UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

City and County of San Francisco	Docket Nos. EL15-3-002
v.	
Pacific Gas & Electric Company	
Pacific Gas & Electric Company	ER15-702-002 ER15-703-002 ER15-704-005 ER15-705-002 ER15-735-002 (Consolidated)

PREHEARING BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO

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GLOSSARY

Abbreviation	Full Term
1987 IA	1987 Interconnection Agreement between PG&E and San Francisco, as amended
CAISO	California Independent System Operator
CDWR	California Department of Water Resources
FPA	Federal Power Act
LILCO	Long Island Lighting Company
PG&E	Pacific Gas and Electric Company
Prospective WDT Load	As defined in Appendix D.1.3 of PG&E's proposed WDT SA (Ex. PGE-9): Specifically, these Points of Delivery: (1) are not Municipal Public Purpose End-Use Customers and were not served by agreement of the Parties under the 1987 CCSF IA since 1998; (2) do not meet the grandfathering provisions under Section 212(h)(2)(B) of the Federal Power Act; and (3) possibly use intervening facilities owned or controlled by CCSF, but no such demonstration by CCSF of requisite intervening facilities was made as part of CCSF's November 2013 application for Distribution Service. Prospective WDT Loads are also the Points of Delivery that change status from another Non-WDT Qualified type described in this Appendix D to a Prospective WDT Load.
Muni Load	As defined in Appendix D.1.1 of PG&E's proposed WDT SA (Ex. PGE-9): "Municipal Public Purpose End-Use Customers" ("Muni Load") are served at metered Points of Delivery providing power to CCSF's governmental departments and agencies, public housing tenants, municipal transportation system, police stations, fire departments, public schools, city parks and public libraries. Non-governmental private persons (other than CCSF public housing tenants) and non-governmental private corporations are not Municipal Public Purpose End-Use Customers. Small Unmetered Street Loads served under Appendix E are not Municipal Public Purpose End-Use Customers

Abbreviation	Full Term
Non-Muni Load	As defined in Appendix D.1.2 of PG&E's proposed WDT SA (Ex. PGE-9): these metered Points of Delivery are not Muni Load ("Non-Muni Load"), were served by PG&E under the 1987 CCSF IA since 1998, and were not served by CCSF on or before October 24, 1992 (i.e., do not meet grandfathering provisions of the Federal Power Act)
Suffolk	Suffolk County Electrical Agency
TFA	Transmission Facilities Agreement
TIA	Transmission Interconnection Agreement
UFLS	Under Frequency Load Shedding
WDT	Wholesale Distribution Tariff
WDT IA	Wholesale Distribution Tariff Interconnection Agreement
WDT SA	Wholesale Distribution Tariff Service Agreement
WDT2 Rate Case	*Pac. Gas & Elec. Co.*, Docket No. ER13-1188
Western	Western Area Power Administration

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This case concerns the ability of the City and County of San Francisco to bring power it generates at its Hetch Hetchy Hydroelectric Project on the Tuolumne River, or that it buys in the CAISO markets, into San Francisco to serve City agencies and related public entities, City property including tenants, and entities providing City services.

San Francisco's utility dates back to 1913, when Congress passed the Raker Act, granting the City the rights to dam the Hetch Hetchy Valley for water and electric generation. For decades, San Francisco has served its customers pursuant to a series of bilateral agreements with PG&E, which provided for use of PG&E's transmission and distribution facilities to supplement those owned by San Francisco.

The most recent of those agreements dated from 1987 and expired in June 2015. In the interim, the Commission propagated Order 888 to "remove impediments to competition in the wholesale bulk power marketplace" and to "remedy undue discrimination in access to the monopoly owned transmission wires that control whether

and to whom electricity can be transported in interstate commerce."[1] To achieve that end, it required that utilities like PG&E file tariffs of general applicability in order to provide open access over their FERC-jurisdictional facilities. In 1998, when the CAISO assumed operational control of PG&E's transmission facilities, PG&E filed its Wholesale Distribution Tariff ("WDT") to provide eligible wholesale customers interconnected to PG&E's distribution system with the non-discriminatory service necessary to reach the CAISO-controlled grid.

Accordingly, as the expiration of the 1987 IA approached, San Francisco sought to transition to open access service. It is now a transmission customer of the CAISO; and, in the application that underlies this proceeding, it sought service from PG&E under its WDT. However, instead of providing non-discriminatory service under that Tariff, PG&E has tendered non-standard agreements to San Francisco that would, over time, strip San Francisco of the load it has served for many decades or put unjust and unreasonable obstacles in the way of San Francisco's continued service.

PG&E's filed agreements accomplish this by sorting San Francisco's existing customers into a complicated array of categories, each of which is subject to different terms and conditions, and most of which PG&E asserts it is serving "voluntarily." These categories have no basis in the Federal Power Act ("FPA") or Commission decisions and

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[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,539, 21,541 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,634 (1996) ("Order 888"), *clarified*, 76 FERC ¶ 61,009 (1996), *modified*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688 (Dec. 9, 1997), 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

do not appear in PG&E's *pro forma* WDT Service Agreement ("WDT SA") or its WDT. Instead, PG&E has divided the points of delivery at which San Francisco receives service into "WDT-Qualified" and "Non-WDT Qualified," based on PG&E's determinations regarding which points San Francisco served in 1992 and the end-use customers San Francisco serves at each point. PG&E has deemed over 90% of San Francisco's delivery points "Non-WDT Qualified."

This categorization of San Francisco's points of delivery as "Non-WDT Qualified" violates Commission precedent and the FPA; so does PG&E's assertion that it is sufficient to provide service "voluntarily" instead of service under its tariff. Finally, the replacement agreements filed unexecuted by PG&E in this proceeding contain numerous other terms that are unjust and unreasonable and that should be rejected.

DISCUSSION

Under Section 212(h) of the FPA, 16 U.S.C. § 824k(h), the Commission may order distribution of electric energy directly to the ultimate consumer only when two conditions are met. First, the entity providing service must be of a type listed in the statute—that list includes federal power marketing agencies, states, and, relevant here, any political subdivision of a state. The City and County of San Francisco is a Charter City of the State of California, and PG&E does not dispute that San Francisco is an eligible entity under Section 212(h).[2]

Second, the eligible entity must either: (1) have been "providing service to [the] ultimate consumer on October 24, 1992"; or (2) "utilize transmission or distribution

[2] Pac. Gas & Elec. Co., Offer of Settlement § 3.1 (Mar. 31, 2015), eLibrary No. 20150331-5502 ("ER13-1188 Offer of Settlement"); Rubin Testimony, Ex. PGE-1, at 8:3-6.

facilities that it owns or controls to deliver" all the electric energy to the ultimate consumer. 16 U.S.C. § 824k(h)(2)(B). If an eligible entity qualifies for service to its customers under the first exception, those customers are referred to as "grandfathered." If it owns or controls facilities that are used to deliver electric energy to the ultimate consumer under the second exception, those facilities are referred to as "Intervening Facilities" or, in PG&E's WDT, as "Intervening Distribution Facilities."[3]

1. GRANDFATHERING OF SERVICE UNDER FPA SECTION 212(H)(2)(B) AND PG&E'S WHOLESALE DISTRIBUTION TARIFF.

The Commission has interpreted the grandfathering prong of Section 212(h) to apply to the *class* of customers an eligible entity was entitled to serve on October 24, 1992, rather than to individual customers or locations. In *Suffolk County Electrical Agency*, 77 FERC ¶ 61,355, at 62,550 n.17 (1996) ("*Suffolk County I*"), the Commission found that *all* customers eligible to receive service from Suffolk County Electrical Agency ("Suffolk") on October 24, 1992 were grandfathered. In a subsequent decision, the Commission explained that by "customers eligible to receive service" it meant "the *class* of customers eligible to receive service" in 1992. *Suffolk Cty. Elec. Agency*, 96 FERC ¶ 61,349, at 62,301 (2001) ("*Suffolk County II*") (emphasis in original). The Commission reasoned that Congress did not "intend a grandfathering provision to apply to *individual* retail customers because surely, in the almost nine years since October 24, 1992, some residential customers have died or moved out, while new residential customers have moved into (or within) the service area." *Suffolk County II*, at 62,301 (emphasis in original). The Commission has also found that grandfathering is not limited

[3] WDT §§ 2.20, 14.2 (Ex. PGE-7, at 7, 28).

to the quantity of service a particular customer was receiving on October 24, 1992. *U.S. DOE-W. Area Power Admin.*, 100 FERC ¶ 61,194, P 19 (2002); *Suffolk County I*, at 62,550 n.17.

1.1. Which San Francisco delivery points or customers qualify for grandfathering?[4]

As San Francisco's witnesses show, every customer that San Francisco included in its application for WDT service is eligible for grandfathering, because they belong to the limited class of customers that was eligible for and did receive service by San Francisco on October 24, 1992,[5] and for which San Francisco seeks grandfathering, as identified in Part 1.1.3 below. As discussed below, all customers in that class qualify for grandfathering.

1.1.1. Is the standard PG&E has proposed for identifying customers and delivery points that qualify for grandfathered service under its Wholesale Distribution Tariff just and reasonable and not unduly discriminatory?

1.1.2. Is the continuing grandfathered status of a delivery point dependent upon the customer or class of customer it serves?

PG&E has distorted Section 212(h), and Commission decisions interpreting it, to conclude that most of San Francisco's customers do not qualify for the grandfathering exception.[6] It has done this primarily through two major mischaracterizations. First, it has argued that only particular locations San Francisco was serving in 1992 can be grandfathered. Second, it has claimed that San Francisco was serving a much narrower

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[4] Hoecker Testimony, Ex. SF-1; Hoecker Rebuttal Testimony, Ex. SF-97. Exs. SF-98, SF-99. Hale Testimony, Ex. SF-2; Hale Rebuttal Testimony, Ex. SF-100. Exs. SF-3, SF-4, SF-5, SF-6, SF-7, SF-8, SF-9, SF-10, SF-11, SF-12, SF-13, SF-14, SF-15, SF-16, SF-17, SF-18, SF-19, SF-101, SF-102, SF-103, SF-104, SF-105, SF-106, SF-107, SF-108, SF-109, SF-110, SF-111, SF-112, SF-113, SF-114.

[5] San Francisco also owns Intervening Facilities at many of its points of delivery, which we will address in Part 3 of this brief.

[6] We address separately below in Part 2 PG&E's flawed proposal to offer "voluntary," non-Tariff service to some of San Francisco's customers or delivery points that PG&E has erroneously deemed "Non-WDT Qualified."

set of customers in 1992 than it actually was and thus limited San Francisco's service by imposing a narrow and baseless view of what is a proper "municipal public purpose." These claims are respectively contrary to Commission precedent and factually inaccurate and should be rejected.

First, PG&E has insisted that grandfathering is only available to a location (or "point of delivery") that was served by an eligible entity in 1992. That is, in PG&E's view, any location to which San Francisco initiated service after 1992 would not qualify for grandfathering even if the resident customer was of a class of customers eligible for service by the eligible entity on October 24, 1992. For example, PG&E would reject San Francisco's right to grandfather a police station that San Francisco served at one location in 1992 but which relocated since that date to another building across the street, even though police stations in general (and that police station in particular) were eligible to be—and were—served by San Francisco on October 24, 1992.[7]

PG&E's "no new locations" limitation on grandfathering is contrary to *Suffolk County* and unsupported by other Commission decisions and the FPA.

In the *Suffolk County I* and *II* decisions, Suffolk County Electrical Agency sought wheeling service from Long Island Lighting Company ("LILCO"), based on the grandfathering prong of Section 212(h), for all members of the residential rate class (and certain other customers) within the footprint of Suffolk County, New York—a class that Suffolk had served in part, but not in whole, since before 1992. It argued that it was "entitled to transmission service necessary to delivery power to the balance of customers

[7] *See* Hoecker Rebuttal Testimony, Ex. SF-97, at 3:18-4:10.

that make up the entire residential rate class at any point in time."[8] When the Commission concurred that Suffolk was, in fact, entitled to serve the entire class of retail customers that was eligible to receive service in 1992, the Commission necessarily rejected any argument that grandfathering was limited to serving only particular houses or "delivery points" that Suffolk served in 1992.

PG&E's interpretation is particularly inappropriate given the respective configurations of PG&E and San Francisco facilities and customers. Like Suffolk and LILCO did, San Francisco and PG&E have shared a service area for decades. San Francisco's customers have always been located within PG&E's distribution system; San Francisco's customers have moved (and continue to move) from location to location within PG&E's distribution system. San Francisco customers have been added, combined with other customers, or ceased to exist. Husing Rebuttal Testimony, Ex. SF-115, at 3:1-5:4. However, as this ordinary evolution of the City's customer base continues, PG&E's interpretation of grandfathering would slowly phase out the locations that are eligible for grandfathered service by San Francisco. This is contrary to the intent of the grandfathering prong of Section 212(h), which sought to preserve existing relationships. Hoecker Testimony, Ex. SF-1, at 8:12-11:16.

This a not a hypothetical problem. As San Francisco witness Husing testifies, the City anticipates that it would lose over 30% of its points of delivery in the first ten years unless it installs over $70 million in largely unnecessary and duplicative Intervening Facilities.[9] PG&E's grandfathering witness, Mr. Rubin, justifies this fact by opining,

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[8] Suffolk Cty. Elec. Agency, Final Brief 5 (July 8, 1997), eLibrary No. 19970711-0310.

[9] Husing Rebuttal Testimony, Ex. SF-115, at 3:9-12, 4:3-5:4; Ex. SF-117.

based only on his own "understanding," that Congress in fact intended grandfathering to apply to a declining number of buildings over time. However, PG&E has not cited to any law to support this view and it is contrary to a common precept of statutory interpretation that a statute's language should be read to give effect to all provisions.

Moreover, as Mr. Hoecker explains, PG&E location specific interpretation of Section 212(h) that would erode the applicability of grandfathering to San Francisco's customers over time is particularly egregious in light of the Raker Act. In passing the Raker Act, Congress resolved a heated controversy in favor of facilitating the delivery of water and power by San Francisco to a hierarchy of customers. Foremost among these were customers that serve San Francisco's municipal public purposes, the category of customers San Francisco seeks to grandfather in this case. Hoecker Rebuttal Testimony, Ex. SF-97, at 3:4-17, 7:14-9:3, 16:1-17:2.

PG&E also argues that its unduly narrow view of grandfathering (and Intervening Facilities discussed later in this brief) is necessary to implement Congress' intent to avoid authorizing retail wheeling. Rubin Testimony, Ex. PGE-1, at 16:2-10; Malahowski Testimony, Ex. PGE-20, at 3:20-23. PG&E ignores, again, the language of the FPA, which expressly provides for Commission-ordered wheeling directly to an ultimate consumer when the customer meets the requirements for grandfathering. 16 U.S.C. § 824k(h)(2)(B); *see also Suffolk County II*, at 62,301.

1.1.3. What class or classes of San Francisco customers qualify for grandfathering under Section 212(h)(2)(B) and the Suffolk County decisions?

1.1.4. Is the continuing grandfathered status of a delivery point dependent upon the customer or class of customer it serves?

1.1.5. Should a customer in a class that qualifies for grandfathering lose its grandfathered status because it relocates to an existing building that has electric service or reconfigures its service at its current location?

Consistent with Section 212(h) and the Commission's *Suffolk County* decisions, San Francisco's customers are all related to its municipal public purposes. The class that qualifies for grandfathering is:

- City agencies and related public entities,
- City-owned properties and tenants of those properties, and
- Entities providing services on behalf of or in coordination with the City.

San Francisco was serving numerous examples of these types of customers in October 24, 1992, pursuant to the 1987 IA, which provided service to the City's municipal public purpose customers. Hale Rebuttal Testimony, Ex. SF-100, at 5:18-6:18; Meal Rebuttal Testimony, Ex. SF-144, at 2:16-8:6. In fact, pursuant to the 1987 IA, the City served many of the very same customers that PG&E now deems ineligible for grandfathering. The loads served by San Francisco represent only a small percentage of the load within the boundaries of the City (less than 15%), and a tiny percentage of the load served by PG&E in its service area (less than 1%). Meal Rebuttal Testimony, Ex. SF-144, at 6:1-7; Ex. SF-145. However, all are an integral part of the City's provision of governmental services and its management of governmental property. And contrary to PG&E's claims, they comprise a finite category of customers.

PG&E, on the other hand, deemed only about 10% of San Francisco's customers "WDT Qualified." For the rest, it created three categories (Non Muni-Load, Municipal Public Purpose or Muni-Load, and Prospective Load). To reach this result, PG&E argues that the only San Francisco locations that are eligible for grandfathering are those

particular locations that were served by San Francisco on October 24 1992, and that either still host the same customer that San Francisco was serving at that time or a new customer that belongs to the category that PG&E has labeled "Municipal Public Purpose Load" or "Muni Load." Rubin Testimony, Ex. PGE-1, at 12:1-21.

PG&E has improperly denied grandfathering to all entities providing service on behalf of the City and to all tenants on City property unless they belong to one of the narrow customer categories on PG&E's Muni Load customer categories list. This is true even for customers that San Francisco was serving in October 1992, such as the Academy of Science and the San Francisco Zoo. Husing Rebuttal Testimony, Ex. SF-115, at 11:9-12:6, 13:1-12; Ex. SF-6.

In fact, the San Francisco Zoo provides a stark example of PG&E's unduly restrictive interpretation of grandfathering. PG&E has excluded the San Francisco Zoo from its "Muni Load" category because it is "neither operated nor managed by the City. Instead, it is run by a non-profit organization that leases the property from the City." Hailemichael Testimony, Ex. PGE-5, at 10:21-24.

However, San Francisco provided electric service to the Zoo pursuant to the 1987 IA in October, 1992.[10] Ex. SF-6. The Zoo is both a related public entity providing services on behalf of the City *and* a City tenant. It is located on City property and operated by a non-profit organization with very close ties to the City. The Zoo pays the City $1 in rent per year, receives $4 million a year in operating expenses from the City,

[10] Somewhat confusingly, PG&E has designated one (but not all) of the Zoo's points of delivery as "WDT-Qualified," which, under PG&E's formulation, should mean that PG&E believes it was served by the City in 1992. However, it has also stated that "is not aware of any [points of delivery]" that were served on that date but do not "fall within PG&E's definition of . . . 'MUNI LOAD.'" Ex. SF-140, PG&E Response to Data Request No. CCSF-PGE-125. That appears to be a plain contradiction in PG&E's filing.

and is governed by a committee established by the San Francisco Recreation and Parks Department Commission. This example illustrates that PG&E's definition of "Muni Load" does not reflect the reality of how the City provides services (now or in 1992), the customers that the City was actually serving in 1992, or the customers that were appropriately "Muni Load" customers in 1992.[11] It should be rejected.

a. PG&E has incorrectly characterized its grandfathering arrangements with other WDT customers.

PG&E has repeatedly argued that it cannot accept San Francisco's grandfathering proposal in part because it would be inequitable to its other customers. It claims, for instance, that "all WDT customers are required to own or control intervening facilities in order for any given delivery point to be eligible for WDT service and they have done so." Ex. S-4, at 1, PG&E Response to Data Request No. Staff-PGE-12. PG&E then admits in the very next sentence that this is not the case—PG&E does not require Intervening Facilities at all of the delivery points covered by its settlement with Western.

Western, with over 1,000 delivery points, is much more similarly situated to San Francisco than are PG&E's other WDT customers, most of which have one (or at most a dozen) delivery points. Meal Rebuttal Testimony, Ex. SF-144, at 12:3-20. Like San Francisco, many of Western's points are small secondary connections. PG&E entered into a settlement with Western that specifies that it may add new delivery points without owning or controlling Intervening Facilities. PG&E insists that the settlement is "non-precedential," but it certainly belies PG&E claims that San Francisco's request for treatment similar to what PG&E provides to Western would somehow be discriminatory.

[11] In fact, in 2005 when PG&E filed to terminate the 1987 IA a full ten years early, PG&E stated that all of San Francisco's load would be served pursuant to its WDT. Ex. SF-19.

1.2. Has PG&E correctly applied its own criteria when placing each of San Francisco's points of delivery into categories such as (a) "WDT-Qualified Point of Delivery," (b) "Municipal Public Purpose End-Use Customer," (c) Non-Muni Load Served by Agreement Under the 1987 CCSF IA," and (d) "Prospective WDT Load"?

San Francisco's witnesses have demonstrated that PG&E has not correctly applied its own criteria in categorizing customers.[12]

2. PG&E'S PROPOSED "VOLUNTARY" SERVICE.

2.1. Is service PG&E proposes to provide through "voluntary accommodation" equivalent to service PG&E is providing to Points of Delivery it has deemed "WDT-Qualified" and is it just and reasonable and not unduly discriminatory?[13]

PG&E has claimed that the "voluntary accommodation" in its proposed WDT SA with the City is equivalent to WDT service.[14] In reality, it is greatly inferior to the service PG&E is required to provide. Moreover, PG&E's "voluntary accommodation" cannot cure the deficiencies of its proposals on grandfathering and Intervening Facilities.

PG&E's "voluntary accommodation" would relegate the vast majority of San Francisco's customers to "off-tariff" service under a scheme that introduces new categories and service restrictions found nowhere in PG&E's WDT or *pro forma* WDT

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[12] Husing Testimony, Ex. SF-20, at 4:21-11:13; Husing Rebuttal Testimony, Ex. SF-115, at 5:5-13:19. Exs. SF-6, SF-18, SF-21, SF-22, SF-23, SF-24, SF-25, SF-26, SF-27, SF-119, SF-120, SF-121, SF-122, SF-123, SF-124, SF-125, SF-126, SF-127, SF-128, SF-129, SF-130, SF-131, SF-132, SF-133, SF-134, SF-135, SF-136, SF-137, SF-138, SF-139, SF-140, SF-141, SF-142, SF-143.

[13] Husing Testimony, Ex. SF-20, at 11:14:18:12, and Husing Rebuttal Testimony, Ex. SF-115, at 3:1-5:4. Exs. SF-28, SF-105, SF-24, SF-116, and SF-117. Hoecker Rebuttal Testimony, Ex. SF-97, at 14:1-17:2, 20:7-21:7. Ex. SF-98.

[14] Pac. Gas & Elec. Co., Answer of Pacific Gas and Electric Company to the Complaint Requesting Fast Track Processing of the City and County of San Francisco 4-5 (Nov. 10, 2014), eLibrary No. 20141110-5286:

> PG&E's replacement service proposal . . . for distribution after termination of the IA would provide CCSF with the following . . . WDT-equivalent distribution service at WDT service rates for all CCSF distribution service points that were served under the IA and that do not meet WDT criteria, on an "as is" basis, without any CCSF obligation to install intervening facilities or WDT-compliant metering facilities (effectively grandfathering all ~2,000 CCSF IA distribution service points).

SA.[15] This scheme is not an adequate substitute for grandfathering in accordance with Section 212(h).

First, former Commission Chairman James Hoecker testifies that under a "voluntary accommodation" as proposed, "PG&E leaves open its option to terminate service entirely, at which point it might argue that the Commission has no jurisdiction to order otherwise."[16] Such a possibility leaves San Francisco with no certainty that it can continue to serve its customers. As Mr. Hoecker explained, a voluntary commitment empowers PG&E to "exercise monopoly power over power transmission infrastructure."[17]

Moreover, as San Francisco witness Husing testified, PG&E's proposed categories, with their increasingly restrictive conditions, ensure that the number of points served under its "voluntary accommodation" will decline over time, particularly in the case of relocations.[18]

PG&E's proposal to serve many of San Francisco's loads "voluntarily" is not equivalent to properly grandfathered service under the WDT, and does not compensate for PG&E's failure to grandfather loads that should be grandfathered.

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[15] Ex. PGE-7, at 54-69 (WDT Attachment A).

[16] Ex. SF-97, at 20:18-20 (citing Ex. SF-98, PG&E Response to Data Request No. CCSF-PGE-133).

[17] Ex. SF-97, at 20:10-22.

[18] Ex. SF-20, at 11:14-23. As Ms. Husing explained in her testimony, PG&E's proposed voluntary service imposes load growth restrictions; the Reserved Capacity cannot permanently increase at points of delivery that serve the category of customers that PG&E terms "Non-Muni Load." Ex. PGE-9, at 22-23 (WDT SA, App. D.2.5). The Commission has explicitly disallowed load growth restrictions like this for grandfathered customers. 100 FERC ¶ 61,194, P 19.

3. INTERVENING FACILITIES UNDER FPA SECTION 212(h)(2)(B) AND PG&E'S WDT

PG&E has also misapplied the second prong of FPA Section 212(h)(2)(B) on Interconnecting Facilities.

3.1 How should the provisions of the WDT be interpreted in determining the specific facilities San Francisco must own or control to meet the Intervening Facilities requirement at delivery points where service is not grandfathered?[19]

3.2 Are PG&E's requirements for specific Intervening Facilities just and reasonable and not unduly discriminatory?

3.2.1. What Intervening Facilities should be necessary for service at primary voltage level?[20]

PG&E's WDT includes two different distribution service rates—primary and secondary—depending on the voltage level of the point of interconnection. PG&E and San Francisco generally agree on the types of Intervening Facilities required for primary service connections under the WDT, which San Francisco witness Maslowski described in his direct testimony. Ex. SF-42, at 13:27-16:6; Malahowski Testimony, Ex. PGE-20, at 12:12-16.

3.2.2. For underground service at secondary voltage level, must San Francisco own or control the service lateral, or is ownership or control of a service entrance conductor or bus duct sufficient to meet the Intervening Facilities requirement under WDT Section 14.2.1, the FPA, and related case law?[21]

a. PG&E's attempt to disclaim the text of its own Tariff on Intervening Facilities should be rejected.

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[19] Maslowski Testimony, Ex. SF-42, at 8:24-26:4; Maslowski Rebuttal Testimony, Ex. SF-152, at 3:21-12:19. Exs. SF-48, SF-49, SF-50, SF-51, SF-52, SF-53, SF-54, SF-153, SF-154, SF-155, SF-156, SF-157, SF-158.

[20] Maslowski Testimony, Ex. SF-42, at 7:4-16:6. Exs. SF-48, SF-49, SF-50, SF-51.

[21] Maslowski Testimony, Ex. SF-42, at 7:4-13:26, 16:7-26:4; Maslowski Rebuttal Testimony, Ex. SF-152, at 12:20-17:24. Exs. SF-48, SF-49, SF-50, SF-52, SF-53, SF-54, SF-153, SF-159, SF-160.

PG&E and San Francisco disagree on the Intervening Facilities required for underground-to-underground secondary service interconnections. San Francisco believes that, consistent with WDT Section 14.2.1, the wire or conductor required to meet the Intervening Facilities requirement for such connections is the service entrance conductor. Maslowski Testimony, Ex. SF-42, at 17:8-21; Maslowski Rebuttal Testimony, Ex. SF-152, at 12:28-13:12; WDT § 14.2.1 (Ex. PGE-7, at 28-29). PG&E asserts that San Francisco must also own or control the service lateral. Malahowski Testimony, Ex. PGE-20, at 14:14-27, 16 n.13.

PG&E's position is inconsistent with the plain language of the WDT and should be rejected.[22] The WDT was revised in PG&E's recent WDT2 rate case to contain specific language about what Intervening Facilities are required for underground-to-underground secondary service interconnections. Section 14.2.1 of that Tariff includes a chart with a number of standard scenarios and establishes a "rebuttable presumption that the Intervening Distribution Facilities identified and associated with each scenario are required for that type of service." Ex. PGE-7, at 28-29 A footnote to the chart includes detailed descriptions of the type of wire required for each type of scenario.

PG&E does not dispute that the Tariff specifically states that the required "Conductor, Wire, or Service Drop" for underground-to-underground secondary service is the "service entrance conductor." However, it has employed several different

[22] The Commission has stated that "when presented with a dispute concerning the interpretation of a tariff or contract, the Commission looks first to the language of the tariff or contract itself and, only if it cannot discern the meaning of the contract or tariff from the language of the contract or tariff, will it look to extrinsic evidence of intent." *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,032, P 30 (2010) (*citing N.Y. Indep. Sys. Operator, Inc. v. Astoria Energy LLC*, 118 FERC ¶ 61,216, P 34 (2007)).

approaches during the course of this proceeding to distance itself from that Tariff language. Malahowski Testimony, Ex. PGE-20, at 14:14-27.

Most recently, Mr. Malahowski stated in his cross-answering testimony that the term in the WDT actually should have been "service lateral conductor" rather than "service entrance conductor," and "apologize[d] for any confusion this error may have caused."[23] Ex. PGE-37, at 7:14-28. This position is not credible. The terms and conditions of the WDT were negotiated for over a year; and as Mr. Maslowski notes, the language in Section 14.2.1 was settled on among a number of parties after a good deal of consideration on the part of San Francisco technical staff. San Francisco's agreement to the settlement was premised in part on its understanding that the parties had reached agreement on the Intervening Facilities required under the Tariff. Maslowski Rebuttal Testimony, Ex. SF-152, at 4:24-5:16. That PG&E apparently now regrets entering into the settlement does not alter the Tariff's plain language or meaning, which cannot be modified in this proceeding.

PG&E and San Francisco also disagree on the type of wire that constitutes an appropriate Intervening Facility in the case of secondary underground service connections that use a bus duct as the service lateral.[24] In the case of certain larger secondary underground service connections, PG&E requires use of a bus duct as the

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[23] This is only the most recent of PG&E's attempts to avoid the clear language of the table in WDT Section 14.2.1. Initially, it appeared to assert that the Tariff provision applied in some cases involving underground-to-underground connections, but not all. Malahowski Testimony, Ex. PGE-20, at 12:3-6; Ex. SF-53, PG&E Response to Data Request No. CCSF-PGE-45(b). At the end of last month, PG&E announced that it actually *never* applies and that the reference to the service entrance conductor in the table was "incorrect." Ex. SF-159, PG&E Response to Data Request No. CCSF-PGE-132.

[24] A bus duct (also called a busway) is a metal duct containing busbars (a metallic strip or bar) for conducting a substantial current of electricity. It is used in lieu of a service cable and provides a higher capacity to match the high capacity main switch.

service lateral conductor that connects to PG&E's transformer. The bus duct in turn connects to the service entrance conductor.

Mr. Malahowski testified that footnote ** to the table in Section 14.2.1 should state that the Intervening Facilities conductor for underground secondary services should be the "service lateral conductor," which is the functional equivalent of the bus duct. Maslowski Rebuttal Testimony, Ex. SF-152, at 14:23-16:11. Nonetheless, Mr. Malahowski testified that bus ducts are insufficient as Intervening Facilities.

The Commission should reject these evasions and hold PG&E to the plain language of the WDT.

b. PG&E Has Provided No Reasonable Basis for Requiring Ownership or Control of Facilities Beyond Those Specified in WDT Section 14.2.1.

The parties dispute on Intervening Facilities can be resolved based on the plain language of the Tariff. The City will, however, briefly address PG&E's efforts to justify its departure from its Tariff. PG&E has offered open-ended, so-called "principles" for defining Intervening Facilities presented by PG&E witness Malahowski (Ex. PGE-20, at 4:15-16:12). As San Francisco witness Maslowski demonstrates, PG&E's "principles" are incorrect, irrelevant, and without merit, and appear to have been developed only for purposes of this litigation. Ex. SF-152, at 4:8-12:9.

Mr. Malahowski, for example, asserts that "Intervening Facilities owned by PG&E's WDT customers should extend from PG&E's existing common distribution facilities to the wholesale customer's end-use customer" (Ex. PGE-20, at 5:2-4), and that direct assignment facilities[25] should be "rare" (*id.* at 5:7). In fact, several sections of the

[25] Direct assignment facilities are facilities owned by the distribution provider but only used to serve, and

WDT (and even Mr. Malahowski's own diagrams of common service configurations produced before he filed testimony) provide for direct assignment facilities and contain no suggestion that these should be "rare." Maslowski Rebuttal Testimony, Ex. SF-152, at 7:10-17; Ex. SF-49. PG&E's WDT SAs with other WDT customers also show extensive use of direct assignment facilities. Maslowski Rebuttal Testimony, Ex. SF-152, at 7:15-16 & n.4.

In addition, Mr. Malahowski's "principle" that "PG&E does not build out its distribution system to meet another utility's end-use customer" (Ex. PGE-20, at 4:28-29), is explicitly contrary to the WDT. The WDT requires PG&E to expand or modify its distribution system as necessary to provide distribution service under the Tariff. Maslowski Rebuttal Testimony, Ex. SF-152, at 6:15-7:3 (citing WDT §§ 12.6, 13.4 (Ex. PGE-7, at 22, 26)).

Mr. Malahowski also attempts to draw a distinction between "receiving facilities" versus "delivering facilities"—i.e., he argues that a service lateral "delivers" power while service entrance conductors and bus ducts "receive" power. Ex. PGE-20, at 13:19-14:13. That argument is both circular and legally irrelevant. *Every* facility used to deliver power to customers receives power from upstream facilities and delivers it to downstream facilities. Maslowski Rebuttal Testimony, Ex. SF-152, at 13:24-14:22. The Commission has never made that distinction (and it would be arbitrary for it to do so).[26] Both the

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entirely paid for, by the distribution customer.

[26] Mr. Malahowski's "receiving"/"delivering" distinction appears to be an attempt to draw an analogy to the Commission's decision in *City of Palm Springs*, 76 FERC ¶ 61,127 (1996), *reh'g denied*, 84 FERC ¶ 61,225 (1998), where it held that duplicate meters were not sufficient Intervening Facilities. That case and this case, however, are different. In *City of Palm Springs*, the Commission held that duplicate meters did not meet the statutory requirement because they "simply measure the flow of power" and are a "measuring and billing device." *Id.* at 61,701-702. It did not purport to distinguish between facilities

service entrance conductors and bus ducts owned or controlled by San Francisco deliver all of the power used to serve San Francisco's end-use customer, and thus meet the requirements of the FPA if owned or controlled by San Francisco.

PG&E's position with respect to both service entrance conductors and bus ducts appears to be self-serving. Without reference to the FPA, Commission decisions, or the WDT, PG&E seeks to re-define "Intervening Facilities" to mean "facilities typically owned by PG&E." Conveniently, this re-definition maximizes PG&E's ability to restrict San Francisco from obtaining ownership or control of this type of equipment in the dense urban built environment of San Francisco, where PG&E and San Francisco compete for customers. PG&E's position should be rejected.

c. PG&E has not shown that its retail customers are subsidizing San Francisco.

Finally, PG&E is incorrect when it asserts that unless San Francisco is required to own and control more than the facilities identified in the WDT, San Francisco will "inappropriately increase[] the burden on PG&E and force[] [PG&E's] own end-use distribution customers to bear the costs of the PG&E facilities that would actually deliver power directly to the City's customer." Malahowski Testimony, Ex. PGE 20, at 14:9-13; *see also id.* at 9:1-4, 22:9-14. PG&E has failed to substantiate these claims; and as explained by San Francisco witness Meal, both the WDT rate methodology and the retail rate methodology formerly used by PG&E under the 1987 IA provide for PG&E to fully recover its costs of any PG&E-owned facilities dedicated to San Francisco. Ex. SF-144,

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"receiving" versus "delivering" power. *See also Laguna Irrigation Dist.*, 84 FERC ¶ 61,226, at 62,089 ("[N]or does Section 212 require that Laguna's facilities be 'extensive.' Rather, what is important is whether Laguna will own or control the transmission or distribution facilities that will be used to deliver all the electric energy, and here Laguna will own or control such facilities."), *on reh'g*, 85 FERC ¶ 61,220 (1998).

at 14:11-19. PG&E's assertions about rates are a red herring that the Commission should ignore.

3.3 Has PG&E properly applied the requirements in the WDT for demonstrating ownership and control of Intervening Facilities to San Francisco Points of Delivery?[27]

Although PG&E and San Francisco essentially agree on the facilities that San Francisco must own or control at primary interconnections to meet the WDT's Intervening Facilities requirement, PG&E has failed to credit San Francisco's evidence of ownership and control. For instance, Mr. Maslowski's testimony details PG&E's refusal to accept the City's demonstration of ownership or control of Intervening Facilities at its Recycling Center located on Pier 98. Ex. SF-152, at 19:1-14.

In addition, the parties continue to disagree on what Intervening Facilities San Francisco must demonstrate ownership and control of at secondary points of delivery. San Francisco witness Maslowski thus proposed that San Francisco be given a reasonable period of time after the Commission's order is issued in this matter to compile and provide to PG&E any necessary additional evidence of ownership or control of Intervening Facilities. Ex. SF-152, at 21:17-27.

3.4 Has PG&E administered the WDT in a competitively neutral manner?[28]

a. PG&E Should Be Required to Provide Clear and Stable Intervening Facilities Requirements Consistent with Its Tariff

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[27] Maslowski Testimony, Ex. SF-42, at 26:5-30:21; Maslowski Rebuttal Testimony, Ex. SF-152, at 17:25-21:27. Exs. SF-55, SF-56, SF-57, SF-58, SF-119, SF-124, SF-118, SF-153, SF-161, SF-162, SF-163, SF-164, SF-165.

[28] Hale Rebuttal Testimony, Ex. SF-100, at 14:15-21:2; Maslowski Rebuttal Testimony, Ex. SF-152, at 33:1-35:25. Exs. SF-108, SF-109, SF-110, SF-111, SF-112, SF-113, SF-114, SF-153, SF-172, SF-173, SF-174, SF-175, SF-176, SF-177, SF-178.

As documented by Mr. Maslowski (Ex. SF-152, at 9:22-10:13), PG&E has repeatedly changed its positions with respect to the detailed technical requirements for Intervening Facilities and interconnection to PG&E's distribution system. Ex. SF-156, PG&E Response to Data Request No. CCSF-PGE-81; Malahowski Testimony, Ex. PGE-20, at 21:14-17. PG&E has likewise made conflicting statements about the applicability of California Public Utilities Commission ("CPUC") rules (Malahowski Testimony, Ex. PGE-20, at 5:18-20; Ex. SF-158, PG&E Responses to Data Request Nos. CCSF-PGE-48, -49, -50, -51; Maslowski Rebuttal Testimony, Ex. SF-152, at 10:22-26), and backed away from the diagrams of common service configurations PG&E provided to San Francisco earlier in this proceeding (Malahowski Testimony, Ex. PGE-20, at 16:19-21; Ex. PGE-23; Maslowski Rebuttal Testimony, Ex. SF-152, at 17:9-13).

The resulting uncertainty allows PG&E undue discretion to design the requirements for each new interconnection. As the Commission has held, open-ended, ill-defined requirements are an unjust and unreasonable barrier to receipt of service.[29] PG&E should be required to honor the plain language of WDT Section 14.2.1, and directed to work with the City to determine and clarify in advance additional technical

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[29] Order 888 at 21,547, FERC Stats. & Regs. ¶ 31,036, at 31,647 ("[t]he ability to spend time and resources litigating the rates, terms and conditions of transmission access is not equivalent to an enforceable voluntary offer to provide comparable service under known rates, terms and conditions" (quoting *Hermiston Generating Co.*, 69 FERC ¶ 61,035, at 61,165 (1994), *reh'g denied*, 72 FERC ¶ 61,071 (1995)); Order 888 at 21,548, FERC Stats. & Regs. ¶ 31,036, at 31,649:

> a negotiation process creates uncertainty and imposes on customers delay and other transaction costs that the transmitting utility members of an RTG do not incur when using the transmission for their own benefit. Moreover, the ability to execute separate transmission agreements with different but similarly situated customers is the ability to unduly discriminate among them. A tariff ensures against such discrimination in the RTG

(quoting *Sw. Reg'l Transmission Ass'n*, 69 FERC ¶ 61,100, at 61,398 (1994), *order on compliance filing*, 73 FERC ¶ 61,147 (1995)).

interconnection requirements for common configurations transparently and uniformly, so that San Francisco and other WDT customers can effectively plan and design their projects that require Wholesale Distribution Service.

b. PG&E's dual role as WDT administrator and competitor for customers creates the opportunity for anticompetitive abuse

The need for unambiguous criteria for entitlement to WDT service is heightened by the fact that any customer that San Francisco is not able to serve becomes a retail customer of PG&E. PG&E can exploit its role as distribution provider and tariff administrator to delay or deny the City's request for service while taking the customer for itself. And some of PG&E's employees are involved both in administering the Tariff and in promoting PG&E's retail service to customers as an alternative to service from San Francisco. *See* Ex. SF-123, PG&E Response to Data Request No. CCSF-PGE-124.

The testimony of San Francisco witness Hale demonstrates that PG&E has in fact made inappropriate use of its role as WDT administrator to delay service to San Francisco and has pursued the customer in question for itself. She describes how PG&E delayed processing the City's application for new service for a tenant of the Port of San Francisco under the WDT (using Intervening Facilities) in an effort to convince the City's customer that PG&E's retail service was a better option. Hale Rebuttal Testimony, Ex. SF-100, at 15:1-21:2. PG&E even informed the City's customer that it could ignore a requirement in the lease that the customer obtain service from the City. *Id.* at 17:20-23; Ex. SF-109, Lease between Tenant and Port § 12.1.

Ms. Hale noted that the same PG&E employees who were supposed to be processing the City's application for wholesale service were also working directly with the City's customer on its application for retail service from PG&E. *Id.* at 19:10-21:2.

These employees were able to use the information they received both from the City and the City's customer to attempt to ensure that PG&E, and not the City, would provide electric service to the City's customer. *Id.* This example illustrates the importance of adopting the clear criteria for grandfathering and Intervening Facilities that San Francisco has proposed.

4. PG&E'S PROPOSED "REPLACEMENT" AGREEMENTS

4.1. What is the legal standard for determining whether provisions in the replacement agreements are just and reasonable and not unduly discriminatory?

PG&E has not met its burden to show that its replacement agreements are just and reasonable. PG&E's witnesses have not responded to San Francisco's proposed mark-ups of the replacement agreements, instead asserting that PG&E has no obligation to address them because "PG&E only has to demonstrate that its own language is just and reasonable, and it has done so." Hailemichael Testimony, Ex. PGE-5, at 22:18-25. San Francisco agrees that the replacement agreements must be just and reasonable. However, in many instances, PG&E has not met that standard, whereas the alternatives proposed by San Francisco do.

PG&E attempts to justify its agreements by stating that many of the provisions therein have been included in agreements with other of its customers that have been found to be just and reasonable by the Commission. *See, e.g.*, Hailemichael Testimony, Ex. PGE-5, at 6:5-23, 23:20-24:3, 26:8-13, 26:32-27:17, 29:3-12, 30:12-30. PG&E is wrong.

First, PG&E has chosen not to file *pro forma* Transmission and WDT Interconnection Agreements ("WDT IAs") with the Commission. Where there is not a Commission-approved *pro forma*, the Commission recognizes that terms and conditions

that might be acceptable, if all parties have agreed to them, can be unjust and unreasonable in an unexecuted agreement. PG&E's proposed replacement agreements, for example, include dispute resolution terms that call for binding, mandatory arbitration of disagreements between San Francisco and PG&E. WDT IA §§ 6.1.3, 23, App. A (Ex. PGE-8, at 12, 44-47); TIA, App. A (Ex. PGE-10, at 47-50). The Commission has never allowed binding arbitration to be imposed on parties unilaterally. *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, P 124 (2008), *reh'g denied*, 126 FERC ¶ 61,099 (2009); *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 74 FERC ¶ 61,006, at 61,022-23 (1996), *reh'g denied*, 96 FERC ¶ 61,130 (2001).

Second, in many cases, the City proposed language that *is* included in PG&E's agreements with other WDT customers. For instance, Mr. Jenkins testified that San Francisco has proposed changes to Section 10.5 of the Transmission Interconnection Agreement ("TIA") that track PG&E's Interconnection Agreement with California Department of Water Resources ("CDWR").[30] Yet PG&E has refused to even discuss this term with San Francisco, despite attempting to impose other terms on San Francisco, based on the argument that they are consistent with the CDWR agreement. *See* Ex. SF-180, PG&E Response to Data Request No. CCSF-PGE-161.

Further, the bulk of the other WDT SAs, WDT IAs, and TIAs were filed as executed agreements by PG&E and were accepted by the Commission via letter orders, which explicitly state that they do "not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents" and that they are "without prejudice to any findings

[30] Jenkins Rebuttal Testimony, Ex. SF-179, at 11:3-19.

or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against PG&E."[31] Even in cases where the Commission did not simply accept the agreements in question by a letter order, the Commission did not consider the issues that San Francisco is raising herein.[32]

PG&E has attempted to pick and choose the terms that are most favorable to it and thus has not met its burden to show that its proposed replacement agreements are just and reasonable and not unduly discriminatory. Nor has it chosen, in most cases, to engage with the proposed alternatives suggested by San Francisco.

4.2. Is PG&E's WDT Service Agreement ("WDT SA") just and reasonable and not unduly discriminatory, or are changes required to make it so?[33]

PG&E's proposed WDT Service Agreement is unjust, unreasonable, and unduly discriminatory. We identify here some representative issues in PG&E's filed WDT SA. The City will not address in this brief all its proposed changes to the agreements filed by PG&E, although they will be detailed in the City's post-hearing brief.

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[31] *See, e.g.*, Letter Order accepting PG&E Revisions to WDT SA and WDT IA with Shelter Cover Improvement District No. 1 (Jan. 15, 2015), eLibrary No. 20150115-3019; Letter Order accepting PG&E Revisions to IA and WDT SA with the Port of Oakland (Jan. 30, 2014), eLibrary No. 20140130-3027; Letter Order accepting PG&E Revisions to the IA with the Power and Water Resources Pooling Authority (Sept. 21, 2015), eLibrary No. 20150921-3034; Letter Order accepting PG&E's filing of SA and IA with Westside Power Authority (Nov. 18, 2003), eLibrary No. 20031118-3011; Letter Order accepting Revisions to WDT SA with Lathrop Irrigation District (Apr. 5, 2013), eLibrary No. 20130405-3006; Letter Order accepting PG&E's filing of TIA and TFA with Lathrop Irrigation District (Jan. 5, 2016), eLibrary No. 20160105-3013; Letter Order accepting PGE's filing of TIA with Northern California Power Agency and TFAs with City of Biggs and the Pluma-Sierra Rural Electric Cooperative (Nov. 10, 2015), eLibrary No. 20151110-3022.

[32] *Pac. Gas & Elec. Co.*, 149 FERC ¶ 61,276 (2014), *reh'g denied*, 151 FERC ¶ 61,252 (2015).

[33] Maslowski Testimony, Ex. SF-42, at 44:15-64:7, 68:5-27, 72:16-73:15, and Maslowski Rebuttal Testimony, Ex. SF-152, at 22:1-30:24. Exs. SF-43, SF-44, SF-57, SF-59, SF-60, SF-70, SF-71, SF-72, SF-73, SF-75, SF-150, SF-165, SF-166, SF-167, SF-168, SF-169, and SF-170. Meal Testimony, Ex. SF-29, at 11:1-15:12, and Meal Rebuttal Testimony, Ex. SF-144, at 16:15-25. Exs. SF-31, SF-40, SF-43, and SF-44.

a. PG&E's approach for determining Reserved Capacity for delivery locations is unjust and unreasonable, unless modified.

PG&E's filed agreements require that a "Reserved Capacity" be set for each San Francisco point of delivery. If PG&E's grandfathering proposal is accepted, exceedance of Reserved Capacity will in some circumstances act as a trigger for PG&E to terminate service; even if it is not, PG&E may require San Francisco to pay for additional facilities if its load exceeds the stated Reserved Capacity level.

Mr. Maslowski proposed using historical peak demand to establish an appropriate Reserved Capacity for points of delivery with demand meters. Ex. SF-42, at 51:16-53:6. PG&E agreed to this approach, but only if the City paid for any required studies to determine the adequacy of PG&E's system to accommodate the increased Reserved Capacity values. As Mr. Maslowski explained in rebuttal, such studies are not necessary to establish that PG&E's facilities are capable of serving the City's existing loads at levels that have been experienced in the past. Ex. SF-152, at 22:25-23:12.

Mr. Maslowski has proposed a compromise position by which Reserved Capacity would be set at the historical peak load in the past five years rather than the all-time peak. Ex. SF-152, at 23:13-19.

b. PG&E's approach to Power Factor is unjust and unreasonable.

PG&E's proposed replacement WDT SA specified that the bandwidth for new points of delivery should be 0.95 lagging to 0.95 leading, contrary to the WDT which states that the power factor bandwidth may not exceed that in the same area.[34] In discovery, PG&E stated that San Francisco could request a study to determine the power

[34] San Francisco and PG&E agree on the power factor bandwidth that applies in the case of existing points of delivery.

factor on a particular circuit on which a point of delivery is located, and that San Francisco can then determine what is needed to maintain the power factor in the same range. Ex. SF-168, PG&E Response to Data Request No. CCSF-PGE-156. While this is a step towards reflecting the actual language of the WDT, Mr. Maslowski's testimony shows that it is unjust and unreasonable for PG&E to require San Francisco to pay the substantial costs associated with any studies necessary to determine the power factor in the area, when PG&E should be maintaining information on power factor as a matter of Good Utility Practice. Ex. SF-152, at 26:4-17.

c. PG&E's Non-Bypassable Charges provision is unjust and unreasonable.

As explained in the testimony of San Francisco witness Meal, Section A.5 in PG&E's proposed WDT SA includes new, non-standard language regarding Non-Bypassable Charges (or Departing Load Charges) for the City's customers. Ex. SF-29, at 15:14-20:22. PG&E and San Francisco agree that any Departing Load Charges assessed by PG&E on San Francisco or its customers are under the jurisdiction of the CPUC, not FERC. As a result, it is unjust and unreasonable to include this provision, which goes further than the *pro forma* WDT SA, in the FERC-jurisdiction service agreement at issue.

4.3 Is PG&E's WDT IA just and reasonable and not unduly discriminatory, or are changes required to make it so?[35]

4.4 Is PG&E's TIA just and reasonable and not unduly discriminatory, or are changes required to make it so?[36]

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[35] Maslowski Testimony, Ex. SF-42, at 53:12-56:2, 64:8-72:15, 75:10-78:18; Maslowski Rebuttal Testimony, Ex. SF-152, at 31:1-32:12. Exs. SF-45, SF-46, SF-71, SF-171.

[36] Jenkins Testimony, Ex. SF-76, at 6:24-29:12; Jenkins Rebuttal Testimony, Ex. SF-179, at 3:1-13:11. Exs. SF-77, SF-78, SF-89, SF-90, SF-91, SF-92, SF-93, SF-180.

4.5 Are PG&E's Transmission Owner Transmission Facilities Agreements("TFAs") just and reasonable and not unduly discriminatory, or are changes required to make them so?[37]

As noted, this brief identifies a number of important themes addressed by the City's mark-ups that cut across the WDT IA, TIA, and TFAs and demonstrate that PG&E has not shown that its proposed agreements are just and reasonable

a. Parties should be responsible for costs they cause.

It is Commission policy to make parties responsible for the costs they cause. A number of the changes to agreements sought by San Francisco are to make PG&E's filed agreement conform to this cost causation principle. For example, the WDT IA includes provisions that make San Francisco responsible for costs due to impacts caused by San Francisco on PG&E's facilities. Consistent with cost causation principles and fairness, these types of provisions should be reciprocal. *See e.g.*, WDT §§ 4.14, 4.15, 4.2, 4.21 (Ex. PGE-8, at 4, 6, 7); Maslowski Testimony, Ex. SF-42, at 64:8-65:8. The TIA suffers from similar defects. *See* TIA § 10.5 (Ex. PGE-10, at 18); Jenkins Testimony, Ex. SF-76, at 25:4-27:14.

b. Undue authority to PG&E

San Francisco seeks a number of changes to provisions of the draft agreements that afford undue authority to PG&E. For example, the WDT IA, TIA, and TFAs provide PG&E a license to locate its equipment on San Francisco property. San Francisco's mark-ups make that license subject to San Francisco's reasonable rules and regulations. WDT IA § 12 (Ex. SF-45, at 31; Ex. SF-46, at 36-37); Maslowski Testimony, Ex. SF-42,

[37] Jenkins Testimony, Ex. SF-76, at 29:13-35:3; Jenkins Rebuttal Testimony, Ex. SF-179, at 13:12-14:14. Exs. SF-79, SF-80, SF-81, SF-82, SF-83, SF-84, SF-85, SF-86, SF-87, SF-88, SF-94, SF-95, SF-96, SF-181, SF-182.

at 71:16-72:4; Jenkins Testimony, Ex. SF-76, at 32:1-35:3. Likewise, San Francisco has eliminated language suggesting that San Francisco must participate without compensation in PG&E Remedial Action and Special Protection Schemes. TIA, App. C.3 (Ex. SF-77, at 54-57; Ex. SF-78, at 66-68); Jenkins Testimony, Ex. SF-76, at 12:18-14:28.

c. Appropriate role of the CAISO

San Francisco has proposed changes to both the WDT IA and the TIA to recognize that the City is already subject to CAISO Tariff requirements. In particular, PG&E's filed TIA seeks to interject itself between the City and the CAISO in a manner that is inappropriate. Jenkins Testimony, Ex. SF-76, at 8:21-10:20; Jenkins Rebuttal Testimony, Ex. SF-179, at 7:9-9:20, 12:13-13:11. PG&E has provided no reasonable explanation for much of its language, and has not responded to the City's edits to correct these problems in Sections 4.16, 9.2, 10.4, 10.7, 10.11, 27.4, and Appendix C of the TIA (Ex. PGE-10, at 7, 15, 18, 20, 23, 39, 52-54) (*see* Jenkins Testimony, Ex. SF-76, at 7:17-12:2) and Sections 4.27. 6.1, and 6.3 of the WDT IA (Ex. PGE-8, at 8, 12-13, 14) (*see* Maslowski Testimony, Ex. SF-42, at 69:1-23).

d. Errors with respect to equipment

San Francisco has corrected errors in the TIA and TFAs regarding the parties' respective ownership of particular equipment, and the capacity of San Francisco's generation and service connections. PG&E has acknowledged some of these errors, but has not revised its agreements. In a few instances it has disagreed; as to some other errors, PG&E has not responded at all.

e. Legal issues

In addition there are a number of legal issues raised by PG&E's agreements. For example, consistent with Commission policy, San Francisco has deleted provisions providing for mandatory binding arbitration.[38] Other legal issues include San Francisco's changes to address PG&E's proposed hierarchy of documents,[39] and the City's Sunshine Act obligations.

5. COST OF OWNERSHIP[40]

Cost of Ownership charges "reflect[] [PG&E's] on-going cost liabilities of owning and operating Direct Assignment Facilities." WDT Schedule WD-1, § 3 (Ex. PGE-7, at 53). As explained in the testimony of San Francisco witness Meal, no Cost of Ownership charges should be imposed for primary facilities when secondary points of delivery convert to primary service. Ex. SF-144, at 15:2-16:14.

CONCLUSION

The Presiding Judge should (a) accept San Francisco's proposed class for grandfathering under Section 212(h), (b) enforce PG&E's Tariff as written on which Intervening Facilities are required, and (c) adopt the mark-ups of replacement agreements as proposed by San Francisco.

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[38] *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, P 124 (directing CAISO to remove proposed binding arbitration provision from tariff because "arbitration is a voluntary process"); *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 74 FERC ¶ 61,006, at 61,023 (requiring Florida Power and Light to revise dispute resolution provision of unexecuted network integration service agreement because binding arbitration permitted "only when all parties involved agree to submit to it.").

[39] Section 5.3 of the TIA, discussed in Jenkins Testimony, Ex. SF-76, at 27:23-29:12, and Section 19.1 of the WDT IA, discussed in Maslowski Testimony, Ex. SF-42, at 76:23-78:18. The City's changes acknowledge that the parties cannot agree in a bilateral agreement to override applicable requirements of the CAISO Tariff, and they make the specific agreements control over generic tariffs controlled by PG&E to prevent PG&E from undertaking changes without adequate notice to the City.

[40] Maslowski Testimony, Ex. SF-42, at 40:11-43:7, and Meal Rebuttal Testimony, SF-144, at 15:1-16:14. Exs. SF-65, SF-66, SF-67, SF-68, SF-69, SF-149, SF-150, and SF-151.

Respectfully submitted,

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April 18, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 18th day of April, 2016.

/s/ *Jeffrey M. Bayne*
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