tariff?

10 WITNESS NELSON: A Yes.

11 Q Why is that?

12 A Because we already testified that it's CCA
13 specific.

14 Q So in your opinion, it's up to -- it's
15 entirely within the CCA's discretion to decide when it
16 gives notice of opt-out?

17 A To -- in the new service category?

18 Q Yes.

19 A Yes.

20 Q That could be 3 months. That could be a year.

21 A When it gives notice?

22 Q Correct.

23 A So this person will obviously be attending --
24 getting service, they'll be turning on, the kids will be
25 playing PlayStation and then you're suggesting that
26 there will be six months or a year before we get notice
27 about who's serving?

28 Q I'm just asking whether, under the rules, the

1 CCA has the discretion to give notice whenever it feels
2 like it.

3 A I would have to say yes.

4 Q Okay. Turning to Section C of your proposed
5 tariff, I think that's on page 8 still. This is in
6 section 1. You've changed certain language in the
7 utility's proposed tariff such that when the utility
8 receives customer inquiry regarding CCA service, you
9 stated the utility will provide the customer with
10 the CCA's contact information instead of telephone
11 number as proposed by the utility; is that correct?

12 WITNESS CASEY: A That's correct.

13 Q Does contact information mean something other
14 than the telephone number?

15 WITNESS BURKE: A It would probably include
16 telephone number and website if it has -- if there's any
17 other additional information.

18 Q Why was that change made?

19 A To allow for the fact there may be more than
20 one means to contact the CCA.

21 Q Turning to page 9 of your proposed tariff.

22 And I apologize for the little delay. I'm
23 trying to avoid questions that were touched upon by
24 Mr. Buchsbaum, so I ask for your indulgence in that.

25 Looking at page 9 of your proposed tariff
26 section D.1, and you made some changes to subsections
27 1a, b and c. In particular, you've changed
28 the utility's proposed language in Section 1a,

1 I believe, from stating the standard opt-out service
2 required to be used by all CCA providers as defined in
3 section I to utility shall cooperate with the CCA to
4 implement its standard opt-out notification
5 requirements. Is that correct?

6 WITNESS LONDON: A Yes.

7 Q Is that a yes from somebody?

8 A You're talking about D.1.a, correct?

9 Q D.1.a, correct.

10 WITNESS NELSON: A Yes, that's correct.

11 Q That's correct?

12 A This version is different from your version.

13 Q But is the difference as I described them?

14 A You know, I don't have a red-line of both
15 versions in front of me, but I would assume that
16 documents speak for themselves.

17 Q Okay. When you refer to -- I'll represent to
18 you that it's as I described it. And I can get out
19 the utility tariff.

20 MR. HUARD: Your Honor, I'll stipulate that
21 Mr. Montoya's statement is correct.

22 MR. MONTOYA: Thank you, David.

23 MR. HUARD: Sure.

24 MR. MONTOYA: Q When you refer to "its" there in
25 section A, are you referring to the CCA or the utility's
26 standard opt-out notification requirements?

27 WITNESS NELSON: A That's a good catch. CCA.]

28 That's the actual point. It's the CCAs.

1 Q It's the CCAs?

2 A Yeah.

3 Q And what are the CCA standard opt-out
4 notification requirements?

5 WITNESS LONDON: A I believe those would be the
6 ones that are defined in the statute, the two notices
7 prior to the enrollment and then the two notices after.
8 Then there may -- some CCAs may choose to embellish on
9 that, and that's going to be a matter of local
10 discretion.

11 Q Okay. So it's nothing that's within -- it's
12 not within the tariff. It's something that each CCA
13 would adopt per its discretion?

14 A There is a section on opt out, and I haven't
15 reviewed it in the context of the question that you're
16 asking me; but I'm going to stand by my first statement.

17 Q Does everyone agree with that on the panel?

18 WITNESS NELSON: A Yes.

19 WITNESS CASEY: A Are you asking whether the CCAs
20 will run any kind of process they wish?

21 Q No. I'm just asking what are the CCAs --
22 since you've indicated it should be CCA standard opt-out
23 notification requirements, I'm just asking what are the
24 standard opt-out notification requirements.

25 And Ms. London --

26 WITNESS LONDON: A Those are defined in Section I
27 of this tariff. If you -- there's a whole section
28 called CCA Customer Opt-Out Processes.

1 Q And it's in Section I?

2 A Yes.

3 Q Then I can ask you why -- why did you delete
4 the utility's language that said a standard opt-out
5 service required be used by all CCA providers as defined
6 in Section I?

7 WITNESS NELSON: A Because it won't apply in the
8 context of initial move-ins. For a mass enrollment
9 service opt-out program, the statute is very clear.

10 For secondary enrollments where customers
11 either move in or transfer service within the
12 jurisdiction, the opt-out notification for that type of
13 service is not clear. And as we have suggested on the
14 panel, that's something that's going to be developed by
15 the CCA in its discretion.

16 Q I'm not sure I understand that answer in
17 response to my question since I think the -- if you look
18 at D.1.a, it just says:

19 In accordance with Commission
20 Decision, [the process decision,
21 blank, blank blank] the processes
22 set forth below describe basic
23 services provided by the Utility
24 to develop, implement and support
25 a CCA service.

26 And then a. is -- a. would have been:

27 A standard opt-out service
28 required be used by all CCA

1 providers as defined in Section I.

2 And you are saying that language will not --
3 is not acceptable, will not work, because of the
4 reasons -- for the reasons you explained; is that --

5 A Is your new question that, if I understand it
6 correctly, that Section I won't work?

7 Q Well, you changed -- you've changed the
8 utility's language, and I'm just trying to understand
9 why you changed the utility's language since, as I
10 understand Ms. London's response, the utility's language
11 worked perfectly. It was understandable. It referred
12 to Section I and --

13 WITNESS LONDON: A I haven't testified as to
14 whether or not we made changes between your Section I
15 and our Section I.

16 I just am looking in our tariff. There is a
17 Section I that defines opt-out notices.

18 Upon further review -- because when I answered
19 you before, I told you that I hadn't reviewed that
20 section in the context of your question -- our Section I
21 does appear to be geared primarily towards the initial
22 mass enrollment that will occur. And as Mr. Nelson just
23 testified, we do have a different situation when it's a
24 new customer moving in and establishing service.

25 So I think that the language that's in
26 Section D.1.a. provides the CCA with the flexibility it
27 needs to accommodate both the initial mass enrollment
28 and a new customer establishing service for the first

1 time within the CCA jurisdiction.

2 Q Turning to Section E.1. of your proposed
3 tariff, it's on page 10. And there you've made some
4 changes, I believe, to the section on specialized
5 service requests; is that correct?

6 A Yes.

7 Q And it looks like you've added language in the
8 second section -- second sentence, excuse me, in E.1.
9 now to state:

10 Specialized Services include any
11 requests for services that do not
12 conform to [utility]'s basic CCA
13 services and processes in
14 Section D or are all or part of
15 any basic services provided to
16 other commodity service providers.

17 And you've added the "or are all or part of
18 any basic services provided to any other commodity
19 service providers"; is that correct?

20 WITNESS NELSON: A Once again, we don't have both
21 documents, but if that's as you state it, then we agree.

22 WITNESS LONDON: A I do have the utility tariff
23 here, and we did add that last phrase that Mr. Montoya
24 just read.

25 Q Thank you, Ms. London.

26 What does that mean, that -- what does that
27 "or are all or part of" and continuing the phrase? I'm
28 just trying to understand what that means.

1 A Sean, do you have any insight on that?

2 WITNESS NELSON: A That means the CCA would like
3 to experience the same level of services that you
4 provide to other participants in the marketplace you
5 provide commodity service.

6 Q Are there any specific services you're
7 referring to?

8 A Not at this time.

9 Q Under your Section I.3. -- it's page 13 of my
10 copy -- I believe you've changed the utility's proposed
11 language again. And that section now says that if a
12 customer notification is mailed to the customer but is
13 returned by the postal service as undelivered, the
14 notification shall still be deemed effective and the
15 customer would still be automatically enrolled in CCA
16 service; is that a fair characterization?

17 Did someone say "yes"?

18 A Yes.

19 WITNESS BURKE: A You overreached just a bit. I
20 think it's fair to say that a customer should be deemed
21 to have received that notice.

22 Q Okay. So you would consider the customer to
23 be informed of its right to opt out even if notices were
24 returned unopened per that language?

25 WITNESS NELSON: A Yes. The notices are mailed
26 to the utility rolls, whatever address you have for the
27 customer where you mail the bills and you send them the
28 mail that we asked you to send them under statute; and,

1 yes.

2 Q Section L.3., starting at page 16, you are
3 proposing different switching rules for CCA customers
4 than currently apply to DA customers; is that correct?

5 A If you'd like to tell us what the DA switching
6 rules are. I have a hard time answering that question
7 in the context you have presented it.

8 Q Well, you are proposing that a CCA customer
9 that switches to bundled service should be committed to
10 bundled portfolio service for one year rather than three
11 years that applies to DA.

12 WITNESS CASEY: A That's correct.

13 WITNESS NELSON: A That's correct.

14 Q And you are proposing this notwithstanding the
15 language in AB 117 that indicates customers that return
16 to electrical corporation for procurement services shall
17 be subject to the same terms and conditions as are
18 applicable to other returning direct access customers;
19 is that correct?

20 WITNESS CASEY: A That's correct. And I think --
21 I think that phrase in AB 117 continues and says
22 something to the effect of "as determined by the
23 Commission."

24 Q Okay. The law speaks for itself. I
25 understand.

26 Nothing further, your Honor.

27 Thank you, by the way.

28 ALJ MALCOLM: Mr. Szymanski.

1 MS. SZYMANSKI: Thank you, your Honor.

2 May we go off the record for just a moment,
3 please?

4 ALJ MALCOLM: Off the record.

5 (Off the record)

6 ALJ MALCOLM: Back on the record.

7 MR. SZYMANSKI: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. SZYMANSKI:

10 Q Good morning, panel. I'm Paul Szymanski on
11 behalf of SDG&E.

12 WITNESS NELSON: A Good morning, Mr. Szymanski.

13 Q And I'd like to move through several
14 provisions of the tariff, and I will be referring
15 intermittently to the CCAs' proposed version as well as
16 the utilities' proposed version. We're looking at
17 differences between those two versions in selected
18 areas, and I'll be as clear as I can about the
19 provisions.

20 Rather than using the paginations, which would
21 possibly be different between the versions, I'm going to
22 refer to section numbers wherever I can.

23 The first question I have for you is
24 associated with Section E.1.i.

25 WITNESS LONDON: A Our tariff doesn't have a
26 Section E.1.i., Mr. Szymanski.

27 WITNESS BURKE: A That could be your problem.

28 Q I'm aware of that.

1 Let me tell you that in the utility version we
2 had an E.1.i. that dealt with phase-in. And as we
3 understand it at the utilities, the CCA version doesn't
4 have that version dealing with phase-in.

5 So given that your version doesn't have that
6 provision, I have a couple of questions.

7 The first is: What is the greatest amount of
8 time that a CCA could phase in its program?

9 WITNESS LONDON: A I don't believe there's been
10 any limit placed on the amount of time over which phase-
11 in can occur.

12 Q So is it your position that it could be
13 indefinite?

14 A Well, I think that the word "phase-in" assumes
15 that there is an end point. We haven't defined what the
16 end point will be, but I think "phase-in" speaks for
17 itself. It's something that happens over time, and then
18 it's in. You're phasing it in.

19 WITNESS BURKE: A I think if you look at the
20 Phase 1 decision, I mean the whole notion of phase-in
21 was introduced in the context of not wanting to impose
22 uneconomic conditions on a program at the outset.

23 If by phasing certain classes of customers one
24 can kind of sequence the revenues and thereby
25 generate -- generate better overall economies for the
26 program, and in that regard, I would think that the
27 implementation plan would be the process by which each
28 jurisdiction would evaluate which customers -- if it's

1 going to do a phase-in at all, which customers it would
2 phase in first and second, and so on, and the time
3 required based on some calculation that, hopefully,
4 would be clearly specified in the implementation plan
5 that substantiates why the subsequent phasing of
6 customers is occurring when it's occurring.

7 Q But, as I understand it, none of you is
8 prepared today to state a limitation on how long
9 phase-in could take?

10 WITNESS LONDON: A No.

11 WITNESS NELSON: A No.

12 Q Okay. During what point in a phase-in that
13 could potentially be indefinite or lengthy, let's just
14 say, more than a few years, maybe more than a year, at
15 what point would customer -- residential customer
16 service be phased in?

17 A That's within the purview and discretion of
18 the CCA who is attempting to adopt the phase-in.

19 WITNESS LONDON: A The statute is clear that all
20 residential customers must be offered service. And I
21 don't believe that the statute addresses whether there
22 is a phase-in scheme for residential customers, but it
23 is clear that they must be offered service.

24 Q Well, if you have, say, an open-ended phase-in
25 proposal in your implementation plan, could you perhaps
26 then have residential phase-in also at an indefinite
27 period of time within that phase-in period of time?

28 WITNESS NELSON: A Yes, that could happen.

1 Q All right. I would like to move on right now
2 to another provision that I believe is in the utility's
3 version but not the CCAs' proposed version.

4 And by the way, I understand both versions are
5 proposed, so I don't mean any suggestion that one is
6 adopted and the other one isn't.

7 Section T, dealing with involuntary service
8 termination.

9 If you folks could just give me a signal or an
10 eye contact that let's me know when you --

11 WITNESS LONDON: A We do have a section that's
12 entitled "Involuntary Service Changes."

13 Q Okay. Great.

14 There are provisions in -- there are
15 provisions in the utility's proposed version that deals
16 with service changes. And it says that service of
17 electricity from a CCA provider may be changed
18 involuntarily under the following circumstances, and
19 there are several circumstances enumerated after that
20 section.

21 And the CCA proposed version of the tariff
22 would delete this general area of the tariff.

23 So my question to you is: Should the CCA be
24 allowed to continue to serve customers if, for example,
25 the Commission determines that it has the authority to
26 decertify customers -- decertify a CCA and then takes an
27 action to decertify the CCA?

28 WITNESS NELSON: A I don't understand your

1 question.

2 Q Okay. One of the circumstances enumerated
3 under Section T.1. is Provision A. And do you happen to
4 have again the utility version in front of you?

5 A No, sir.

6 Q Okay. That's the issue.

7 Section A says: The CCA provider has been
8 decertified by the Commission, has Commission
9 registration revoked or suspended or receives a
10 Commission order that otherwise prohibits a CCA provider
11 from serving as a CCA provider.

12 That's an example of a circumstance that the
13 utilities believe would warrant or could warrant an
14 involuntary service change.

15 Now we understand that the issue of
16 certification or what that involves and the issue of
17 decertification also is an open issue right now in this
18 proceeding. But let's assume for the sake of this
19 question that the Commission determines that it has some
20 authority to decertify or to deregister, if you will, a
21 CCA provider.

22 Would it be appropriate for the Commission to
23 allow this provision to remain in the tariff?

24 A Assuming the Commission has the power you've
25 stated in your question, then it would be appropriate
26 for the Commission to comply with its power.

27 Q Would it be appropriate to have this provision
28 in the tariff to let parties and customers know the

1 circumstances under which there can be an involuntary
2 service change?

3 A No.

4 Q Okay. Could you elaborate on your
5 reasoning --

6 A Yes, sir.

7 Q -- please?

8 A If the tariff were to elaborate on all of the
9 Commission powers, it would be a substantially lengthy
10 document. If the Commission retains the power, as
11 stated in your question, it's a power that's incumbent
12 upon the Commission to exercise in its discretion.

13 It's not necessary to refer to it in such a
14 document that's a working document between a CCA and a
15 utility.

16 Q Is this document only a working document
17 between the CCA and the utility?

18 A That's my understanding of the usage in common
19 parlance in -- the tariff is an open-ended contract
20 between the utility and whoever is on the other end of
21 the tariff. In this instance, it's our understanding --
22 and correct me if I'm wrong -- that this document is
23 meant to be an understanding between how the utility
24 will interact with the CCA.

25 Q And it's only that, is my question to you.
26 It's no more than that?

27 A It's hard to say. I mean it could be used for
28 any number of other things.

1 WITNESS LONDON: A I mean the document is approved
2 by the Commission, as all your tariffs are approved by
3 the Commission. But as a matter of policy, we believe
4 that the tariff is between the utility and its customer.
5 Your customer is the CCA.

6 Q Okay. Thank you.

7 I'd like to now switch to another topic.

8 It's in, I believe, both versions of our
9 proposed tariffs at Section B.2.a.

10 I take it that you guys are okay; you are
11 ready to go?

12 WITNESS CASEY: A Yes.

13 WITNESS LONDON: A Yeah.

14 Q Okay. There, of course, has been a lot of
15 discussion and testimony about cooperation. And my
16 question to you with regard to cooperation is two-fold:

17 Shouldn't the obligation of cooperation be
18 reciprocal in all regards?

19 A That's your first question?

20 Q That's my first question.

21 A Well, there is -- I mean as a general rule,
22 like, I have kids who are in nursery school. I try to
23 teach them that it's nice to cooperate and play well
24 with others. And I'm not trying to make light of your
25 question, but as a general rule, I think that
26 cooperation is a good thing.

27 I also think -- I also know that the statute
28 is very specific, and I'm looking for the place in the

1 code and I can't find it right quickly -- that there is
2 language in the code that talks about the utility shall
3 cooperate and do everything they can to make CCA happen.

4 Q So your answer is "yes" because of cooperation
5 is a good thing, or is it -- is your answer "no" because
6 the statute says as you -- what you claim it says?

7 A My answer is that the reason -- I think your
8 question, Mr. Szymanski, is why did we say utilities
9 shall discharge its responsibility under this rule in a
10 cooperative, fair and nondiscriminatory manner.

11 Q No. My question -- if I may interrupt -- is:
12 Do you believe the obligation to be cooperative is
13 100 percent identical in both directions, utility to CCA
14 and CCA to utility?

15 A I guess I would have to say I do not believe
16 that it is because the statute provides specific
17 direction to the utility to be cooperative.

18 And I think that the CCA has huge incentive to
19 be cooperative with the utility because it wants its
20 program to succeed and the program cannot succeed unless
21 the CCA is able to work with the utility. That's very
22 clear from everything that's gone on here.

23 Q But your testimony here is that there is no
24 obligation on the CCA to be cooperative?

25 A Yes, correct.

26 Q Okay. Can you explain what types of
27 cooperation you can expect from the utility towards the
28 CCA under your proposal that the CCA would not be able

1 to expect as an obligation from the CCA to the utility?

2 WITNESS NELSON: A Could you be more specific?

3 Q No. I think that I am trying to explain
4 the -- we are trying to understand your proposal about
5 cooperation, and I'm asking in what regards must the
6 utility be cooperative towards the CCA where the CCA
7 need not be cooperative towards the utility.

8 A Okay. The first part of your question where
9 the utility should be cooperative with the CCA, as
10 Ms. London refers to, is enumerated in the statute.

11 Secondly, to answer your second part of
12 your question, the statute does not speak to the CCA
13 cooperation in that regard.

14 WITNESS LONDON: A Are you looking for examples
15 Mr. Szymanski; is that --

16 Q Yes, my first question had to do with specific
17 examples where the utility may need to be cooperative to
18 the CCA under your interpretation of the term
19 "cooperative" -- "cooperation" and where the CCA need
20 not be cooperative vis-a-vis the utility.

21 ALJ MALCOLM: I'm having a hard time with this.

22 Let's go off the record.

23 (Off the record)

24 ALJ MALCOLM: Back on the record.

25 Mr. Szymanski.

26 MR. SZYMANSKI: Thank you.

27 Q To conclude this, I have one final question.
28 In the next area of the proposed tariff, I think on each

1 version, under B, No. 3, there's a section entitled
2 "General Obligations of Community Choice Aggregators";
3 do you see that section?

4 Your version of the tariff contains no
5 references to cooperation with regards to what the CCAs
6 must do; is that correct?

7 WITNESS NELSON: A No. It has a six-page
8 provision that requires several levels of cooperation.
9 It has no identical provision to Section 2.a., as you
10 suggest.

11 WITNESS LONDON: A I would add, Mr. Szymanski,
12 that the first section under there, 3.a., Timeliness and
13 Due Diligence, meeting obligations and deadlines,
14 sounds -- if you wanted to find other words for
15 "cooperation," it sounds pretty -- pretty close, you
16 know.]

17 I would accept that definition from my
18 children.

19 Q Would you accept that definition from the
20 utilities, then?

21 A The utilities have a statutory obligation to
22 fully cooperate. I didn't write that into the language.

23 Q Let's move on. I would like to refer you to a
24 provision that was added in the CCA proposed version in
25 Section B.2.f. The section is entitled Other Services
26 Funded by Bundled Rates.

27 The question I have for you with regards to
28 this provision is don't bundled rates include both

1 commodity and transmission and distribution components?

2 WITNESS NELSON: A Bundled rates include those
3 two things, yes, they do.

4 Q So wouldn't your provision dictate that CCA
5 customers would receive services that are funded through
6 commodity rates which they do not pay for?

7 A No. Your bundle rates also include CTC
8 charges, PCG funds, nuclear decommissioning funds.

9 Q The way you have written this provision,
10 however, it includes commodity rates as well, right?

11 A I agree with you, bundled rates include a
12 number of things.

13 Q Do you see any concern here with the way that
14 the provision is written that it would suggest that CCA
15 customers would be receiving services that are funded
16 through commodity rates which they do not pay for?

17 A No. As an example, if the utility offers a
18 program where it will come to my house and pick up my 25
19 year old refrigerator out of my garage because it no
20 longer wants me to have that unit and then I will get a
21 new credit to buy a new energy efficient refrigerator,
22 the credit I get comes out of some certain allocation of
23 funding.

24 The people that you pay to come to my house
25 and pick up that refrigerator get a salary, they get
26 some money from you somehow. If that is a service you
27 offer to your customers, all we are asking for is we
28 have access to that same service when those services are

1 being paid for out of rates.

2 Q Let's move on to a section a little bit
3 further down, the scheduling coordinator section. There
4 was much discussion already on the record, and I don't
5 intend to revisit that entire discussion. But my
6 question to you, panel, is this: Are you aware that the
7 direct access tariffs from each of the three utilities
8 that have been approved by the Commission have a
9 provision in those tariffs dealing with very similar, if
10 not the same, text?

11 A No, I am not aware of any specific provision.
12 If you have a reference, we would be sure to review it
13 and respond to that question.

14 Q Is that the same answer that each of you would
15 have?

16 I assume if one person answers alone the other
17 three are in agreement.

18 WITNESS BURKE: A We will disagree if we
19 disagree.

20 Q If you are in disagreement you will let me
21 know?

22 A Absolutely.

23 Q That's fine.

24 A And none of us have that tariff in front of
25 us, the direct access tariff that you made reference to.

26 Q Are any of you aware of any problems that have
27 been visited on any customer or any ESP or utility or
28 anybody else by virtue of the fact that the direct

1 access tariffs have had, as I represent to you, a
2 scheduling coordinator set of issues or concerns or
3 obligations stated in that tariff provision?

4 WITNESS NELSON: A I am not sure I could even
5 begin to answer that question.

6 WITNESS LONDON: A The way I -- when I hear that
7 question, what I am hearing you say is there were --

8 Q If you have a question with my question, then
9 just ask it and I will be happy to give it to you.

10 A Can you clarify -- I think we will ask you to
11 clarify your question.

12 Q I am happy to do that.

13 We will move on. Thank you.

14 Section B.5.

15 WITNESS NELSON: A B as in boy?

16 Q Yes. This is a section entitled

17 Responsibility for Electric Purchases.

18 I noted that in the CCAs' proposed version of
19 the tariff you added the words "required by law" at the
20 end. The full sentence maybe I should read for the
21 purpose of making the record complete is, as I
22 understand the text as you would have it:

23 CCAs have exclusive responsibility
24 for obtaining or providing the
25 electric power needs, including
26 ancillary services of their CCA
27 customers, and to deliver such
28 power to the necessary grid

1 location required to serve
2 electric power needs of those
3 customers as required by law.

4 Do you see that text there?

5 A Yes, sir.

6 WITNESS LONDON: A I think it says "to" those
7 customers. You said "for."

8 Q Thank you. "As required by law," I am looking
9 at those last three words, "as required by law."

10 Do you mean when you refer to the law there
11 any other Commission decision or regulatory obligations
12 such as those that might flow from the ISO?

13 WITNESS NELSON: A Or FERC.

14 Q So all those are what are implied by the term
15 "required by law"?

16 A As they may change from time to time.

17 Q In Section B.8 I have a question for you
18 dealing with load aggregation for procuring electric
19 power.

20 Could one of you please read actually the last
21 sentence of that provision.

22 WITNESS BURKE: A I will be happy to do that.

23 The right of customers to
24 physically aggregate by combining
25 multiple accounts into a single
26 account or other account
27 delineation as permitted under any
28 applicable CCA rates and rules is

1 not restricted by this section.

2 Q Could you please explain to me what a
3 delineation is or an account delineation.

4 WITNESS NELSON: A The meter classifications,
5 that you have differentiation by meter type and
6 customer.

7 In this particular instance you may have
8 street lighting account that is on a piece of property
9 that is located behind several different types of meters
10 and on multi-use plot of land. For instance, if the
11 landowner wanted to aggregate all those meters up to a
12 master meter, contract with the utility for an
13 installation of that master meter and have it billed
14 through the master meter through WDAT, then all those
15 different meters could be aggregated under one larger
16 meter.

17 Q Are you referring to the utility's account
18 delineation, or a CCA's account delineation?

19 A I think it would necessarily have to be both
20 in order for the CCA SR to be submitted for a meter
21 switch out or transfer, there would have to be a proper
22 accounting between your language and the CCA's language
23 for what they call a customer or the type of customer it
24 is.

25 Q Later on in the sentence your text adds the
26 terms "any applicable CCA rates and rules."

27 What do you mean exactly by any applicable CCA
28 rates?

1 WITNESS BURKE: A An example of that could be
2 CCA commodity rates. We are talking about utility
3 having its own T&D rates and the CCA having its own
4 commodity rates. And the CCA may decide that for the
5 purpose of allocating commodity costs among a variety of
6 accounts or among a number of accounts and an even
7 greater number of meters for a single customer, they may
8 treat that particular customer as a single account or
9 there may be other special provisions, particularly if
10 they regard on site generation that is employed by that
11 particular customer and how that customer is credited
12 for the value of that on-site generation that they may
13 sell back to the CCA.

14 So we are basically trying to say that the CCA
15 is going to exercise whatever discretion it feels is
16 necessary to appropriately charge and price and account
17 for the sale of the commodity portion of this service to
18 this customer. And those rules and rates may not
19 perfectly comport with existing T&D rules and rates and
20 certainly may not comport with your existing bundled
21 rules and rates.

22 Q Thank you.

23 Let's move on to Section B.26. Excuse me. I
24 am going to edit that out due to somebody else's
25 question.

26 Let me revise my reference here to
27 Section E.1, please. It is an area dealing in Section E
28 with CCA specialized service requests.

1 I would like to refer you specifically to
2 Section E.1.a.

3 This is some text that was in the utility
4 version of the tariff but it was stricken from that
5 version. So it wouldn't appear in at least some
6 versions of the CCAs' proposed version.

7 Do you have text before you that says a CCA
8 provider interested in submitting a request for
9 specialized services shall be responsible for funding an
10 analysis of the impacts to utility normal operations and
11 a study to determine the estimate of costs for which the
12 CCA provider shall be responsible to pay? Do you see
13 that text?

14 WITNESS CASEY: A Yes.

15 Q Do you understand that these specialized
16 service requests could encompass a wide range of
17 requests big and small?

18 WITNESS BURKE: A Yes.

19 Q And who will pay for this cost if not the CCA?

20 WITNESS NELSON: A This tariff provision
21 presumes that the cost would be associated with whatever
22 the specialized services agreement between the CCA and
23 the utility end up becoming.

24 Q I'm sorry, sir. I didn't hear your answer.

25 A I apologize. In the Section E.1.a reference
26 that you read, you pointed out there is some language
27 that has been removed as between the utility version and
28 the CCA version. The CCA version as it reads, and I

1 quote:

2 E.1.a: A CCA requesting
3 specialized services shall be
4 responsible for executing a
5 specialized services agreement
6 between the CCA and the utility.

7 We presume that that agreement
8 will have some cost attributes and that will be
9 negotiated between the parties.

10 Q Do you understand that a specialized service
11 request could require, for example, preliminary work
12 that is requested of the utility and that once we
13 provide some information to the CCA as requested, the
14 CCA may determine that it doesn't want to pursue
15 something?

16 So the question we would have is would under
17 your provision the utility be paid for any work that the
18 utility does for the CCA even if it doesn't culminate in
19 the CCA actually using that work?

20 A No. For instance, if you go to Best Buy and
21 you want to buy a TV and you talk to the Best Buy
22 salesperson about buying a TV but you ultimately decide
23 not to buy the TV, you don't have to pay the salesperson
24 for his time.

25 Likewise, if they want to negotiate with you
26 for a specialized service and they ultimately don't
27 purchase that service, then it is a lost opportunity.

28 Q But what would happen if, for example, you

1 asked the utility to perform some specialized service
2 that involved modifying its billing systems or doing
3 computer work, systems changes to accommodate a
4 particular request that you folks might have of us? We
5 give you the analysis. We give you the information or
6 we set up systems to do the work. But then you don't
7 actually implement that work in your own program. Do
8 you still believe that the utility should not be paid
9 for that work? It is done at the request of the CCA.

10 A As I stated, I believe it is a lost
11 opportunity.

12 I also believe that the utility has the right
13 to say, geez, you know, that is going to take a lot of
14 work for us to try to figure out how to do that for you
15 and we don't feel like doing that without you coming to
16 some agreement with what you are going to pay us for
17 doing the work. That is all part of the negotiation
18 that is going to go into the agreement that I am
19 presuming you will make with the customer requesting
20 this specialized service.

21 WITNESS BURKE: A Let me clarify that, too.

22 The way your tariff is written, Mr. Szymanski,
23 it kind of implies that we got paid to show up to the
24 first meeting. And I don't think that's the implication
25 that any of us intended to have in the tariff.

26 It's been my experience in working with other
27 clients, Disney is a great example, I worked with them
28 on trying to underground transmission lines across their

1 parking lot for what is now the California Adventure.
2 There was a lot of this back and forth where there were
3 meetings and then ultimately feasibility study, but
4 prior to the conduct of the feasibility study the
5 meetings themselves addressed the fact that there would
6 be considerable cost incurred by the Edison Company.
7 And Disney in that instance decided, yes, we will pay
8 for it, and they did. In fact, they went around the
9 bush several times over a ten-year period and there were
10 several false starts, which Disney did pay for.

11 So obviously a lack of any reference to what
12 you find objectionable, a blanket reference to it where,
13 as I said earlier, we would have to pay you for showing
14 up, we will be obligated for the first meeting, is
15 something we find objectionable. And if we can capture
16 something that acknowledges that there -- there may be
17 some things that do ultimately culminate in considerable
18 cost being borne by the utility, and those costs should
19 legitimately be paid by the CCA.

20 By the same token, a CCA may make a request
21 that ultimately ends up in creating a service
22 improvement: For example, if we do make a request about
23 would you please modify your billing system to do X, and
24 you discover that is not too bad of an idea, I think we
25 will do that systemwide, and as a result the utility and
26 the bundled ratepayers benefit from this suggestion and
27 from the request that CCA has made, too.

28 It would be nice if we can just recognize that

1 suppliers and customers need to talk and that the cost
2 of entering the room isn't to pay the bill for showing
3 up at the meeting. A legitimate topic of discussion
4 ought to be the work that is being proposed and who pays
5 for the work.

6 Q Let's move on to Section F.2, please. Please
7 let me know when you're ready.

8 My question to you, Panel, is what is the
9 basis for this new language given the statutory
10 requirement? Statutory requirement is Section 366.2.c.a
11 that says that the Commission shall designate the
12 earliest possible effective date for the implementation
13 of a CCA program.

14 WITNESS NELSON: A What new language are you
15 referring to?

16 Q It is in your version at Section F.2. Do you
17 have that before you, sir?

18 A Yes, I do.

19 Q That is the language I'm referring to.

20 A The entire Section F.2?

21 Q Yes. I see that it consists of, I believe,
22 one sentence.

23 A A rather long sentence.

24 Q Right.

25 A Yes.

26 Q So can you explain to me what the reason was
27 for changing what the utility had?

28 A It was to allow some flexibility to cooperate

1 with the utility to try to pick a date that is going to
2 work for everyone.

3 Q So as I understand it, your provision would
4 allow the parties to work out a date that is in fact
5 earlier than the earliest date specified by the
6 Commission, am I correct?

7 A I believe the language refers to in the latter
8 part of that very long sentence "whichever is later." I
9 believe the intent of your question is to ask whether or
10 not this provision is designed to violate the law, as
11 you have correctly pointed out, which says no sooner
12 than the date. And I can assure you it was not intended
13 to allow anyone to violate that provision.

14 Q Well, the statute says that the Commission
15 shall designate the earliest possible effective date for
16 the implementation of the CCA program. But as I read
17 your revision to what the utilities had, it would
18 suggest to me that there's some date earlier than that
19 earliest date that the Commission designates that the
20 CCA and the utility could agree to. Am I reading that
21 provision the way -- am I reading that provision
22 correctly?

23 A I couldn't say because obviously we are
24 disagreeing on the way it is being read. So there is
25 some ambiguity, as reasonable minds can differ. But I
26 can assure you the intent as you suggested is not to
27 allow the CCA to begin service before the Commission has
28 authorized the implementation date service to begin.

1 Q Okay. What is it that you are intending,
2 then?

3 A I think I have stated what I believe to be the
4 intention, which is to allow the parties to cooperate.

5 Q Can we agree, then, through cooperation to a
6 date earlier than the earliest date that the Commission
7 designates for the implementation of a CCA program?

8 A We could, but it would be against the law.

9 Q Well, I can assure you that SDG&E won't do it.

10 A We will all be glad for that.

11 Q Can your provision be read for the CCA and the
12 utility to agree to a date later than the earliest
13 possible -- than the Commission's designation of the
14 earliest possible effective date for the implementation
15 of the CCA program?

16 A Right. Can it be clarified to make that more
17 clear since an ambiguity does exist? I agree, it could
18 be.

19 Q Let's move on to section -- I just have a
20 couple more here -- Section E.3, please.

21 WITNESS LONDON: A E.3?

22 MR. HUARD: Counsel, what is the reference?

23 MR. SZYMANSKI: Could we go off the record a
24 second.

25 ALJ MALCOLM: Off the record.

26 (Off the record)

27 ALJ MALCOLM: Back on the record.

28 MR. SZYMANSKI: Q I'm sorry for the incorrect

1 reference. What I was referring to was F.3, F.d.3. I'm
2 sorry. The pagination -- I agree with Mr. Buchsbaum on
3 everything he has said about tariff designations and
4 statutory designations. It is F.3, small D, in parens
5 3, F.3.d(3).

6 Do you see the new language that the CCA group
7 is proposing that says that EDI testing shall be
8 available at no charge to the CCA at any time upon 15
9 days written notice?]

10 WITNESS NELSON: A Yes, I see that.

11 Do you guys see that?

12 WITNESS LONDON: See it.

13 WITNESS BURKE: Mm-hmm.

14 Q Do you understand that this EDI testing is an
15 incremental activity for the utility associated with
16 the CCA program?

17 WITNESS NELSON: A I have no understanding about
18 whether or not it is an incremental activity for you.

19 Q Assuming that EDI testing is an incremental
20 activity, would you still believe that that activity
21 should be provided to the CCA at no charge?

22 A Yes, I believe you should provide it at no
23 charge.

24 MR. SZYMANSKI: Okay. Thank you.

25 Let's move on to the last area of my
26 questioning. It's section I, like India, 5.

27 Panel, on further review, we think that we've
28 already addressed this elsewhere. So that concludes my

1 cross-examination. Thank you very much.

2 WITNESS NELSON: Thank you.

3 MR. SZYMANSKI: Thank you, your Honor.

4 ALJ MALCOLM: Thank you, Mr. Szymanski.

5 WITNESS CASEY: Thank you.

6 ALJ MALCOLM: Is there any redirect?

7 MR. HUARD: Your Honor, we could take a break at
8 this point, and I'll talk to the panel and make that
9 determination when we get back. I think we have very
10 limited.

11 ALJ MALCOLM: Okay. We will be in recess until
12 10:50.

13 (Recess taken)

14 ALJ MALCOLM: Be back on the record.

15 Mr. Huard, do you have any redirect of
16 the panel?

17 MR. HUARD: Yes. Thank you, your Honor. I have
18 questions on two different particular tariff sections
19 that were inquired about by the utility
20 cross-examination.

21 REDIRECT EXAMINATION

22 BY MR. SZYMANSKI:

23 Q Panel, could I ask you to turn to Section E
24 like in Edward, 1. I believe that's on page 10 of
25 the CCA proposed tariff. Do you have that reference?

26 WITNESS CASEY: A Yes.

27 WITNESS LONDON: A Yes.

28 Q Do you recall you were asked about in

1 the preamble there is a phrase, "or are all or part of
2 any basic services provided to other commodity service
3 providers"? Do you recall being questioned on that
4 phrase?

5 WITNESS CASEY: A Yes.

6 Q Could you at this time clarify what is
7 intended by that phrase?

8 A Yes. There should be the insertion of
9 the word "not," n-o-t, "not" before the word "all." And
10 that's on line 4 of that preamble.

11 So the section -- that phrase should now read
12 "or are not all or part of any basic services," and so
13 on.

14 ALJ MALCOLM: Can we -- can you repeat that?
15 I thought you were talking about Section F.1.

16 MR. HUARD: No, your Honor. E.1.

17 WITNESS CASEY: Section E.1, your Honor.

18 ALJ MALCOLM: Okay. Can you repeat that again,
19 Mr. Casey.

20 WITNESS CASEY: Yes. There should be an insertion
21 of the word "not" before the word "all" on line 4 of
22 that preamble under E.1.

23 MR. MONTROYA: Oh. Not. That makes sense.

24 ALJ MALCOLM: I don't see it.

25 MR. HUARD: Your Honor, can I approach the bench
26 and I'll point.

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

28 (Off the record)

1 ALJ MALCOLM: Back on the record.

2 MR. HUARD: Q The second section would be section
3 F.2. It appears on the same page of Mr. Casey's
4 combined utility/CCA proposed tariff. There was
5 questions -- do you remember being questioned by
6 Mr. Szymanski about whether or not the phrase "unless a
7 different mutually agreed upon date is established by
8 the CCA"?

9 WITNESS LONDON: A Yes.

10 WITNESS CASEY: A Yes.

11 Q Do you have a change that you would propose
12 for Section F.2 to clarify?

13 A Yes. In F.2, on line 4, the phrase "whichever
14 is later" should be deleted from that line. There
15 should be a -- on the following line after the word
16 "utility," there should be a comma, and then "whichever
17 is later" should be inserted on that line with a period.

18 MR. MONTOYA: One more time, please, if you don't
19 mind.

20 WITNESS LONDON: If I might, you're moving --

21 WITNESS CASEY: Sure.

22 WITNESS LONDON: -- "whichever is later" from
23 where it is currently to the end of the phrase.

24 WITNESS CASEY: To the end of the phrase, exactly.
25 End of the sentence.

26 MR. MONTOYA: Right after utility?

27 WITNESS CASEY: Mm-hmm.

28 MR. MONTOYA: That's easier.

1 WITNESS CASEY: So hopefully that will clarify
2 the intent of F.2.

3 MR. HUARD: Your Honor, that's all the redirect
4 I have.

5 ALJ MALCOLM: Is there any recross?
6 (No response)

7 ALJ MALCOLM: Thank you.
8 Let's go off the record.
9 (Off the record)

10 ALJ MALCOLM: We'll be back on the record.
11 We will have the testimony first of
12 Mr. Nelson, then Mr. Burke, then Ms. Middelburg, and
13 then Ms. London.

14 Mr. Buchsbaum, did you want to start?
15 (No response)

16 ALJ MALCOLM: Mr. Buchsbaum, did you want to
17 start?

18 MR. BUCHSBAUM: I was going to defer to
19 Mr. Montoya, because I don't even have the pages open.

20 MR. MONTOYA: I'd love to help you, but I've got
21 no questions for Mr. Nelson.

22 ALJ MALCOLM: Okay. Mr. Szymanski?

23 MR. SZYMANSKI: No questions, your Honor.

24 MR. MONTOYA: Back to you.

25 ALJ MALCOLM: Off the record.
26 (Off the record)

27 ALJ MALCOLM: Back on the record.

28 Mr. Montoya, you may present Edison's last

1 witness.

2 MR. MONTOYA: Did you want to swear her in?

3 ALJ MALCOLM: I will.

4 Ms. Middelburg, will you stand and raise your
5 right hand.

6 SUZANNE MIDDELBURG, called as a
7 witness by Southern California Edison
8 Company, having been sworn, testified as
9 follows:

10 ALJ MALCOLM: Thank you.

11 DIRECT EXAMINATION

12 BY MR. MONTOYA:

13 Q Good morning, Ms. Middelburg.

14 A Good morning.

15 Q Are you sponsoring portions of the joint
16 testimony in this proceeding that have been marked as
17 Exhibits 1A, which is the opening, 2A, reply, and 3A
18 rebuttal?

19 A Yes, I am.

20 Q And what portions are you sponsoring?

21 A Sections F which is the implementation plan
22 and consumer protection.

23 Q And were those sections prepared by you or
24 under your direction?

25 A Yes, they were.

26 Q And to the extent those portions include
27 factual statements, are those statements true and
28 correct to the best of your knowledge?

A Yes, they are.

1 Q And to the extent your testimony includes
2 opinions, do those opinions reflect your best judgment?

3 A Yes, they do.

4 Q Do you have any corrections to make?

5 A No, I do not.

6 Q Do you adopt those sections of the joint
7 utilities' testimony as your sworn testimony today?

8 A Yes, I do.

9 MR. MONTROYA: Your Honor, the witness is available
10 for cross-examination.

11 ALJ MALCOLM: Okay. Mr. Fenn?

12 (No response)

13 ALJ MALCOLM: Mr. Como.

14 MR. COMO: I prefer Mr. Huard go first, your
15 Honor.

16 ALJ MALCOLM: Okay. Mr. Huard.

17 MR. HUARD: Today seems to be the day to pass
18 the buck.

19 Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. HUARD:

22 Q Ms. Middelburg.

23 A Good morning.

24 Q My name is David Huard and I'm appearing on
25 behalf of the Local Government Commission, County of Los
26 Angeles and City of Chula Vista. Hope you're feeling
27 better.

28 A Thank you. And thank you for accommodating my

1 schedule. I appreciate it.

2 Q No problem. I have just a few questions that
3 I'd like to ask you, if I could.

4 First, I'd like to ask you about your
5 background, for a second. My reading of your background
6 is you're a long-time employee of Southern California
7 Edison; is that correct?

8 A That's correct.

9 Q And you're not an attorney?

10 A Not.

11 Q So that your sworn testimony here is your
12 personal opinion on policy and is not intended to render
13 a legal opinion?

14 A That's correct.

15 Q Have you ever been elected to a city council
16 or a county board of supervisors?

17 A No, I have not.

18 Q Have you ever been employed by a municipal
19 utility or any city or county as a full-time employee?

20 A No, I have not.

21 Q Are you familiar with the Brown Act?

22 A Familiar with. I'm aware of it.

23 MR. HUARD: Okay. Your Honor, at this time, I'd
24 like to have marked as identification three exhibits.
25 They were handed out yesterday. And I have extra copies
26 if anyone wants it.

27 MR. MONTROYA: There were three? I only got two
28 yesterday.

1 MR. HUARD: The third is actually the text of
2 the statute.

3 MR. SZYMANSKI: You have a spare?

4 MR. HUARD: Sure. I've got tons.

5 MR. MONTOYA: Your Honor, I'm going to object to
6 marking this as an exhibit. This is the California
7 statute, and I don't see any need to include
8 the California statute as an exhibit in this proceeding.

9 MR. HUARD: Your Honor, as you recall,
10 Mr. Buchsbaum submitted the Ohio statute as an exhibit
11 and it was previously marked. If statutes are to be
12 excluded as exhibits, then I would suggest that all
13 statutes are excluded as exhibits.

14 MR. MONTOYA: Your Honor, if I could respond.
15 That's silly. That's the Ohio statute which the parties
16 do not have quick access to. All the parties in this
17 proceeding have ready access to the California statutes.

18 MR. HUARD: Your Honor --

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

20 (Off the record)

21 ALJ MALCOLM: Back on the record.

22 We'll mark the -- well --

23 MR. HUARD: Your Honor, let me give you two sets
24 of three documents. The first one is entitled Summary
25 of Brown Act, California Government Code Section 54950
26 et seq.

27 ALJ MALCOLM: We will mark that as Exhibit 41-A
28 but as I mentioned, I don't intend to enter it into

1 the record.

2 (Exhibit No. 41-A was marked for
3 identification.)

4 MR. HUARD: That's fine.

5 The second one is the LEXSTAT of
6 the California code, basically the Brown Act itself.

7 ALJ MALCOLM: We'll mark that but not enter it as
8 Exhibit 42-A.

9 (Exhibit No. 42-A was marked for
10 identification.)

11 MR. HUARD: The third, your Honor, is the
12 California Attorney General's Office has prepared an
13 Open Meeting For Legislative Bodies manual entitled
14 The Brown Act 2003. If I could have that marked, your
15 Honor.

16 ALJ MALCOLM: We'll mark that as Exhibit 43-A.

17 (Exhibit No. 43-A was marked for
18 identification.)

19 Q Ms. Middelburg, to your knowledge, won't all
20 cities, counties or subsections of cities and counties,
21 committees, whatever, be bound by the Brown Act for
22 their deliberative processes?

23 A That's my understanding.

24 Q So that all activities such as the issuance of
25 an ordinance would be covered by the Brown Act?

26 A I would assume yes.

27 Q Would discussion and adoption of
28 the implementation plan be covered by the Brown Act

1 requirement?

2 A I would assume it would, yes.

3 Q And therefore, also approval of contracts for
4 electricity or other major procurement?

5 A I'm making these assumptions because I'm not
6 that familiar with the Brown Act.

7 Q Have you attended city council meetings?

8 A Yes, I have, and watched them on my cable.

9 Q So that you've seen them have meetings where
10 they voted for, discussed and adopted --

11 A Yes.

12 Q -- contracts during open meetings?

13 A Yes.

14 Q And therefore adoptions of tariffs, rules and
15 other rate schedules would also be covered by the Brown
16 Act as well?

17 A Yes.

18 MR. MONTROYA: Your Honor, I'm going to object that
19 the witness has already indicated that she's vaguely
20 familiar with the Brown Act. He's basically asking a
21 legal opinion whether or not some actions taken by some
22 city would be covered under the Brown Act. And I
23 couldn't tell you as an attorney sitting here whether
24 that's true or not.

25 MR. HUARD: Your Honor, Exhibit 43-A will be more
26 than detailed in that regard, which is why I've
27 basically submitted it for the record.

28 ALJ MALCOLM: All right.

1 MR. HUARD: It's an issuance of the state
2 government by the state attorney general as guidance to
3 all city-counties or any other interested persons.

4 MR. MONTOYA: That's legal argument.

5 ALJ MALCOLM: Okay. Why don't you refer her to
6 a portion of the statute or of the AG's analysis of it,
7 and ask her if she understands whatever point you're
8 trying to make.

9 MR. HUARD: Thank you, your Honor.

10 ALJ MALCOLM: But with the understanding that
11 she's not giving a legal opinion.

12 MR. HUARD: I understand, your Honor. But you
13 also understand that there is a fine line here between
14 policy and interpretation of AB 117 as well as
15 interpretation of other statutes.

16 ALJ MALCOLM: Right. And I understand that you're
17 trying to make sure she has some basic understanding of
18 the statute in the context of her recommendations on
19 procedural protections.

20 MR. HUARD: Thank you, your Honor.

21 ALJ MALCOLM: For consumers.

22 MR. HUARD: Q Ms. Middelburg, I just handed you
23 what has been marked as Exhibit 43-A in this proceeding.

24 A Mm-hmm.

25 Q Can you turn basically to the second page of
26 the text in Chapter 2. Can you read the first paragraph
27 of that, please.

28 A

1 The Brown Act applies to the
2 "legislative bodies" of all local
3 agencies in California, e.g.,
4 councils, boards, commissions and
5 committees. (Sections 54951 and
6 54952.) In addition, any person
7 elected to serve as a member of a
8 legislative body who has not
9 assumed the duties of office shall
10 conform his or her conduct to the
11 requirements of the Act, and shall
12 be treated for purposes of
13 enforcement of the Act as if he or
14 she had already assumed office.
15 (Section 54952.1; see, 216 *Sutter*
16 *Bay Associates v. County of*
17 *Sutter*, (1997), 58 Cal.App.4th.860.

18 Q If I could turn you to the summary of pre-
19 Brown Act provision which appears at the very beginning
20 of that document, and they're Roman numeral numbered,
21 Roman 6.

22 MR. MONTROYA: Where are you?

23 MR. HUARD: It's Roman 6. It's about the fourth
24 page in. They do a couple of numbered pages and they
25 switch to Roman numbers and then they switch back.

26 MR. MONTROYA: Are we in a different doc- -- okay.

27 MR. HUARD: (Showing document to Counsel)

28 Q Now in this, is it your understanding based on

1 this, that it covers -- look under Governing Bodies.

2 A Mm-hmm.

3 MR. MONTOYA: Your Honor, all he's doing is asking
4 the witness to read from or refer to a document that she
5 has absolutely no knowledge or expertise about, that she
6 had no involvement in writing. I don't understand the
7 point. He could be asking me to do the same thing.

8 MR. HUARD: Your Honor --

9 MR. MONTOYA: What value is there?

10 MR. HUARD: Can I respond, sir?

11 This witness testifies to the lack of consumer
12 protection and necessity for the Commission to provide
13 consumer protection. What this is to show is how cities
14 and counties have detailed government code requirements
15 for their operations for how things are participate --
16 how people participate, what their rights are for
17 participation, and basically are a significant consumer
18 protection.

19 MR. MONTOYA: Your Honor, he just outlined his
20 argument in brief. That's all that was.

21 ALJ MALCOLM: Well --

22 MR. SZYMANSKI: This is fodder for official or
23 judicial notice. This isn't fodder for
24 cross-examination.

25 ALJ MALCOLM: I understand. I think it's okay
26 that he's asking her whether she knows what's in these
27 documents and whether she, for example, considered them
28 when she wrote her testimony.

1 MR. MONTROYA: He can ask those foundational
2 questions, your Honor, whether she has read this
3 document before, whether she considered any provision in
4 there. That's fine.

5 ALJ MALCOLM: Well --

6 MR. HUARD: Your Honor, actually I did.

7 ALJ MALCOLM: Okay. And so let's move along and
8 not spend too much time on the details of the document
9 or reading it into the record.

10 MR. HUARD: Q Ms. Middelburg, is it your
11 understanding that when a CCA adopts either an ordinance
12 or an implementation plan or takes any action, that that
13 action is governed by California Government Code as
14 outlined by the Brown Act?

15 A I assume it is, yes.

16 MR. HUARD: Your Honor, that was all the questions
17 I had.

18 ALJ MALCOLM: Thank you. Short but wild ride.
19 Mr. Como.

20 MR. HUARD: I thought it would be fairly simple,
21 but apparently nothing is in this proceeding.

22 MR. COMO: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. COMO:

25 Q Good morning, Ms. Middelburg.

26 A Good morning.

27 Q I'm Joe Como. I'm with the City and County of
28 San Francisco. I've actually whittled down my questions

1 to just a few.

2 I want to first clarify something on Chapter
3 4, page 4, of your testimony, I guess that's the
4 rebuttal testimony, on line 15.

5 MR. MONTOYA: Joe, one second. If you can bear
6 with me while I try to get there.

7 MR. COMO: Sure.

8 MR. MONTOYA: Okay. Thanks.

9 MR. COMO: Q Ms. Middelburg, you see in that
10 line, line 15, in quotes, you have the phrase "clear and
11 complete."

12 A (Nods)

13 Q Can you tell me why that's in quotes?

14 A Well, my recollection is that in the general
15 response to this particular question, and above
16 the question was asking if the Commission had a little
17 discretion beyond a specific task.

18 My response, to put it in context, was that
19 the tariffs need to contain language that is clear and
20 complete so there is understanding by all the parties,
21 including consumers who I'm basically trying to
22 represent here today as well; that the outline for how
23 the CCA programs will be implemented, consumers' rights
24 and responsibilities, et cetera, are clearly outlined
25 for all parties to see and understand.

26 Q So you are not quoting that language from some
27 general authority that you've identified as being the
28 Commission's authority?

1 A That's correct. The quotes are not as part of
2 my citation.

3 Q On page 5 of that same section, the same
4 chapter, on line 5, you say that as a general matter,
5 it's far more difficult to resolve disputes when
6 the tariff is silent or not specific on a particular
7 matter. Do you see that?

8 A That's true, yes.

9 Q What if there's a dispute between the CCA
10 customer and the CCA, which document would you say takes
11 precedence in resolving that dispute; the implementation
12 plan prepared by the CCA or the tariff?

13 A When a consumer complains to a CCA, it will be
14 up to the CCA to provide whatever documentation the CCA,
15 in my opinion, is standing behind in terms of why they
16 took a particular action or why something happened.

17 As I'm writing this, I can tell you from
18 experience, 18 years as a consumer advocate and public
19 policy person at Edison, consumers will first call
20 the utility because a charge is on their bill or they'll
21 call the Commission. We're hoping they are going to
22 call the CCA. But if they don't, all the parties in
23 some case have to be able to point to something to
24 explain to the customer why a particular action or
25 charge occurred.

26 And I'm merely stating that it is our
27 experience that if you have a process outlined up front,
28 you will, (a), be able to solve disputes much, much

1 easier to the better satisfaction of the consumer as
2 well as actually reducing the costs and keeping your
3 customer satisfaction high. It is a good thing to have
4 a process in place up front.

5 Q Would you say that if there's an
6 implementation plan which has certain rules and
7 requirements and a tariff which has certain rules and
8 requirements, that they have to be in lockstep with each
9 other in order for the consumer to understand how to
10 resolve a problem?

11 A Well, I think my opinion would be that
12 the more they are in line, the easier it is for a
13 consumer to understand. It's been my experience that if
14 you have conflicting documents, you will not be able to
15 effectively resolve the dispute.

16 Q Are you familiar with a process to change
17 what's in a tariff at the CPUC?

18 A I've had experience in getting tariff language
19 changed, yes.

20 Q If the utility decided to come to the CPUC and
21 was successful in getting a change in a CCA tariff and
22 that language was in conflict with a particular CCA's
23 implementation plan, would the CCA have to change its
24 implementation plan in order to conform with the new
25 language in the tariff?

26 A I don't think I'm qualified to say yes or no
27 on that. I would defer to the Commission because it has
28 pretty broad authority to make those decisions. What

1 I'm recommending in my testimony is what we would like
2 the Commission to consider in its decision to implement
3 consumer protection rules.

4 MR. COMO: That's all I have, your Honor. Thank
5 you.

6 ALJ MALCOLM: Thank you.

7 Any questions, Mr. Fenn?

8 MR. FENN: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. FENN:

11 Q Hello, Ms. Middelburg. I'm Paul Fenn from
12 Local Power.

13 A Hello.

14 Q I just want to make sure I'm crossing you on
15 the correct sections of testimony.

16 You did, did you not, sponsor Appendix A to
17 the opening testimony?

18 A Yes, I did.

19 Q As well as Appendix B?

20 A Yes.

21 Q And then did you also sponsor the rebuttal
22 testimony concerning implementation plans?]

23 A Yes.

24 Q Okay. Thank you.

25 Please, if we could go to Appendix A of the
26 opening testimony in Section A.

27 A I'm sorry. I'm finding Sections B and C.

28 What is Appendix A? Can you describe what it

1 is?

2 Q Appendix A is open season proposal --

3 MR. MONTOYA: I don't believe --

4 THE WITNESS: That was not my -- I'm sorry.

5 MR. FENN: Q That was not your testimony?

6 A I sponsored B and C.

7 Q B and C?

8 A Correct.

9 Q I see. I believe I questioned another witness
10 last week who indicated you were the author of this when
11 I asked to -- but I'll have to check the record on that.

12 Thank you.

13 Let's go on then to Appendix B.

14 A Okay.

15 Q If we could go to page 3. Under Section 8 it
16 reads:

17 Before Registrant can apply to
18 register as a CCA Provider,
19 Registrant is required to execute
20 a service agreement with each
21 utility distribution company,
22 and so on.

23 What's the basis for requiring the service
24 agreement prior to registration of a CCA?

25 A That's a very good question. And I can't
26 recall other than to say that when we modified this form
27 from the direct access form to provide it as a
28 recommended format, that we were expecting that the CCA

1 provider would actually have worked out with the
2 Commission a service agreement -- worked out with the
3 utilities a service agreement prior to coming to the
4 Commission and stating that they are prepared to be a
5 CCA provider.

6 Q There is no other basis other than the fact
7 that it was a direct access precedent?

8 A I do not believe so.

9 Q Thank you.

10 Please, if we could go to page 4.

11 When you refer to the CCA provider in this
12 document, do you mean the CCA itself, or do you mean the
13 ESP, or is there -- could it be either?

14 A It -- we're -- I used the term "provider" as
15 community choice aggregation doesn't say anything other
16 than it's aggregation community choice.

17 The provider is -- in my opinion would be the
18 city or the county or the entity because that is the
19 entity that has responsibility for the consumer.

20 Q I see. So this form is designed for a local
21 governing board to fill out?

22 A Correct.

23 Q Not for an ESP or an officer of a company?

24 A Correct. I consider the ESP as a third party
25 to the -- a contractor, if you will, to the CCA
26 provider.

27 Q Understood. Thank you.

28 I'm just wondering, when you indicate here in

1 Section 9 on page 4 where you require the CCA to provide
2 the names, titles and a brief job description of key
3 personnel that are involved in the technical and
4 operational aspects of the business, do you mean members
5 of the governing board, or is this -- does this refer to
6 operational staff?

7 It seems to be a -- does this describe people
8 who are involved in providing electricity services or
9 executive officers of the governing board?

10 A I would like to refer to the assembly bill
11 portion that calls out what the CCAs would provide. And
12 we merely, as I said, took the DA form, modified it, but
13 we paraphrased, so this isn't a statute written exactly.

14 But as the statute asks the CCA provider to
15 provide technical ability, proof of technical ability,
16 operational ability, et cetera, it calls out in the
17 statute that there is a place for this sort of
18 information to be contained. So we were merely
19 providing on the form a place for the statute
20 requirement.

21 Q Can you refer me to that, or is that beyond
22 your ability?

23 A Give me a moment and I might be able to.

24 Q Sure.

25 A Actually, if you refer to my opening
26 testimony, page 18, starting on line 5, I call out from
27 the statute the following information that the
28 implementation plan must contain.

1 And it's number G calls out what third parties
2 would be supplying, and A calls out the organizational
3 structure, its operations and its funding.

4 If you go to page 20 of my testimony, opening
5 testimony, line 7, under the "Requirement.
6 Organizational structure," our additional guidance
7 intends to clarify what we understand that to mean.

8 The organizational structure level and
9 sophistication of operations would be merely stating how
10 is the CCA provider structured in order to prove that
11 it's capable of providing a CCA program.

12 Q So you are taking requirements -- statutory
13 requirements for the implementation plan and inserting
14 them into the registration?

15 A What we attempted to do was to assist in the
16 process by providing a form as a recommended form to be
17 used in this program. It's certainly up to the
18 discretion of the Commission to decide this is the
19 correct form or not form, but that was our intent.

20 Q Okay. Thank you.

21 All right. Please, if we could just go down
22 to your rebuttal testimony on Roman 4, Arabic 21 -- or,
23 sorry -- Roman 4, Arabic 23.

24 Now you contest my assertion that the
25 Commission has no authority to refuse to accept an
26 implementation plan filing.

27 MR. MONTROYA: Counsel, is there a specific line?

28 MR. FENN: Yes. I'm sorry. This is line 18,

1 please, on Roman 4, Arabic 23.

2 Q Now the basis of your disagreement is that you
3 believe the Legislature could not possibly have meant
4 that the Commission had no authority to disapprove, to
5 use the word on the top of Arabic 24, implementation
6 plan filings.

7 And you believe that this language in Section
8 366.2(c)(4)(D) that you cite there, the line 2,
9 overrides the specific statutory certification language
10 that's used in AB 117?

11 A I think I understand your question, but let me
12 give you an answer and let me see if this is the answer
13 to the question you are asking.

14 It is my testimony that the Commission was
15 given broad authority to determine what would be
16 necessary beyond the initial parts of the statute to
17 make sure that the utilities are -- get recovery.

18 They would not have included the Commission,
19 in my opinion, in any other part of the statute if it
20 had not intended for that -- for the Commission to take
21 whatever it saw as necessary.

22 And in the statute it does give -- in fact,
23 it's on page 8, and it's Section C 14. And it states
24 that community choice aggregators shall register with
25 the Commission, which may require additional information
26 to ensure compliance with basic consumer protection
27 rules and other procedural matters.

28 Our testimony is that this gives pretty broad

1 discretion to the Commission purposefully by the
2 Legislature to allow the Commission to determine what is
3 necessary for it to be able to register and approve a
4 program.

5 Is that what you're asking?

6 Q Yes. Please, though, just for purposes of
7 clarification, though, do you have the statute in front
8 of you?

9 A Yes, I do.

10 Q Would you mind reading a section of it,
11 please. And I'll admit partial responsibility for the
12 enumeration, which is difficult sometimes. It's
13 366.2(c)(7), which is on page 92 of the statute, or
14 page 5 --

15 A Page 5.

16 Q -- on the top.

17 Would you please read the -- just read that
18 whole section, please.

19 A [Reading:]

20 Within 90 days after the community
21 choice aggregator establishing
22 load aggregation files its
23 implementation plan, the
24 Commission shall certify that it
25 has received the implementation
26 plan, including any additional
27 information necessary to determine
28 a cost- recovery mechanism. After

1 certification of receipt of the
2 implementation plan and any
3 additional information requested,
4 the Commission shall then provide
5 the community choice aggregator
6 with its findings regarding any
7 cost recovery that must be paid by
8 customers of the community choice
9 aggregator to prevent a shifting
10 of costs as provided for in
11 subdivisions D, E and F.

12 Q Thank you very much.

13 What do you believe is the meaning of the
14 expression "the Commission shall certify that it has
15 received the implementation plan"?

16 Do you believe that -- let me rephrase it
17 slightly.

18 Do you believe that -- that the Commission
19 within this sentence or requirement is authorized to
20 refuse certification?

21 A I believe it is if the plan is not complete.
22 If the plan does not include the required information
23 that the statute calls for and that the Commission
24 requests, then it's logical to assume the Commission
25 wouldn't certify it as ready to go. That's kind of a
26 logical step in my --

27 Q But in this case, the term is "certify that is
28 has received."

1 It doesn't say certify that it's ready to go,
2 does it?

3 A That's true. It has certification of receipt.

4 Q So, in effect, a refusal would be a -- would
5 it not, simply be a refusal to certify that it had
6 received the plan?

7 A As I read this section, it has received the
8 plan. And with regard to the findings regarding cost
9 recovery, is what I see the Commission is certifying in
10 this -- in this particular piece of the statute.

11 MR. BUCHSBAUM: Your Honor, I just think we should
12 move on.

13 I object because I tried hard not to get into
14 legal interpretation, and you had given us a direction
15 to argue that in the briefs, so --

16 ALJ MALCOLM: I will say her testimony reads
17 partly like a brief. And so I understand why Mr. Fenn
18 is pursuing this line of cross-examination.

19 But, yeah, I'd like to limit it.

20 MR. FENN: Okay. Your Honor, I'll move on. In
21 fact, I was done with it really.

22 I just wanted to clarify because there were --
23 there's this statement here on 4-24 that if there were
24 any doubt about the Commission's authority to do so,
25 refer to another section of statute, not the section
26 concerning the certification.

27 So for me there was an interpretation of
28 statute there I just wanted to clarify.

1 So I'll move on.

2 If we go down to line 16 on 4-24, you -- you
3 disagreed with my disagreement that the notion of a
4 statutory requirement for a disclosure of organizational
5 structure in the plan should include level and
6 sophistication of operation, because the meaning of such
7 a requirement is totally unclear.

8 And you had commented in line 20 that
9 disclosing the information will benefit customers, the
10 Commission, and affected utilities.

11 Aside from whether it would bestow a benefit,
12 I would like to know what is the meaning of the "level
13 and sophistication of operation."

14 A What I meant by that is that -- and Edison
15 deals with well over 100 cities and counties -- that
16 there are varying degrees of sophistication within these
17 cities. Some are very sophisticated, as is
18 San Francisco and other large cities. Some may not be
19 so.

20 We simply don't know what level of
21 sophistication or what ability any given city that
22 decides they want to be a CCA provider has.

23 We're asking that it be made clear to the
24 consumers that will be affected, to the utilities that
25 still serve those consumers and will have a relationship
26 with the CCA provider, and to the Commission so that
27 they can ensure that basic consumer protections are in
28 place and are being implemented.

1 It merely just calls out for clarification
2 how -- how is this entity capable of providing the
3 service that it says it will provide.

4 Part of my testimony goes back to experience
5 we had in the seven years of direct access where we had
6 some good players and some poor players, not that they
7 were bad people. Some players were just not capable.

8 ALJ MALCOLM: [Inaudible]

9 (Laughter)

10 THE WITNESS: Well, I didn't want to have to say
11 that, your Honor, but I remember clearly all of those.

12 That we just can't just assume that because a
13 city is a city they have the right level of
14 sophistication to take on this very complex program.

15 We are just asking that it be made clear
16 upfront.

17 MR. FENN: Q Does this testimony presume that the
18 implementation plan would be filed following a CCA
19 selection of an ESP or award of contract by munis?

20 A I can't -- I can't testify to that. I hadn't
21 thought that through.

22 From a consumer's perspective and from the
23 utility's perspective, I would say I would be much more
24 comfortable dealing with a CCA provider once the CCA
25 provider has their program in place, in other words, set
26 up. I would want to know if the CCA provider is going
27 to contract with an ESP, who is that ESP, does the ESP
28 have the ability to serve, are they registered,

1 et cetera. It's a matter of providing consumer
2 information upfront so that everybody knows the ability
3 and the operational ability, technical ability, to
4 serve.

5 Q Okay. But in the case of -- say a city were
6 to pass an ordinance in Year 1 and then work for a year,
7 preparing the implementation plan in Year 2 with an
8 intention of going from an ordinance to implementation
9 plan to an award of contract by ordinance to an ESP.
10 How would such a city be able to provide level of
11 sophistication of operation under such a scenario?

12 A That would be my question as well.

13 Q It would not be prepared to.

14 So under this requirement, a CCA -- would it
15 not be precluded from adopting an implementation plan
16 prior to award of contract to an ESP?

17 A That might be a legal opinion.

18 I -- I would say from a consumer perspective
19 that if you are going to provide me electric service and
20 you are going to hire a third party to -- to be your
21 contractor for that, I as a consumer would kind of want
22 to know that.

23 Q So this requirement is based upon your
24 assertion that the purpose or a major purpose of the
25 implementation plan is notification to consumers?

26 A It's -- it's that and to the Commission and to
27 the utilities as well. We're all stakeholders in the
28 program.

1 Q Thank you.

2 I think I just have one more question which
3 concerns Roman 4, Arabic 26, line 6.

4 A Still in rebuttal?

5 Q Yes, please.

6 Where you state that the Commission did not in
7 04-12-046, a decision last December 16th, the Commission
8 did not receive evidence on the trustworthiness of
9 potential CCA providers, nor did it make any such
10 findings of fact.

11 Do you recall the use of the word
12 "trustworthiness" within that decision?

13 A Not specifically, but I do call out reference
14 on page 51 of the decision and I do have it here, if you
15 want me to go to it.

16 Q Certainly, please.

17 A It's been a few weeks since I've actually been
18 this close to the testimony.

19 Q And you state that there are --

20 A It starts on page 51 with a quote:

21 We believe AB 117 assumes, as we do, that CCAs
22 can be entrusted with confidential customer information.

23 So the context there was the utilities handing
24 off proprietary, confidential information, which we have
25 not done in the past.

26 The Commission decision is stating that they
27 believe CCAs can be entrusted with consumer information.

28 So going back to my statement of the

1 Commission did not receive evidence on the
2 trustworthiness of potential CCA providers, the context
3 of the decision was on treatment of customer
4 confidential information, not necessarily on the broad
5 basis of an entire program and implementation plan.

6 MR. FENN: Okay. Thank you.

7 That concludes my questions, your Honor.

8 ALJ MALCOLM: I had a couple of questions.

9 EXAMINATION

10 BY ALJ MALCOLM:

11 Q Ms. Middelburg, from your understanding, how
12 are municipal utilities different from CCAs?

13 A Municipal utilities are already providing
14 electric service to their customers. So they already
15 have a relationship that the utilities and the
16 Commission do not have a role in.

17 A CCA provider will be providing service to
18 consumers who are customers of the regulated utility and
19 are also -- receive protections from the CPUC.

20 Q And are you aware of any munis that have had
21 chronic consumer protection problems?

22 A I am aware of one utility that, during the
23 direct access, did register to become an ESP but was not
24 capable of providing a scheduling coordinator.

25 And it took them well over a year to finally
26 get their -- dig their way out of that. And it ended up
27 costing ratepayers and bundled customers because of
28 their inability to -- to hire higher a scheduling

1 coordinator and actually perform.

2 Q And are you familiar with any of the laws
3 that -- and I'm -- I don't want you to give me legal
4 opinions, but are you familiar with the laws that govern
5 the creation of municipal utilities?

6 A No, not really.

7 Q But, you know, where the PUC doesn't regulate
8 their consumer protection programs --

9 A Correct. I aware of that, yes.

10 Q -- or their services?

11 A Yes.

12 ALJ MALCOLM: That's all I had.

13 Okay. Is there any redirect, Mr. Montoya?

14 MR. MONTOYA: No, your Honor.

15 ALJ MALCOLM: No.

16 Thank you, Ms. Middelburg. You are excused.

17 MR. SZYMANSKI: Your Honor, is it -- we are off
18 the record, please?

19 ALJ MALCOLM: Off the record.

20 (Off the record)

21 ALJ MALCOLM: Back on the record.

22 Mr. Buchsbaum, Mr. Nelson is back on the
23 stand.

24 MICHAEL NELSON

25 resumed the stand and testified further as follows:

26 CROSS-EXAMINATION

27 BY MR. BUCHSBAUM:

28 Q Good morning, Mr. Nelson.

1 A Good morning, Mr. Buchsbaum.

2 Q Just a few points of clarification.

3 You are aware that there currently is a
4 renewable portfolio proceeding going on right now --

5 A Yes.

6 Q -- at the Commission?

7 And I just want to clarify for the record that
8 in your tariff recommendations nothing you are
9 recommending is designed in any way to limit whatever
10 obligations might come out of that other proceeding; is
11 that correct?

12 A That's correct.

13 Q And just one more point of clarification,
14 though.

15 Obligations that would come out of that
16 proceeding, they haven't yet been determined at this
17 point, have they?

18 A Not to my knowledge.

19 Q Turning to page -- I'd like to -- I'm not
20 trying to be flip, but turning to page -- it looks like
21 it's page 3, and my copy doesn't have pagination --
22 page 3 of your testimony where you are talking about
23 there is little doubt that local governments will be
24 able to handle the regulation of providing the service
25 such as electricity to their constituents; do you see
26 that sentence?

27 A Could you give me a line reference?

28 Q It's lines 23 to 29 at the bottom of the page.

1 A In my opening testimony?

2 Q No; this is in your reply.

3 A Okay.

4 MR. BUCHSBAUM: And these questions will be very
5 brief, your Honor.

6 A Could you repeat the reference?

7 Q It is the paragraph that begins with: It is a
8 local government's job to regulate many different
9 functions for their citizens on a daily basis.

10 MR. MONTROYA: What page is this?

11 MR. BUCHSBAUM: I'm sorry. It looks like it's
12 page 4. I was sorry, but my copy had no page numbers on
13 it.

14 MR. HUNT: It's Question 7, the bottom paragraph.

15 THE WITNESS: Yes, I see the reference.

16 MR. BUCHSBAUM: Q And then you say, in fact, many
17 local governments are providing complex services, such
18 as water, cable television, garbage collection,
19 recycling programs, et cetera. Do you see that
20 sentence?

21 A Yes, sir, I do.

22 Q Do you think procuring energy is analogous to
23 providing garbage service?

24 A Absolutely.

25 Q And do you think the -- a city that has
26 provided garbage service will have the same level of
27 experience in collecting garbage that it will have had
28 or will have in procuring energy?

1 CROSS-EXAMINATION

2 BY MR. MONTROYA:

3 Q Good morning, sir.

4 A Good morning.

5 Q On page 1 of your opening testimony, looking
6 at lines 9 through 10, you state that ECI, short for
7 Energy Choice, Inc., is a company formed in 2004 solely
8 to help local government agencies implement and manage
9 community choice programs.

10 Do you see that?

11 A Yes.

12 Q Are ECI's activities limited to community
13 choice in California, or do they provide services to
14 local governmental agencies outside of California?

15 A We are limited at the moment to California.

16 Q And what are the services that ECI provides?

17 A ECI provides a fairly wide range of technical
18 and managerial experience and capabilities to any cities
19 and counties who would like to evaluate and, if
20 necessary, implement a community choice program,
21 including management of JPAs, if that is the vehicle
22 that the entity chooses to use; power procurement
23 expertise; procurement of services; management of
24 various suppliers and vendors necessary to allow the
25 city or county to effectively and confidently
26 participate in the energy market.]

27 Q But solely related to CCAs; is that correct?

28 A Yes.

1 Q And do you charge cities on a fee basis, a
2 charge for the consulting work that you provide?

3 A No. We don't charge consulting fees.

4 Q If I may ask, how does the CCA -- how does ECI
5 charge CCAs under its current business plan?

6 A By whatever means it is negotiable.

7 Q Is it true that ECI will only charge a CCA if
8 the CCA makes money?

9 A If that is the business model the city or
10 county has chosen to employ, yes.

11 Q I took the liberty of looking at your website.
12 You do have a website; is that correct?

13 A Yeah.

14 Q And on your website, if I can read from one of
15 the pages, and you can disagree if this is not correct,
16 it says:

17 And we are a true partner. We
18 don't charge any upfront
19 consulting fees. We stick with
20 you and tend to day-to-day
21 operations of the buying JPAs and
22 we only get paid when we create
23 savings and revenues for you.

24 Is that a true statement?

25 A Yes. That is an accurate reading of the
26 website, yes. That is a true statement, too.

27 Q But is that true in terms of how you will
28 charge CCAs?

1 A As I said, we don't approach our clients with
2 a hard and fast rule. If a client tells us our
3 preference really would be to pay your consulting fee,
4 then we will collect a consulting fee.

5 Q You are familiar, are you not, with the
6 resource adequacy rules that are being reviewed in the
7 resource adequacy proceeding?

8 A Somewhat, yes.

9 Q And in ECI's opinion should a community choice
10 aggregator be required to comply with the same resource
11 adequacy rules as other load serving entities?

12 A As a blanket statement, no.

13 Q Do you have an opinion as to how much load
14 will depart to community choice aggregators in SCE's
15 service territory in future years?

16 A I haven't got a clue.

17 Q Looking at page, I think it is, 6 of your
18 opening testimony -- bear with me a second. There at
19 the bottom of the page, the top of page 7, I think you
20 talk about the utility reserve margins; is that correct?

21 A Yes.

22 Q And is it your testimony that the utility
23 reserve margins are sufficient to handle any
24 fluctuations in loads due to CCA?

25 A If they're at acceptable standard levels
26 and -- let me retract that.

27 I can't answer the question right now until we
28 can establish exactly what the CCA load is. But at

1 certain modest levels the answer would be yes.

2 Q Suppose a CCA has bundled service load of
3 2000 megawatts and under resource adequacy rules SCE is
4 supposed to have a reserve margin of 15 percent. Do you
5 agree doing the math that SCE would need to have
6 23,000 megawatts of resources, 20,000 times 1.15?

7 A I'm sorry. Say again.

8 Q Do you want me to go through the whole thing
9 again?

10 A You had a 2000 megawatt CCA --

11 Q 20,000 megawatts. If I said 2000 I apologize.

12 A 20,000-megawatt utility load?

13 Q Right. 20,000 megawatts of utility load.
14 Under resource adequacy rules SCE is supposed to have a
15 reserve margin of 15 percent. Do you agree that SCE
16 would need to have 23,000 megawatts of resources under
17 resource adequacy, 20,000 times 1.15?

18 A Yes.

19 Q Suppose that 2000 megawatts will be served by
20 CCA, which is within the reserve margin of
21 3000 megawatts described above. Wouldn't SCE's load
22 drop to 18,000 megawatts and SCE would then need to
23 demonstrate that it has 20,700 megawatts of resources?
24 That is 18,000 times --

25 A I will stipulate the math is correct and say
26 yes.

27 Q So it's yes?

28 A Sure.

1 Q How should SCE recover the cost of the
2 unnneeded 2300 megawatts of resources if it cannot sell
3 the resources at the price originally paid for?

4 A The answer lies in how those resources are
5 acquired and how they are contracted for. If you are
6 procuring your energy properly -- I shouldn't use the
7 word properly. If you are procuring the energy using
8 the same standards that I am familiar with, having once
9 been an owner and operator of an ESP, you have a
10 considerable amount of flexibility and optionality built
11 into your contracts that you have already paid for, the
12 ability to reshape capacity and energy balances, the
13 ability to reshape delivery schedules, the ability to
14 reshape the term of the contract.

15 And the answer to the question lies in what
16 degree of flexibility have your own resource planners
17 built into your portfolio.

18 The answer may be that there are no costs,
19 incremental costs, associated with that loss of load.
20 But if you recall, in the '70s we used to call it
21 decremental load conservation. It used to be considered
22 a good thing back then.

23 So I don't necessarily agree with or subscribe
24 to the notion that decremental load on its face causes
25 stranded costs.

26 It may cause -- I subscribe to the theory
27 decremental load may cause portfolio management
28 challenges, but I frankly feel that your portfolio

1 manager is smarter and better at it than you seem to
2 believe.

3 Q If we assume there is an incremental cost,
4 let's assume there is a cost that results, is it your
5 testimony that the CCA should not be held responsible
6 for that?

7 A No, because the statute seems to be real clear
8 on incremental costs such as they are to the fact that
9 they are established as true incremental costs and
10 should be paid.

11 Q As you just indicated you have had extensive
12 experience in the direct access market as I think one of
13 the cofounders of New Energy Ventures?

14 A That's correct.

15 Q And in your opinion did the Commission
16 exercise a proper amount of oversight in the area of
17 consumer protection for the direct access market?

18 A Yeah.

19 Q Page 11 of your opening testimony -- excuse
20 me, your reply testimony -- I am looking at line 13,
21 there you question the utilities' charges for billing
22 services provided to community choice aggregators; is
23 that right?

24 A I'm sorry. Page 11 --

25 Q Page 11, line 13, starting at "Since utilities
26 currently prepare." I am just paraphrasing.

27 A Yeah.

28 Q Is that a fair characterization?

1 A What was the characterization?

2 Q You questioned the utilities' charges for
3 billing services provided to community choice
4 aggregators. In fact, you state that --

5 A Yeah, that's a fair characterization of my
6 concern here, yeah.

7 Q You state that since the utilities currently
8 prepare bundled bills and get paid through existing
9 rates to prepare a bundled bill there should be no
10 authorized incremental charges to community choice
11 aggregators for billing; is that correct?

12 A Hm-hmm.

13 Q Is it your testimony that there are no
14 additional steps that a utility has to take to send out
15 a bill with community choice aggregator charges on it?

16 A It is my testimony that I have seen no
17 evidence that there are any additional tests, any
18 additional steps needed to take to send out a bill with
19 a CCA line as the commodity line on the bill as opposed
20 to the utility commodity cost on the bill.

21 Q So steps such as receiving the charges from
22 the community choice aggregator, adding those charges to
23 the customer's bill and remitting the customer's payment
24 to the community choice aggregator, you don't believe
25 those are additional steps?

26 A No, that is not what I said. What I said was
27 whether those are additional steps that manifest
28 themselves in incremental costs or not can only be

1 determined until you back out the costs of calculating
2 your own commodity charges, which you fail to do.

3 MR. MONTOYA: I have no further questions, your
4 Honor.

5 ALJ MALCOLM: Thank you.

6 Mr. Buchsbaum.

7 MR. BUCHSBAUM: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. BUCHSBAUM:

10 Q I have one quick question.

11 A God bless you.

12 Q Can you turn to page 5 of your rebuttal.

13 A Okay. I would have felt bad if --

14 Q I am going to ask you questions about lines 1
15 to 5 where you are talking about the Phase 1 decision.

16 Then you add the sentence that says:

17 In the event a CCA program causes
18 a low reserve margin to actually
19 grow at no cost to the utility, I
20 respectfully disagree with the
21 Commission. A CCA program in that
22 circumstance would be a welcomed
23 relief to a stressed system.

24 Do you see that sentence?

25 A Yeah, I do.

26 Q My question for you is if a CCA procured in
27 such a way that no new resources were built, how would a
28 welcomed relief to a stressed system result?

1 A Maybe the better term is welcomed relief to
2 the stressed managers who work at the utility who are
3 trying to cope with the lower reserve margin.

4 Q But as far as the system is concerned, the
5 state as a whole, there are no new resources, it is not
6 going to be a welcomed relief to the system, is it?

7 A Yes, it would.

8 Q It would, even though no new resources --

9 A I think so, because, for example, the reason
10 your reserve margin may be lower than it ought to be,
11 which I don't think is true in PG&E's case, but let's
12 assume for the sake of argument that it were, it may not
13 be due to the availability or lack thereof of physical
14 resources. It may be due just to reticence to contract
15 for them.

16 And I don't necessarily see a CCA existing or
17 not existing. It doesn't -- none of them will have any
18 effect on the physical environment. But what I am
19 testifying to is that you and your managers, if they
20 have to buy, again, for the sake of the example,
21 3000 megawatts of reserves or maintain the 3000-megawatt
22 reserve margin and all of a sudden your obligation just
23 because of the arithmetic has been reduced to 2500, that
24 is 500 megawatts less of reserves that you need to
25 contract for.

26 If your reserves are already low and if they
27 are low because of the reason I stated, that is, there
28 is some reticence to contract for them, then I would

1 characterize that as relief.

2 Q Thank you.

3 I have no further questions.

4 ALJ MALCOLM: Thank you.

5 Is there any redirect?

6 MR. HUARD: No, your Honor.

7 MR. MONTOYA: Are you representing him?

8 MR. HUARD: I put him on the stand. There is no
9 one to actually ask him. The last time I tried to ask a
10 general question I got objected to. So I said no.

11 MR. MONTOYA: Okay.

12 ALJ MALCOLM: Thank you, Mr. Burke.

13 Let's go off the record.

14 (Off the record)

15 ALJ MALCOLM: On the record.

16 We will be in recess for 10 minutes.

17 (Recess taken)

18 ALJ MALCOLM: Back on the record.

19 JODY LONDON

20 resumed the stand and testified further as follows:

21 ALJ MALCOLM: Mr. Buchsbaum.

22 MR. BUCHSBAUM: I will be brief, your Honor.

23 CROSS-EXAMINATION

24 BY MR. BUCHSBAUM:

25 Q Ms. London, can you turn to page 5 of your
26 opening testimony.

27 There you have some discussion about one of my
28 favorite topics, which is credit. And you say that

1 governmental entities are stable, reliable counter
2 parties and their credit is generally good.

3 You don't have any background in credit
4 analysis, do you?

5 A No, I do not.

6 Q And I'm not trying to ask a question -- I
7 mean, if you don't know, that's fine. Joint Power
8 Agencies, I personally don't understand exactly what
9 their legal structure is. I was wondering whether a
10 city that participates in a joint powers agency is like
11 a partnership in the sense that the liability passes
12 through to the city, or whether the joint power
13 authority would be its own independent entity for credit
14 purposes?

15 A That question is beyond my ability to answer
16 also.

17 Q And so let's just hypothesize, well, if you
18 had a joint power agency that had no assets and if the
19 liability didn't flow through to the individual cities,
20 isn't it fair to say that there's virtually no credit
21 quality in that entity except to the extent it can
22 collect money from customers?

23 A I can't agree or disagree with that statement.
24 My intuition tells me that a JP will not be structured
25 as you have just described and that it would draw on the
26 credit rating of its member agencies.

27 But again, we have already established that I
28 am not an expert in finance. But I couldn't agree to

1 what you just said because that just doesn't feel right
2 to me.

3 Q No. I think what I was trying to say was
4 assume for purposes of my question that the cities are
5 not individually liable, that there is a joint power
6 agency, it is a separate legal entity, it takes its
7 own -- it takes its own credit based upon whatever
8 assets it has. Obviously, if it has no assets, my
9 question is really straightforward. It wouldn't have
10 much credit quality, would it?

11 A Probably not. That's the conclusion that you
12 would have me reach.

13 Q I'll move on.

14 I would like to ask you some questions in your
15 rebuttal about deposits. And from --

16 A Can you direct me to the page that you're on?

17 Q Page 15 of your rebuttal -- I'm sorry. It
18 wasn't about deposits. It was about partial payments.

19 A Yes.

20 MR. HUARD: There are only 13 pages.

21 MR. BUCHSBAUM: I am getting mixed up on the
22 pages.

23 Q It's page 15 of your opening.

24 From your testimony generally I'm assuming you
25 think, as you pointed out, you believe the Commission
26 should have a limited role in regulation --

27 A Yes.

28 Q -- of the CCAs. And I was trying to

1 understand how your partial payment allocation system
2 would work if a customer, for example, for whatever
3 reason, chooses to protest his or her CCA bill. Let's
4 just --

5 A I think that --

6 Q Let me just work through the math.

7 I think the way that it works, and correct me
8 if I'm wrong, a customer in that situation, as the
9 payments start getting allocated between the utility and
10 the CCA, eventually the disconnectable charges wouldn't
11 be paid. So under the scenario that you posit where the
12 customer is in a protest mode or for whatever reason
13 doesn't want to pay the CCA portion of his or her bill,
14 if a customer tries to do that, under your scenario they
15 will be disconnected; is that correct?

16 A I haven't reached a conclusion about whether
17 or not the customer would be disconnected.

18 I will point out that I based this on PG&E's
19 approach. So I'm almost tempted to put it back to you,
20 what would PG&E do?

21 Q I'm sorry. PG&E's approach was explained in
22 the initial testimony, and it -- there was further
23 clarification in later testimony. So although we do in
24 part a proration, it is not complete. So I just want to
25 make that point clear.

26 A I think that the disconnection policies would
27 be defined in the documents that govern the relationship
28 between the CCAs and its customer. And those haven't

1 been developed yet.

2 Q I hate to spend a lot of time on this
3 because -- but I think you would agree with me that the
4 math, let's assume the CCA bill is 50 percent of the
5 bill and the utility bill is the other 50 percent. If
6 the customer is only paying 50 percent of the bill, by
7 the sixth month -- excuse me -- by the twelfth month of
8 the year in which the protest has occurred, if we have
9 allocated the payments equally to the CCA bill and the
10 utility bill, at that point the utility bill is six
11 months in arrears and we would be entitled under our
12 disconnection rules to disconnect the customer?

13 A And I now completely understand your question.

14 Q Okay. I'm sorry. It is kind of complicated
15 to work through the math. But I wanted the Commission
16 to understand that under your proposal, in effect I
17 think it's true to say that an unregulated rate and a
18 protest against that unregulated rate could give rise to
19 a disconnection?

20 A What I will come back with is if we were in a
21 less adversarial setting than this room, this would be
22 the kind of topic I think we could probably work
23 through, develop a provision around. We are going to
24 have a partial payment scheme; what happens this event?
25 I think these are all really relevant questions that are
26 going to need to be addressed on a moving forward basis.

27 And I am not going to sit here right now
28 obviously and work out what the solution should be. But

1 this is the kind of thing that I think could be worked
2 out very nicely in a collaborative manner when we get
3 into the working group part of this.

4 Q Thank you.

5 I am just going to move to -- I appreciate
6 your comments about collaboration, but I do want to
7 highlight a couple of comments that didn't read
8 particularly collaboratively.]

9 I think -- I'm not trying to put you on
10 the spot, but let me read a few of them. And I'm not
11 going to give the page references just because I'm just
12 going to run through it.

13 It says: Rather, the utilities would create
14 administrative barriers and financial hurdles under the
15 guise of consumer protection.

16 Then again, on a different quote:
17 The utilities are trying to create additional hurdles
18 for community aggregators with the implementation plan
19 filing which the Commissioners should -- Commission
20 should reject.

21 And then again --

22 MR. HUARD: Your Honor, there must be a question
23 somewhere.

24 MR. BUCHSBAUM: There will be.

25 MR. HUARD: But the testimony speaks for itself.
26 Do you have a question on any of the quotes
27 that you have read thus far?

28 MR. BUCHSBAUM: I do. Let me read the last one

1 And then I'll get to the question. And that will be my
2 last question.

3 The utilities are again trying to create
4 additional hurdles and requirements for CCA to jump
5 through.

6 And I guess my final question to you, isn't it
7 possible at least, that at least some of the utility's
8 motivation is being caused by concerns about what has
9 happened in the past -- the energy crisis, the failure
10 of the state to have adequate resources and our
11 experience with direct access -- isn't it possible that
12 that also motivated the utilities?

13 A I can understand where that might be
14 motivating utilities. But that was direct access. This
15 is community choice aggregation. This program was
16 developed in the immediate wake of the energy crisis.
17 I think the Legislature was very aware of the immediate
18 past history and it chose nonetheless to pursue this
19 opportunity for communities to come together and form
20 their model for how they want to procure electricity and
21 what it should look like.

22 And I think that you're also dealing -- and
23 this is in my testimony -- with a very different -- not
24 a completely different group of vendors, but the first
25 entity that you're going to go to, instead of an energy
26 service provider who an out-of-state company and who
27 knows what their background is and all those other
28 things that we've been hearing all those horror stories

1 about --

2 Q I was really asking about our motivation.

3 A Well, I'm just saying CCA is very different
4 from direct access.

5 And I think you're getting right back to
6 the first question you asked me. Cities and counties
7 are extremely motivated to do well by their constituents
8 and --

9 Q I realize -- and I'll make one last comment
10 before I close. And that is I promised not to --

11 MR. HUARD: Is there a question?

12 ALJ MALCOLM: First let him --

13 MR. BUCHSBAUM: You can object.

14 ALJ MALCOLM: -- state what he's going to state.
15 Then you can object.

16 MR. BUCHSBAUM: I promised not to argue the law.
17 And I know Mr. Florio extensively, as well as you, have
18 assumed the way the law should be interpreted. I have
19 followed the Judge's direction to try to keep legal
20 argument in the briefs. So I don't necessarily agree
21 with your interpretation, but I'm not going to go
22 through that now.

23 And there's a variety of statutory provisions
24 that I could have walked us through that I think suggest
25 differently than what you're arguing.

26 So that's all. And I'm finished.

27 MR. HUARD: Your Honor --

28 ALJ MALCOLM: Thank you.

1 MR. HUARD: -- if I could just note, the law in
2 its wisdom has determined that statements of counsel are
3 not evidence.

4 ALJ MALCOLM: That's fine. I'll read your briefs.
5 Mr. Montoya.

6 MR. MONTOYA: Thank you, your Honor.

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

9 (Off the record)

10 ALJ MALCOLM: Back on the record.

11 Mr. Montoya.

12 CROSS-EXAMINATION

13 BY MR. MONTOYA:

14 Q Good afternoon.

15 A Good afternoon.

16 Q In response to one of Mr. Buchsbaum's
17 questions, I think you were talking about partial
18 payment rules, and you referred to it as -- or you
19 referred to a method of trying to come to some
20 agreement, and you used the term work through. I think
21 you identified the subject as something that's perfect
22 for working through through a workshop process. Is that
23 what you --

24 A Working group process.

25 Q Working group. Okay.

26 So are you envisioning that you'd have one set
27 of rules that would be -- that would apply to all CCAs
28 or are you suggesting that the utility would have to

1 work it through with each individual CCA?

2 A No. I think ideally, you would --
3 the Commission would adopt the tariff in the Phase 2
4 decision, and then we would all move about implementing
5 the tariff.

6 I think, you know, once this decision is
7 resolved, if it's resolved in a way that gives enough
8 certainty to CCAs, they are going to start preparing
9 implementation plans and they're going to need to be
10 working very closely with the utilities during that
11 process.

12 And in direct access, after the direct access
13 tariff was adopted, I think most people in the room are
14 familiar that there was the Rule 22 working group which
15 spent -- Sean, you were there -- it was at least a year,
16 if not more. I think they still meet to work out issues
17 that have come up with how they all worked under that
18 tariff. And I think --

19 Q Okay. So this is one area that you would
20 suggest that not -- the specifics not initially be
21 included in the tariff now, but that they subsequently
22 be worked through through a working group and then added
23 to the tariff?

24 A If the resolution is such that everyone agrees
25 it needs to be in the tariff, then I think that would be
26 a rel- -- I mean, I'm working under the assumption that
27 these would be operational issues that will not be
28 controversial and would not lead us into another

1 hearing-room process.

2 Q Okay. On page 7 of your opening testimony,
3 line 2, you state that as community aggregation is being
4 studied and discussed, customers can participate in
5 the deliberative process, influencing almost every
6 aspect of how the program is structured in that
7 jurisdiction.

8 Is that a fair characterization?

9 A Yes.

10 Q You also state that customers retain
11 the opportunity to opt-out of community aggregation
12 under Section 366.2(c)(2); correct?

13 A Yes.

14 Q How will CCAs, in your opinion, ensure
15 customer participation?

16 A In their deliberative process?

17 Q Mm-hmm.

18 A Well, as we've already discussed this morning,
19 the deliberative process that local governments follow
20 is governed by the Brown Act is enforced by the state
21 attorney general.

22 The -- I can run through the sort of typical
23 process that a local government goes through, but
24 the bottom line is city councils and counties' boards of
25 supervisors meet monthly -- meet weekly, excuse me.
26 Their agendas are published in advance. They are
27 available to all their constituents. There's often
28 coverage of their meetings and the issues that are going

1 to be addressed in the local press. I think
2 particularly in smaller communities, smaller medium
3 markets you get more attention even to what's going on
4 with local governments. And the custom -- citizens can
5 go down and participate whenever they want.

6 And I would add that if I live in Escondido or
7 anywhere outside of San Francisco or Oakland or the near
8 parts of Marin County, it's a lot closer for me to go to
9 city hall than it is to come to this building when I
10 have a debate or dispute about what's happening with the
11 program.

12 Q So in your opinion, the Brown Act will ensure
13 an adequate level of customer participation of
14 the process?

15 A I think that the people who want to follow
16 what is happening will have adequate opportunity to do
17 that through their elected officials and through
18 the city governments that are directly responsive to
19 their needs and concerns.

20 Q Along the same lines on page 10 starting at
21 line 17, you talk about the governing board of
22 the community aggregator adopting the implementation
23 plan through a duly noticed public hearing process. And
24 I presume that's pursuant to the Brown Act; correct?

25 A Right.

26 Q You also include which is very likely to occur
27 after an extensive public outreach process. So now
28 you're adding this public outreach process. Is that

1 going to be required anywhere?

2 A I don't think it's required, but I think that
3 any community that's undertaking a community aggregation
4 program is going to have very strong motivation to do it
5 right and to make sure that everybody understands what
6 they're doing, particularly if they're one of the first
7 communities to move forward. And if any of them were to
8 ask my advice, I would advise them very strongly to have
9 a very extensive and thorough public outreach process
10 that reaches every element of their community.

11 Q Which would include what?

12 A I mean, you may need to do your outreach in
13 several languages. You probably will want to make sure
14 that you are having the elected officials communicate
15 with their constituents.

16 I'll give you an example.

17 I live in Oakland. Oakland is actively
18 studying community aggregation. I would be -- I fully
19 expect that some time in the next year, the member of
20 the Oakland city council who represents my district will
21 have her monthly community meeting and the topic will be
22 Oakland's energy future or something like that, and
23 everyone in the district will get a little flier it will
24 say Come to the meeting and talk about this. And she'll
25 write it up and it may get covered in the little local
26 paper that comes to my house. And there's going to be
27 more like that.

28 Q And so the extent of the public outreach will

1 be subject to the discretion of each CCA; is that
2 correct?

3 A Yes, it will.

4 Q Page 7 of your opening testimony, line 19.
5 There you state the Commission also must adopt rules for
6 implementing community choice aggregation; is that
7 correct?

8 A Yes.

9 Q And is it your testimony that these rules are
10 limited to determining the cost recovery and exit fees
11 that customers must pay?]

12 A The Commission has two -- as it states above
13 in that same paragraph, the Commission has two primary
14 responsibilities: Determining the cost recovery and the
15 exit fees and then certifying that it's received the
16 implementation plan.

17 Q And that's the extent of their
18 responsibilities?

19 A Statutory responsibilities, yes.

20 Q On page 9 of your opening testimony, line 21
21 through 23, I believe, you state:

22 Customer service provided by the
23 utility to the mutual end-use
24 customers of both the aggregator
25 and the utility will be covered
26 under the utility's transmission
27 and distribution tariff, and does
28 not belong in the community

1 aggregation tariff.

2 Is that correct?

3 A Yes.

4 Q What services and transmission and
5 distribution tariff are you referring to?

6 A When I receive my utility bill today, there's
7 a portion that's the electric commodity and then there
8 is the rest of the bill. The rest -- the rest -- the
9 other. And there's all sorts of line items. And I
10 should have brought the bill with me if I would have
11 known you were going to ask me this question.

12 But it's the things that are not the electric
13 commodity that are -- you know, right now the bill is
14 ordered in this way, and that little bit that is the
15 commodity will now be part of the CCA bill. And the
16 rest will continue to be utility bill.

17 And AB 117 envisioned that the utilities would
18 continue to provide these services and continue to bill
19 for them.

20 Q Let me direct you to page 3 of your reply
21 testimony. This is starting at line 10.

22 You state:

23 As discussed in my opening
24 testimony on page 10, the utility
25 CCA tariff should not include any
26 direction on the Implementation
27 Plan

28 Is that correct?

1 A Yes.

2 Q Do you propose that such direction on the
3 implementation plan be included somewhere else?

4 A The direction on the implementation plan,
5 first of all, has already been provided in AB 117. And
6 attached to my opening testimony as Attachment B was a
7 document that I prepared that outlines the process by
8 which the Commission would communicate with CCAs about
9 what they need to put into their implementation, not
10 only what they must put in, but what they should
11 strongly consider putting in in order to help the
12 Commission in its, you know, review and certification of
13 the plan.

14 Q And where would that instruction or direction
15 be; would that be placed somewhere?

16 A The Commission, I believe, is going to develop
17 a little expertise in processing CCA implementation
18 plans in the same way that it has developed some
19 expertise in, you know, registering direct access
20 providers, dealing with competitors to the local
21 exchange companies. This is sort of how these
22 industries evolve.

23 And the Commission has done this over time,
24 and I don't know exactly how the Commission will choose
25 to do it, but they'd probably post instructions on their
26 Web site. They will probably make information available
27 through their Public Advisor and through their various
28 operating divisions.

1 Q In the utility's reply testimony, Chapter 4,
2 there was an attachment, and I guess we can look at it
3 if this doesn't ring a bell. And towards the bottom of
4 that attachment, the utilities added a requirement that
5 the CCA provider must adhere to the terms of the
6 implementation plan.

7 Do agree that the CCA provider must implement
8 its program according to the description in its
9 implementation plan?

10 A I think that there is -- yes, there is going
11 to be an expectation on the part of the governing board
12 that it approve the implementation plan. And it
13 directed its staff to go out and implement the plan as
14 it was adopted.

15 And, typically, in situations like that before
16 the staff makes any major deviations from something that
17 their governing board has approved, they go back to the
18 board and they say, We are going to change this aspect.
19 We are going to do it differently. And the board either
20 approves it or says no.

21 Q The utilities also included a statement that
22 if the CCA provider changes the terms of its program, it
23 must update its implementation plan.

24 Do you have any problem with that language?

25 A It is not clear to me that, as we move into
26 operation of CCA programs, the implementation plan will
27 continue to be the driving document that is governing
28 how the CCA operates. But -- and so I can't say

1 absolutely yes to that.

2 And I definitely would not want to create a
3 requirement where every time there was a minor tweak to
4 the implementation plan, the CCA was suddenly required
5 to come into this Commission for a big advice letter
6 filing process that's full of protests and other things.

7 I think that any changes to the implementation
8 plan are going to be approved by the city council or the
9 board of supervisors and -- and that, you know, those
10 are the folks who are ultimately the most responsible
11 for the plan and its execution.

12 Q Well, you talk about any time there is a small
13 change in the implementation plan, the CCA shouldn't
14 have to run in to this Commission.

15 What if there was a major change in the
16 implementation plan?

17 A AB 117 requires the Commission to certify
18 within 90 days that it's received the implementation
19 plan and to make findings about the cost-recovery
20 mechanism.

21 Beyond that, there is no requirement for the
22 CCA to bring in an update to the implementation plan.

23 Q Okay. So the CCA can make any changes it
24 wants to the implementation plan and not have to inform
25 the Commission?

26 A I think that the CCA can do that. Whether the
27 CCA chooses to do that is a matter to the CCA.

28 And, again, I would encourage any CCA that is

1 going to be making major changes to its plan to let the
2 Commission know this is what's happening with our plan.
3 This is how our program is going.

4 MR. MONTOYA: I have nothing further, your Honor.
5 Thank you.

6 ALJ MALCOLM: Mr. Szymanski.

7 MR. SZYMANSKI: May I have just a moment?

8 Thanks.

9 Nothing for this witness, your Honor.

10 ALJ MALCOLM: Is there any redirect?

11 MR. HUARD: No, your Honor, there is none.

12 ALJ MALCOLM: Thank you, Ms. London.

13 THE WITNESS: Thank you.

14 ALJ MALCOLM: We will have documents entered into
15 the record.

16 We will start with the utilities.

17 MR. BUCHSBAUM: Thank you, your Honor.

18 We are proposing to move into the record
19 Exhibit Numbers 1A, 2A, 3A, as well as cross-examination
20 Exhibits 13A, 14A, 15A and 16A.

21 As to the first three exhibits, there were
22 portions of those exhibits where no witnesses appeared
23 because it involved the CARE testimony. We would ask
24 that that be allowed into evidence, though, by
25 stipulation of your Honor and the other parties.]

26 ALJ MALCOLM: All right. Any objection,
27 Mr. Huard?

28 MR. HUARD: Not as to the direct exhibits. The

1 cross-examination exhibits I would like to address.

2 ALJ MALCOLM: Okay. 13, 14, 15 and 16.

3 (Exhibits Nos. 1-A, 2-A, and 3-A
4 were received into evidence.)

5 MR. BUCHSBAUM: There is further one statement I
6 wanted to make about the CARE testimony on behalf of
7 PG&E. It was fairly complicated testimony, but there
8 was a reference to our Phase 2 general rate case
9 proceeding where we had a proposal with respect to the
10 treatment of CARE customers. The witness who was
11 sponsoring that portion wanted me to communicate that
12 our proposal on the Phase 2 general rate case decision
13 was withdrawn in the settlement but that we continue to
14 favor that approach in this proceeding.

15 ALJ MALCOLM: Okay.

16 MR. HUARD: Your Honor, could there be a specific
17 reference, just for the record, as to where that
18 appears?

19 You can follow it up with an e-mail or letter,
20 that would be fine. But I just wanted to know which
21 sections of the testimony you will be changing.

22 MR. BUCHSBAUM: I am happy to do that, but the
23 testimony is very brief and it is all in the opening.
24 So it should be self-evident, but I will do so.

25 MR. HUARD: Just courtesy of counsel.

26 MR. BUCHSBAUM: That's fine.

27 ALJ MALCOLM: Mr. Huard, you wanted to address the
28 cross-examination exhibits?

1 MR. HUARD: Yes, your Honor. I believe at least
2 as to 16-A there were no questions that were raised
3 within cross-examination. I believe that's an excerpt
4 from a news report on something in Los Angeles County.

5 MR. BUCHSBAUM: No. Actually we never used that.
6 We never used that. 16-A is actually the example that I
7 used in cross-examination with Mr. Florio. The
8 reference to the LA Times article I decided that we had
9 gone on long enough in this proceeding and I didn't use.

10 MR. HUARD: So then the fact that it is included
11 in the packet, we should just throw it out?

12 MR. BUCHSBAUM: You can throw it out, although I
13 will feel free to brief on it.

14 (Laughter)

15 ALJ MALCOLM: It is legal argument.

16 MR. HUARD: Your Honor, as to the Ohio statute, I
17 have no problems with its admission as long as the
18 California statute is treated equally.

19 MR. BUCHSBAUM: I raise no objection to
20 California.

21 ALJ MALCOLM: I am not going to treat them
22 differently. I don't care which way we go. The
23 Commission can take notice of either of them.

24 MR. MONTROYA: My preference would be just to take
25 judicial notice, your Honor.

26 MR. HUARD: If it is judicial notice as to both,
27 that's fine.

28 MR. BUCHSBAUM: That's fine.

1 ALJ MALCOLM: They will be in the file. They are
2 not part of the formal record.

3 MR. BUCHSBAUM: This is a rulemaking, and I have
4 tried to be relaxed on the rules.

5 ALJ MALCOLM: I am going to treat the decision,
6 Commission decision, excerpts, the same way, which is
7 15-A.

8 MR. COMO: Your Honor, I also had cross exam
9 exhibits I would like to be moved into evidence. Those
10 are Exhibits 4-A, 5-A and 6-A.

11 ALJ MALCOLM: Is there any objection?

12 MR. MONTOYA: Which ones are those?

13 MR. COMO: Those are the billing table --

14 MR. MONTOYA: No objection.

15 MR. BUCHSBAUM: Just for briefing purposes, which
16 exhibits have been not entered into evidence?

17 ALJ MALCOLM: 13-A, 14-A, 15-A, 41-A, 42-A and
18 43-A, which is the AG's report.

19 MR. COMO: Your Honor, I think we needed
20 clarification on the exhibits for my witnesses. I think
21 there was maybe an error in numbering from yesterday.

22 ALJ MALCOLM: Sure. I just want to make sure I am
23 not getting any objection.

24 MR. HUARD: Your Honor, you have ruled on mine
25 before I even had a chance to talk.

26 I assume that, for instance, a document that
27 is on the official website of the Attorney General I can
28 quote from?

1 ALJ MALCOLM: Yes.

2 MR. HUARD: Thank you. I just don't want the
3 whole document considered evidence. It is way more than
4 we needed for the proceeding.

5 Mr. Como.

6 MR. COMO: Your Honor, yesterday I believe you
7 admitted into evidence the testimony of Mr. Hyams,
8 Mr. Casey and Mr. Fulmer. And I believe from my reading
9 of yesterday's --

10 ALJ MALCOLM: Not Mr. Casey.

11 MR. HUARD: Mr. Casey was today.

12 MR. COMO: In that case, just to clarify, I would
13 like to move into evidence the testimony from all three
14 of my witnesses.

15 ALJ MALCOLM: All right. That would be Exhibits
16 28, 29, 30 and 31, right?

17 MR. COMO: Yes. And you have already moved into
18 evidence 23-A through 27-A.

19 ALJ MALCOLM: Right. Is there any objection?

20 (No response)

21 ALJ MALCOLM: All right.

22 (Exhibits Nos. 28, 29, 30 and 31
23 were received into evidence.)

24 MR. COMO: I didn't know if you ruled on my cross
25 exam exhibits yet, 4-A, 5-A and 6-A.

26 ALJ MALCOLM: I didn't. I am now. We will enter
27 those into the record.

28 (Exhibits Nos. 4-A, 5-A and 6-A
were received into evidence.)

1

ALJ MALCOLM: Then we have the testimony of --

2

3

MR. HUARD: Ms. London is 32-A through 34-A, so --

4

5

ALJ MALCOLM: Any objection to entering those,
Ms. London's testimonies?

6

(No response)

7

ALJ MALCOLM: We will move those.

8

(Exhibits Nos. 32-A, 33-A, and
34-A were received into evidence.)

9

MR. HUARD: 36-A, 37-A, and 35-A.

10

ALJ MALCOLM: Any objection?

11

(No response)

12

ALJ MALCOLM: We will move those into is the
record.

13

14

(Exhibits Nos. 35-A, 36-A, and
37-A were received into evidence.)

15

16

MR. HUARD: Mr. Nelson is 38-A, 39-A and 40-A.

17

ALJ MALCOLM: Any objection?

18

(No response)

19

ALJ MALCOLM: We will enter those into the record.

20

(Exhibits Nos. 38-A, 39-A and 40-A
were received into evidence.)

21

22

MR. HUARD: I believe that's it, your Honor.

23

24

MR. BUCHSBAUM: Your Honor, I would just like one
clarification that I know you will agree with, but I
just want to make sure the record is clear.

25

26

ALJ MALCOLM: Okay.

27

28

MR. BUCHSBAUM: That you agreed to take official
notice of the Ohio statute and regulations, because it

1 is discretionary on the part of the CPUC. And I would
2 like --

3 ALJ MALCOLM: You want me to do it right here?

4 MR. BUCHSBAUM: Yes.

5 ALJ MALCOLM: The Commission can take official
6 notice of the Ohio statute.

7 MR. BUCHSBAUM: And regulations.

8 ALJ MALCOLM: And regulations.

9 MR. HUARD: I am basically assuming that
10 Mr. Buchsbaum's exhibits in that regard and mine will be
11 treated similarly. I do not object to official notice
12 of either.

13 MR. BUCHSBAUM: I certainly don't have any
14 objection. You don't even need official notice of the
15 California statute. You do of any -- I did a little
16 research on this, and you do need official notice for
17 statutes and regulations out of the state.

18 MR. HUARD: We would also need it for the Attorney
19 General's material.

20 MR. BUCHSBAUM: You might.

21 ALJ MALCOLM: All right. We are taking official
22 notice of that exhibit.

23 MR. HUARD: Actually, all three of them.

24 ALJ MALCOLM: 41, 42 and 43.

25 Briefs.

26 MR. FENN: Your Honor, I have one additional
27 exhibit I would like to move into the record which I
28 mentioned. This was the draft implementation plan

1 referenced in cross-examination.

2 ALJ MALCOLM: It is not part of anybody's
3 testimony?

4 MR. FENN: It relates to my own testimony and my
5 cross-examination.

6 ALJ MALCOLM: Is there any objection to adding
7 this document?

8 MR. MONTOYA: What document is it?

9 MR. FENN: This is the draft implementation plan
10 upon which I was cross-examined by the utilities.

11 MR. MONTOYA: Isn't that marked?

12 MR. SZYMANSKI: No.

13 MR. BUCHSBAUM: That's fine with me.

14 ALJ MALCOLM: This is the one you drafted for the
15 City of San Francisco that was adopted by the city.

16 MR. FENN: Done by the LAFCO that I was
17 cross-examined on it. So I would like it to be admitted
18 into the record.

19 ALJ MALCOLM: All right.

20 MR. MONTOYA: Can I ask for what purpose?

21 MR. FENN: For the purpose of reference in
22 relation to my cross-examination.

23 ALJ MALCOLM: Let's go off the record for a
24 minute.

25 (Off the record)

26 ALJ MALCOLM: Back on the record.

27 We are not going to include the draft CCSF
28 document as part of the record.

1 On the briefs, one thing I realized from the
2 workshops in these hearings is that a real big threshold
3 issue is the extent of jurisdiction that AB 117 confers
4 on the PUC. And so I presume you are going to do this
5 anyway, but I would really like right up front sort of a
6 broad legal analysis of the jurisdictional issue. And
7 then I know you are going to have to address it again
8 for smaller issues. But if I could have that up front
9 that would be good.

10 And if you want to, you can also talk about
11 the policy issue, assuming the Commission has
12 jurisdiction, what are the reasons for or against
13 asserting jurisdiction in sort of a broad sense on
14 behalf of the state and consumers.

15 And then I was going to throw out a July 1st
16 briefing date. I don't know if that is too soon for
17 you, but I would like to get going writing the decision.

18 MR. HUARD: Your Honor, can we make it July 5th?

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

20 (Off the record)

21 ALJ MALCOLM: Back on the record.

22 Opening briefs will be due July 8th, and reply
23 briefs are due August 1st. And we'll be submitted upon
24 receipt of the reply briefs.

25 Thank you everybody.

26 (Whereupon, at the hour of 1:05 p.m.,
27 this matter was submitted upon receipt of
28 reply briefs due August 1, 2005.)

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