

ORIGINALDecision No. 63562

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC GAS AND ELECTRIC COMPANY for)
 authorization to amend its presently)
 filed Electric and Gas Rule No. 18.)
 (Electric and Gas)

Application No. 42434
 (Filed July 1, 1960)

F. T. Searls, John C. Morrissey and Malcolm A. MacKillop,
 for Pacific Gas and Electric Company, applicant.
Thomas F. Stack, for Ronald H. Williams; Harold Gold,
Reuben Lozner, Gerald Jones, C. C. Morris, and
Paul M. Sapp, for Department of Defense and all
 other Executive Agencies of the United States
 Government; William L. Knecht, for California Farm
 Bureau Federation; Kenneth M. Robinson and A. F. Bava,
 for Kaiser Center, Inc.; William S. Boyd and J. Benton
Tulley, for Bay Fair and Valley Fair Shopping Centers;
Boris H. Lakusta, La Forest E. Phillips, Jr., Graham,
 James & Rolph, for Estate of Graeme MacDonald,
 Woodland Shopping Center and Lincoln Building;
Gerald Wagstaffe, Wagstaffe, Daba and Hulse, for
 David D. Bohannan and Ophelia E. Bohannan; Graham,
 James & Rolph, by Raymond A. Greene, Jr.; Donald J.
 Carman, Gilbert C. Delvaille and Richard Edsall, by
Gilbert C. Delvaille, for California Electric Power
 Company; Robert C. Burnstein, for United
 California Bank; interested parties.
Spurgeon Avakian, Jerry Phelan and Elmer Johnson, for
 Building Owners and Managers Association of San
 Francisco; Stanley Mosk, by Miriam E. Wolff, for the
 State of California, San Francisco Port Authority;
 protestants.
Mary Moran Pajalich, for the Commission staff.

O P I N I O NApplicant's Request

Pacific Gas and Electric Company (Pacific) seeks authority to revise its presently effective Electric Rule 18, Supply to Separate Premises and Re-sale of Electric Energy, and its presently effective Gas Rule 18, Supply to Separate Premises and Re-sale of Gas. The revised Rule 18 for Electric service and for Gas service

which Pacific seeks to make effective are set forth as Exhibit A to the application.

The significant effects of Pacific's proposed changes would be to eliminate its option to permit sales to nondomestic customers for resale through submeters and to eliminate its option to refuse sales to domestic customers for resale through submeters. Where a customer has been reselling on a metered basis to his tenants for nondomestic purposes prior to the effective date of the proposed rule, Pacific proposes to continue such resale until an equitable plan for eliminating such resale is presented to and authorized by this Commission.

Public Hearing

Fifteen days of public hearing were held on this matter during the period November 1, 1960, through September 11, 1961, before Examiner William W. Dunlop in San Francisco. The matter was submitted subject to the filing of briefs, Pacific's closing brief having been filed on January 22, 1962.

Present Rule 18

The wording of Pacific's present Electric Rule 18 is substantially the same as that of its present Gas Rule 18. Pacific's present Electric Rule 18 is as follows:

"RULE AND REGULATION No. 18

"SUPPLY TO SEPARATE PREMISES AND RE-SALE OF ELECTRIC ENERGY

"Where the Company has adequate service facilities to supply separate premises, such separate premises, even though owned by the same customer, will not be supplied with electric energy through the same meter, except as specifically provided for in certain domestic service schedules applicable in unincorporated territory.

"Unless specially agreed upon, the customer shall not re-sell any of the electric energy received by him from the Company to any other person or for any other purpose, or on other premises than specified in his application for service.

"Owners or lessees of apartment houses or other buildings may re-sell electric energy to tenants of such houses or buildings, provided either,

"1. Such energy is resold at rates identical with the rates of the Company that would apply in the event that energy were supplied to the sub-customer directly by the Company; or,

"2. The charge to the sub-customer for such energy is absorbed in the rental charge for the premises occupied by him.

"In the event that such energy is resold otherwise than as provided for above, the Company shall have the right at its option, either to discontinue service to the customer, or, to furnish electric energy directly to the sub-customer."

Pacific's Proposed Rule 18

Pacific's proposed Electric Rule 18 (Exhibit A of the application) is substantially the same as its proposed Gas Rule 18. Electric Rule 18 as proposed by Pacific follows:

"RULE No. 18

"SUPPLY TO SEPARATE PREMISES AND RESALE
OF ELECTRIC ENERGY

"(A) Separate Metering

"Where the Company has adequate service facilities to supply separate premises, such separate premises, even though owned by the same customer, will not be supplied with electric energy through the same meter, except as may be specifically provided for in the applicable rate schedule.

"(B) Other Uses or Premises

"A customer shall not furnish or use electricity received from the Company upon premises, or for purposes, other than those specified in his application for service and accepted by the Company.

"(C) Resale of Electricity

"A customer shall not furnish or resell electricity received from the Company to any person, except:

- "1. Where energy is purchased under rate schedules that specifically provide for resale service; or
- "2. Where the charge to tenants is absorbed in the rental for the premises or space occupied; or
- "3. Where a customer furnishes electric energy to the tenants or occupants of single family dwellings, flats, or apartments located on the same property and submeters and resells such energy at the same rates the Company would charge for the energy if supplied by it directly; or
- "4. Where a customer has been reselling energy on a metered basis to his tenants for non-domestic purposes prior to the effective date of this rule, such customer may continue such resale of energy at existing locations at the same rates that the Company would charge for the service if supplied by it directly until such time as an equitable plan for eliminating such resale is presented by Company to and authorized by the Commission.

"In the event that such energy is furnished or resold otherwise than as provided for above, the Company may either discontinue service to the customer or furnish electric energy directly to the subcustomer."

At the hearing on July 17, 1961, Pacific proposed, as an alternative for consideration by the Commission, a revision of proposed paragraph (C)4. to eliminate the words "until such time as an equitable plan for eliminating such resale is presented by Company to and authorized by the Commission", and with the suggestion that the Commission might wish to authorize a study of the existing services to see if it was worthwhile eliminating those where there was resale.

Position of Pacific

Pacific maintains that its present Rule 18 gives it the right to either grant or deny resale privileges to a customer. Prior to 1958 it had been Pacific's practice not to refuse to allow resale but, rather, to discourage resale by its commercial customers through submeters. Some time in 1958 Pacific changed its practice, consistently granting applications for resale service to owners or lessees of apartment houses but consistently refusing applications for resale service through submeters to owners or lessees of other buildings.

According to Pacific, the purpose of its proposed Rule 18 is to clarify the intent of present Rule 18 and to set forth more clearly its present practice thereunder. Pacific maintains that the intent of its present Rule 18 and present practice is to prohibit resale by submetering other than for domestic use or by municipalities or other public utilities purchasing utility service under wholesale schedules designed for resale purposes.

The record discloses some 77 cases where Pacific provides service to a commercial customer through a master meter and where such customer in turn resells that service to his tenants through submeters. Some of these cases go back more than thirty years. Pacific states that those customers who have been permitted to resell electricity or gas to tenants by submetering have been allowed to do so when the convenience of Pacific, type of service, or other considerations indicated that no substantial adverse effect would accrue to Pacific or to its ratepayers generally.

The record further reveals that as of November 1, 1960, Pacific had on hand 15 requests for nondomestic resale by submetering, 8 of which involved requests to change from direct metering to master

metering and resale through submeters. Pacific urges that the present number of requests for nondomestic submetering would, if granted, result in a substantial revenue loss to Pacific and present a real and present danger of adversely affecting Pacific and its existing and future ratepayers in a manner not consistent with the public interest. However, Pacific did not present any estimate of the effect on its plant, revenues or expenses of granting the 15 requests for nondomestic submetering. On the other hand, Pacific's witness calculated an annual loss in gross revenues of \$65,000 if three shopping centers had been submetered; an annual loss in gross revenues of \$672,563 and an annual reduction in expenses of \$37,400 on the assumption that all existing major commercial establishments where tenants are now metered individually by Pacific were to receive electric and gas service by means of one or more master meters; and an annual increase in gross revenues to Pacific of \$677,000 on the assumption that individual electric meters had been installed by Pacific in lieu of the present electric master meters involving some 77 accounts. Pacific's calculations, however, admittedly were not based upon any comprehensive study and analysis of the actual revenues, costs or problems involved in converting existing nondomestic submetered tenants to an individual metered basis.

It is Pacific's claim that by removing the optional element of the existing rule and revising the language as it proposes, controversy will be avoided, ease of administration of the rules and uniformity of treatment of customers by Pacific's personnel will be fostered, proper metering, billing, and service by Pacific's trained personnel for all users of electricity and

gas will be assured, understanding of the rule by Pacific's customers and potential customers will be fostered, uniformity with the language of similar rules of other major utilities in California will be more nearly achieved, and a potential loss of customers and revenue to the detriment of Pacific and its ratepayers will be removed.

Woodland Shopping Center and Lincoln Building

Woodland Shopping Center in Woodland applied for and was furnished master meter electric service from Pacific about five years ago and continues to receive such service. Lincoln Building at Fifth and Market Streets in San Francisco has received master meter electric service from Pacific for the past approximately twenty years.

A witness for the Woodland Shopping Center and the Lincoln Building proposed in Exhibit 11 the following "grandfather" clause assuming Pacific's rules are changed:

"Where a customer has been reselling energy on a metered basis to his tenants for non-domestic purposes prior to the effective date of this rule, or where an applicant for master meter service has requested such service prior to the effective date of this rule and has agreed to resell in accordance with Paragraph No. 2 in Rule 18 in effect until superseded by this rule, such customer may continue such resale of energy, or shall be given the right to receive energy for resale, as the case may be, at existing locations at the same rates that the Company would charge for the service if supplied by it directly. Such master meter service shall be continued so long as the premises are used by the customer or his or its successors for the same general purpose or until such time as the master meter customer and the Company agree upon a discontinuance of such service upon terms acceptable to the Commission."

Woodland Shopping Center and the Lincoln Building urge that the application be denied but state that at the very least Pacific should be required to continue rendering master meter electric

service to these properties until such time as the premises may cease to be used for general commercial purposes.

Hillsdale Shopping Center

Hillsdale Shopping Center in San Mateo urges the inclusion of a "grandfather" clause continuing the existing master meter arrangements for nondomestic uses but takes no position on other changes in Rule 18 proposed by Pacific.

Bay Fair, Valley Fair and Capital Company

Bay Fair, Valley Fair and Capital Company take essentially the same position as the Hillsdale Shopping Center in urging the inclusion of a "grandfather" clause.

Building Owners and Managers Association
of San Francisco

The Building Owners and Managers Association of San Francisco urges that the proposed rule change is unreasonable, contrary to the public interest and should not be granted. That association states that master metering serves a legitimate business purpose and should not be prohibited prospectively or retroactively. It urges the following two principal reasons for master metering and resale by submetering: (1) to charge each user for the amount consumed and (2) to give the owner the control over his electrical system which permits him to render the best possible service to his tenants.

Pacific points out with respect to the first reason that the user is similarly charged for the amount he consumes if he is directly metered by Pacific. With respect to the second reason Pacific states that under its proposal the customer does not lose control of his interior wiring.

San Francisco Port Authority

The record reveals that the San Francisco Port Authority is an agency of the State of California, created to operate and now is operating the Port of San Francisco, which is owned by the State of California. Commencing in 1913, power was delivered to the Port Authority by Pacific on contracts let to Pacific as low bidder on competitive bid. There is no record that such contracts were filed with or authorized by this Commission. In the discharge of its duties, the Port Authority buys electricity from Pacific through some 200 meters and furnishes electricity to all persons, firms and corporations using the Port, including other agencies of the State of California. The Port Authority resells electricity to ultimate consumers through some 243 submeters. Such resales have continued for at least the past thirty years and are made on property owned by the State of California within the jurisdiction of the Port Authority. Such resales are made to persons, firms or corporations using the facilities of the Port, at filed tariff rates published under the jurisdiction of the Federal Maritime Board. Such tariff rates are other than as published by Pacific. The schedules under which the Port Authority are served by Pacific are A-1, A-13, A-15, H-1, LS-5, P-3, and P-5. No gas is resold.

The area under the jurisdiction of the Port Authority is set forth generally in Exhibit 26. At present approximately 476 separate licensees use space in the area. The licensees are generally engaged in either the operation of the piers themselves or in the service to businesses related to the pier operation. These include ship chandlers, machine shops, shipwrights, ship repair operations, boat building, fish canneries, restaurants, packers,

strappers and balers. In addition to an extensive electrical distribution system, the Port Authority operates a railroad, a round house and the services normally incident thereto. The Port Authority has an automotive and other repair and machine shops. It operates its police department and has fire service. It maintains, paves and lights its own streets. It also maintains foghorns, navigation lights and similar services.

The evidence further reveals that over the years Pacific has made suggestions to the Port Authority for combining services and meters; that many of such suggestions have been implemented; and that the Port Authority has hoped to solve its electrical problems by eventually combining its demand so that electricity enters at only four points instead of the present some 280 points.

Pacific acknowledges that the Port Authority presents a situation which may well be subject to exception from the general application of its proposed Rule 13.

The Port Authority urges that Pacific's proposed paragraph (C)4. of Rule 13 be revised to read as follows:

"Where a customer has been reselling energy on a metered basis to his tenants for nondomestic purposes prior to the effective date of this rule, such customer may continue such resale of energy at the same rates that the Company would charge for the service if supplied by it directly."

The Port Authority also requests that Rule 13 be so drafted as to permit the resale of electricity pursuant to special contracts to be filed with and approved by this Commission. In this connection, the Port Authority suggests the inclusion of the following additional exception to proposed subdivision (C):

"5. Where a contract is entered into between the company and the purchaser, which contract is filed with, and approved by, the Public Utilities Commission."

Commission Staff's Proposals and Position

The staff's proposals are set forth in Exhibits 5, 6 and 7. In addition to certain recommendations, urged chiefly for precision of definition and clarification, the staff proposed that a term of ten years be allowed within which to effect an equitable plan for the elimination of commercial submetering.

The proposals of the staff contemplate that Pacific would come to an equitable arrangement for the acquisition of meters, transformers, vaults, and other facilities which Pacific would normally furnish. However, the staff proposal, like that of Pacific, did not envision the acquisition by Pacific of interior wiring or the payment by Pacific for acquisition of easements within premises for location of meters or vaults.

The staff's view is that Pacific's present Electric Rule 18 and Gas Rule 18 should be revised because they permit Pacific at its discretion to refuse or to allow sales for resale and because such unnecessary discretionary powers can be applied in an unreasonably discriminatory manner. According to the staff the elimination of nondomestic submetering is desirable and the practice of permitting master metering is not in the public interest, because it puts an unregulated person into the utility business and affords no recourse to the ultimate consumer either as to rates or as to conditions of service.

The staff acknowledges that the San Francisco Port Authority is a governmental agency and that possibly, in some of its activities, it can be regarded as a publicly owned electric utility, a different category from the other submetering customers.

While the staff recommends that its proposals be adopted in toto, the staff urges that if existing cases involving non-domestic resale by submetering are permitted to continue on a "grandfather" basis Pacific should be required to ascertain, on a reasonable sampling basis, the proper application of its filed and effective tariff schedules by submetering customers and that the submetering customers should also be required, as a condition of service, to permit Pacific to inspect and examine their billing procedures to determine if resale is made in accordance with Pacific's rules.

Findings

After considering the evidence, the following findings are made: (1) present Electric Rule 18 and Gas Rule 18 of the Pacific Gas and Electric Company should be revised to eliminate unnecessary discretionary powers of the utility; (2) Pacific's present practice of refusing nondomestic submetering and of continuing to allow domestic submetering is not unreasonably discriminatory, is in accordance with the practice of other major gas and electric utilities in California, and should be incorporated in its Electric Rule 18 and Gas Rule 18; (3) existing cases of nondomestic submetering should be continued under an appropriate "grandfather" provision of the rule; (4) Pacific should continue to provide service to the San Francisco Port Authority under present arrangements until a more appropriate plan is developed and authorized by this Commission; (5) Pacific should ascertain, on a reasonable sampling basis, how and to what extent its effective tariff schedules are being applied by submetering customers; (6) submetering customers should be required, as a condition of service, to permit the utility to examine their billing

procedures for accuracy, submit data to the utility on the accuracy of the submeters, and adjust bills in accordance with the utility's Rule 17; (7) appropriate definitions of "customer" and "multi-family accommodation" should be included in Rule 1; and (8) such increases in rates or charges as might result from the revision of rules as authorized and directed herein are justified and present rules insofar as they differ from those herein prescribed, are, for the future, unjust and unreasonable.

O R D E R

Based on the evidence and the findings thereon set forth in the foregoing opinion,

IT IS ORDERED as follows:

1. Pacific Gas and Electric Company is authorized and directed to file in quadruplicate with this Commission on or after the effective date of this order, in conformity with the provisions of General Order No. 96-A, Rule No. 1 (electric), revised Rule No. 18 (electric), Rule No. 1 (gas), and revised Rule No. 18 (gas) as set forth in Appendix A attached hereto and, on not less than five days' notice to the public and to this Commission, to make said rules effective for all service rendered on and after May 15, 1962. ✓

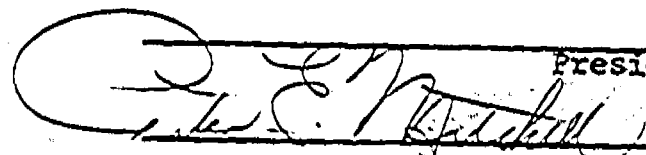
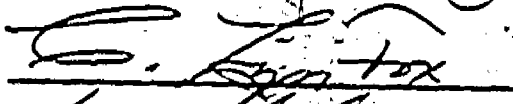
2. Pacific Gas and Electric Company shall continue to provide service to the San Francisco Port Authority under present arrangements until a more appropriate plan is developed and authorized by this Commission. Pacific Gas and Electric Company hereby is directed to cooperate fully with the San Francisco Port Authority in developing a more appropriate plan of service including, but not necessarily limited to, the possibility of providing the San ✓

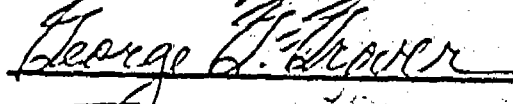
Francisco Port Authority service under an appropriate resale rate schedule. Pacific Gas and Electric Company shall file a written report with this Commission not later than six months after the effective date of this order setting forth the results of its cooperative efforts with the San Francisco Port Authority in developing a more appropriate plan of service and thereafter at six months' intervals until a plan is filed for Commission consideration as hereinabove provided.

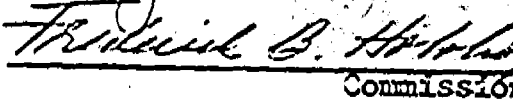
3. Pacific Gas and Electric Company shall ascertain, on a reasonable sampling basis, how and to what extent its filed and effective tariff schedules are being applied by submetering customers. Within three months from the effective date of this order, Pacific Gas and Electric Company shall file a written report setting forth in a manner acceptable to this Commission its practice in this regard.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of APRIL, 1962.


 _____ President





 _____ Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

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(Electric)

RULE NO. 1

DEFINITIONS

Customer: The person in whose name service is rendered as evidenced by the signature on the application, contract, or agreement for that service, or in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his name, regardless of the identity of the actual user of the service.

Multi-family Accommodation: An apartment building, duplex, court group, or any other group of residential units located upon a single premises, providing the residential units therein meet the requirements for a single-family accommodation.

Hotels, guest or resort ranches, tourist camps, motels, auto courts, and trailer courts, consisting primarily of guest rooms and/or transient accommodations, are not classed as multi-family accommodations.

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(Electric)

RULE NO. 18

SUPPLY TO SEPARATE PREMISES AND RESALE OF ELECTRIC ENERGY

(A) Separate Metering

Separate premises, even though owned by the same customer, will not be supplied through the same meter, except as may be specifically provided for in the applicable rate schedule.

(B) Other Uses or Premises

A customer shall not furnish or use electricity received from the utility upon premises, or for purposes, other than those specified in his application for service.

(C) Resale of Electricity

A customer shall not furnish or resell electricity received from the utility to any person, except:

1. Where energy is purchased under rate schedules that specifically provide for resale service; or
2. Where the charge to tenants is absorbed in the rental for the premises or space occupied; or
3. Where the customer is the owner, lessee, or operator of an apartment house or other multi-family accommodation, and submeters and resells electricity to domestic tenants at the same rates and charges that the utility would charge for the service if supplied by it directly; or
4. Where the utility has been authorized or directed by the Public Utilities Commission of the State of California to provide service to a customer for resale on a metered basis; or

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(Electric)

RULE NO. 18 (Continued)

5. Where a customer is reselling energy on a metered basis to tenants for nondomestic purposes on May 15, 1962 at the same rates and charges that the utility would charge for the service if supplied by it directly and where such customer desires to continue such nondomestic resale. Unless otherwise ordered by the Public Utilities Commission of the State of California in an appropriate proceeding or requested by the customer, such nondomestic resale on a metered basis together with additions, rearrangements and changes to the service are permitted so long as the customer's premises, as defined by Decision No. 60938, are used by the customer or his successors in interest for the same general purpose.

(D) As a condition of service for submetering, where electric energy is resold in accordance with Paragraphs (C)3., (C)4. and (C)5. above, customers using submeters as a basis for charges for electricity shall submit to the utility certification by a meter testing laboratory, satisfactory to the utility, as to the accuracy of the submeters upon initial installation of such submeters, or for existing submeters upon request of the utility. As a further condition of service for submetering, the customer shall agree that he will be governed by the utility's Rule No. 17, Meter Tests and

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(Electric)

RULE NO. 18 (Continued)

Adjustment of Bills for Meter Error, with the exception that the word "subcustomer" be substituted for "customer" and the words "utility's customer" be substituted for "Company". As a further condition of service for submetering, the customer shall agree that the utility may inspect and examine customer's billing procedures from time to time to determine that resale is made in accordance with this rule or as otherwise may be authorized by the Commission.

(E) In the event such energy is furnished or resold otherwise than as provided for above, the utility may either discontinue service to the customer or furnish electric energy directly to the subcustomer.

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(Gas)

RULE NO. 1

DEFINITIONS

Customer: The person in whose name service is rendered as evidenced by the signature on the application, contract, or agreement for that service, or in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his name, regardless of the identity of the actual user of the service.

Multi-family Accommodation: An apartment building, duplex, court group, or any other group of residential units located upon a single premises, providing the residential units therein meet the requirements for a single-family accommodation. Hotels, guest or resort ranches, tourist camps, motels, auto courts, and trailer courts, consisting primarily of guest rooms and/or transient accommodations, are not classed as multi-family accommodations.

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(Gas)

RULE NO. 18

SUPPLY TO SEPARATE PREMISES AND RESALE OF GAS

(A) Separate Metering

Separate premises, even though owned by the same customer, will not be supplied through the same meter, except as may be specifically provided for in the applicable rate schedule.

(B) Other Uses or Premises

A customer shall not furnish or use gas received from the utility upon premises, or for purposes, other than those specified in his application for service.

(C) Resale of Gas

A customer shall not furnish or resell gas received from the utility to any person, except:

1. Where gas is purchased under rate schedules that specifically provide for resale service; or
2. Where the charge to tenants is absorbed in the rental for the premises or space occupied; or
3. Where the customer is the owner, lessee, or operator of an apartment house or other multi-family accommodation, and submeters and resells gas to domestic tenants at the same rates and charges that the utility would charge for the service if supplied by it directly; or
4. Where the utility has been authorized or directed by the Public Utilities Commission of the State of California to provide service to a customer for resale on a metered basis; or

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(Gas)

RULE NO. 18 (Continued)

5. Where a customer is reselling gas on a metered basis to tenants for nondomestic purposes on May 15, 1962 at the same rates and charges that the utility would charge for the service if supplied by it directly and where such customer desires to continue such non-domestic resale. Unless otherwise ordered by the Public Utilities Commission of the State of California in an appropriate proceeding or requested by the customer, such nondomestic resale on a metered basis together with additions, rearrangements and changes to the service are permitted so long as the customer's premises, as defined by Decision No. 60938, are used by the customer or his successors in interest for the same general purposes.

(D) As a condition of service for submetering, where gas is resold in accordance with Paragraphs (C)3., (C)4. and (C)5., above, customers using submeters as a basis for charges for gas shall submit to the utility certification by a meter testing laboratory, satisfactory to the utility, as to the accuracy of the submeters upon initial installation of such submeters, or for existing submeters upon request of the utility. As a further condition of service for submetering, the customer shall agree that he will be governed by the utility's Rule No. 17, Meter Tests and Adjustment of Bills for Meter Error, with the exception that the word "subcustomer" be

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(Gas)

RULE NO. 18 (Continued)

substituted for "customer" and the words "utility's customer" be substituted for "Company". As a further condition of service for submetering, the customer shall agree that the utility may inspect and examine customer's billing procedures from time to time to determine that resale is made in accordance with this rule or as otherwise may be authorized by the Commission.

(E) In the event such gas is furnished or resold otherwise than as provided for above, the utility may either discontinue service to the customer or furnish gas directly to the subcustomer.