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Decision 98-02-040 February 4, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Proposed Policies Governing Restructuring
California's Electric Services Industry and Reforming
Regulation.

R.94-04-031
(Filed April 20, 1994)

Order Instituting Investigation on the Commission's
Proposed Policies Governing Restructuring
California's Electric Services Industry and Reforming
Regulation.

I.94-04-032
(Filed April 20, 1994)

INTERIM OPINION: BOARD COMPLIANCE FILINGS

Today's decision addresses the compliance filings of the California Board for Energy Efficiency (CBEE) and Low-Income Governing Board (LIGB), collectively referred to as "the Boards," required by Decision (D.) 97-09-117, Ordering Paragraph 21. We adopt the revised bylaws, per diem, reimbursement and conflict of interest rules with minor modifications to improve their clarity and ensure conformance with D.97-09-117. With respect to the proposed trust agreements, we find it necessary to make language revisions that 1) improve the consistency with one another and in relation to advisory board trusts which have previously received federal income tax exempt status 2) clarify the Commission's control over the Boards and the funds governed by the agreement, 3) clarify the dedication of funds to the beneficiaries of the trust, and 4) bring the documents into conformity with a more standardized format. The approved start-up documents, as revised by this decision, are presented in Attachments 1 to 5.

We adopt 1998 operating budgets for CBEE and LIGB of \$2.81 million and \$2.02 million, respectively. These amounts represent less than 1% of total 1998 program funds for energy efficiency and low-income assistance programs. CBEE and LIGB shall

apply all carryover funding from their 1997 budget authorizations before allocating additional funds from the public goods charge (PGC) to their operations. The Boards currently estimate approximately \$200,000 in 1997 carryover funding for LIGB and \$20,000 for CBEE. We also adopt the total budget allocations proposed by CBEE for 1998 energy efficiency programs.

By October 1 of each year, LIGB and CBEE should submit to the Commission an Advice Letter with their proposed annual budget, as described in this decision. During the time that the Commission is considering approval of the proposed budget, each Board shall act in accordance with its existing budget as though it had been extended for another year. The Boards may prepare and submit supplemental budget requests to the Commission if such requests are necessary to adequately fulfill the duties of the Boards.

Revised Board Start-Up Documents

Pursuant to Ordering Paragraph 21 of D.97-09-117 and the assigned Administrative Law Judge's (ALJ) September 25, 1997 ruling, the CBEE and LIGB filed their revised start-up documents on October 14 and 16, 1997, respectively. CBEE filed 1) bylaws, including conflict of interest rules (Section 4.3), 2) per diem and expense reimbursement rules, and 3) a trust fund agreement. LIGB filed 1) a charter and bylaws, including board member reimbursement guidelines (Appendix A) and conflict of interest rules (Appendix B), and 2) a trust agreement.

We find that the Boards have generally complied with our orders with respect to the revised bylaws, per diem and expense reimbursement rules and conflict of interest provisions. However, we make language modifications to these documents to improve their clarity and to ensure conformance with D.97-04-044 and D.97-09-117, as indicated in Attachments 1, 2, and 3. In particular, we modify the proposed indemnification language to conform to the language contained in D.97-04-044. (See Attachment 1, Article 3.7 and Attachment 3, Section 3.8.) On the issue of teleconferencing, we delete references to any sunset date, since Assembly Bill 1097 appealed those provisions. We also conform the language to clarify our intent that a quorum must be physically

present at the location specified in the notice of the meeting, in order for other members to teleconference. It appears that CBEE and LIGB interpreted our reference to "quorum present in one location" in conjunction with our requirement that the rules comply with Government Code § 11123(b)(1)(F) to potentially allow for that quorum convening in a location other than that specified in the notice of meeting. (See D.97-09-117, Conclusions of Law 34 and 35.) We did not intend that result, and modify the bylaws accordingly.¹

In addition, we add the exclusion of utility employees for per diem reimbursement, consistent with our determinations in D.97-04-044. (See Attachment 1, Articles 3.7, 5.3; Attachment 2, p. 3; Attachment 3, Section 3.8, 5.9, and p. 19 (Appendix A).) We note that the LIGB's decision to use the word "charter" in its start-up documents is based on LIGB's understanding of what it needs to obtain errors and omissions insurance. It does not dictate the legal structure of the Board, and will not commit us to any particular legal structure in the future. (See LIGB's letter to the Commission dated October 24, 1997.)

In conformance with D.97-04-044, the Boards are permitted to obtain errors and omissions insurance to indemnify Board members, Board employees, and any members of Advisory Committees or task forces reporting to the Board, for their acts done within the course and scope of the services they perform for the Board. (See Attachment 1, Article 3.7 and Attachment 3, Section 3.8.) We wish to clarify that the Boards should not expend PGC funds for errors and omissions insurance where individuals are already covered through another source.

In reviewing the proposed trust agreements, we note a number of variations in the provisions proposed by each Board. For example, CBEE includes a provision reflecting the composition of the Board, while LIGB does not. Similarly, LIGB includes

¹ We recognize that LIGB has filed a petition for rehearing (petition) of D.97-09-117 regarding these teleconferencing rules. LIGB's petition will be addressed in a separate Commission decision.

a lengthy provision articulating the Trustee's administrative powers, while CBEE does not.

We prefer that Commission advisory boards with trust oversight responsibilities use common, uniform trust provisions whenever possible. To this end, we are aware that the Commission has not formally adopted or developed a model trust agreement for use by our advisory boards, and we do not do so today. Our immediate goal in reviewing the two proposed trust documents is to ensure that they are consistent in relation to each other, and consistent overall in relation to advisory board trusts which have previously received federal income tax exempt status.²

In their opening provisions (preambles), both CBEE and LIGB propose that the Commission act as trustor under the agreements. LIGB further proposes that the Commission's executive director sign the agreement as the named trustor. Although we have clearly retained control over the Boards and the funds governed by the trusts, the actual establishment of the trusts and oversight of interaction with the trustee is an administrative function of the Boards. Consistent with these Board functions, and the practice of previously established trusts, we direct the Boards to be the named trustors for purposes of entering the trust agreements. Board members should thus be the signatories on the trust documents. Our approval of the trust agreements as well as authorization for the Boards to proceed with the establishment of the trusts is satisfied through the Commission decision process. By this decision we merely adopt the proposed Trust Agreements. Consistent with D.97-09-117 (pp. 32-33), we do not authorize LIGB and CBEE to establish bank accounts or trust funds at this time.

To reflect this intent we have indicated similar revisions of the opening provisions of both trust agreements. We have also revised LIGB's document to list the Board members, rather than the Commission's executive director, as signatories. In

² In particular, we have reviewed the trust agreements for the Deaf and Disabled Telecommunications Program Administrative Committee, the Universal Lifeline Telecommunications Service Administrative Committee and the California High Cost Fund-A Administrative Committee.

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making this revision, it is our understanding that the Commission retains sufficient control and direction over the Boards and the trusts to receive federal income tax exempt status for the program funds. If the Boards have compelling information to suggest that the past practice of naming the Boards as trustors under these agreements will no longer satisfy Internal Revenue Service requirements for tax-exempt status, the Boards should bring this issue before us for further consideration.

With respect to the remainder of CBEE's proposed trust agreement, we make minor modifications for the purpose of clarifying our control over the Boards and/or the funds governed by the agreement, or to clarify the dedication of funds to the beneficiaries of the trust. Attachment 4 indicates the revisions made to provision numbers 2.1, 3.1, 3.2, 6.1, 7.2, and 10.4.

The remaining revisions we make to LIGB's proposed trust agreement are intended to achieve the same purpose or are intended to bring the document into conformity with a more standardized format. Related to the former, Attachment 5 indicates minor revisions to provision numbers 2.1, 2.3, 3.1, 3.2, 4.2, 5.1, 5.2, 5.3, 6.2, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.4, 10.1, 10.2, and 10.4. In addition, we add provision 1.7 to reflect the composition of the Board.

Finally, we delete two provisions of LIGB's proposed trust agreement. First, is provision number 1.4, "CPUC Authority and Delegation." We prefer the more standardized language as used by CBEE. Thus, we replace this provision with a new 1.4, "Administrative Powers and Duties of the LIGB." Second, we delete provision number 6.1, "Administrative Provisions." This proposed language contains an extensive enumeration of the powers of the Trustee. Such provisions are better suited to the letter agreement to be entered between an individual Board and a Trustee. These revisions are reflected in Attachment 5.

With respect to the revisions we make today, we acknowledge that tax-related or other issues may arise which warrant reconsideration of various trust provisions. Therefore, we advise the Boards that we will consider future modifications to the trust agreement provisions if it is sufficiently established that the proposed changes are in the best interest of the beneficiaries of the funds, the advisory board, and this Commission.

1998 Board Budgets

In accordance with ALJ Ruling dated November 13, 1997, CBEE and LIGB submitted their proposed administrative budgets for 1998 and explanations for differences. No parties filed comments.

Total authorized annual program funding levels for 1998 energy efficiency and low-income assistance programs are \$297 million and \$183 million, respectively.³ Table 1 presents a summary of the Boards' proposed operating budgets, including low and high estimate ranges. As indicated in the table, CBEE requests \$1.58 million (low) to \$2.81 million (high) for 1998 professional services, board meetings, technical advisory meetings, and other estimated expenses. LIGB requests a range of \$1.38 million (low) to \$2.03 million (high) for similar expense categories. The high budget estimates represent approximately 1% of the total annual program funds for which each Board is responsible. As can be seen from Table 1, the Boards have allocated similar percentages to the major expense categories.

The Boards also supplemented their filings to provide a summary of actual expenditures for 1997, compared to authorized levels. The LIGB was funded \$839,000 for 1997, of which it has spent \$397,544 as of November 31, 1997. However, a complete accounting of 1997 expenditures is not available because the December invoices of LIGB's consultants have not yet been submitted for review and approval. At this point in time, it appears that at least \$200,000 will remain uncommitted and unexpended for 1997 activities.⁴ CBEE, on the other hand, estimates carryovers of approximately \$29,000.

CBEE also presented its proposed allocation of the 1998 total energy efficiency budget, including allocations to 1) the 1998 Board operating budget, 2) the 1998 budget

³ See Resolution E-3515 for LIGB's 1998 funding authorization. CBEE's 1998 program funding was authorized in D.97-02-014.

⁴ Per LIGB's supplemental filing and follow-up phone conversation between ALJ Gottstein and Sharon Weinberg, LIGB's administrative consultant.

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for utility interim administrators, 3) the 1998 budget for the new administrators, 4) 1988 market assessment, evaluation and analysis activities, and 5) other measurement activities performed in 1998 funded with pre-1998 carryover funds. (See Attachment A.)

We have carefully reviewed the Boards' submittal and the explanation of differences between their expenditure details. We find that the budgets are appropriate and that the differences are warranted given the expected activities and the manner in which the Boards intend to operate in 1998. At the request of the assigned ALJ, CBEE and LIGB also filed information on the types and costs of Board studies it intends to undertake in 1998. We have reviewed LIGB's submittal, and are satisfied that the reports to be developed by its technical consultants pertain directly to creating independent administration of the rate assistance, energy efficiency and energy education programs. Topics include 1) program objectives, 2) roles, responsibilities, and relationships of the independent administrator(s) and the LIGB, 3) eligibility and verification guidelines, 4) affiliate rules, 5) utility assets and liabilities, 6) program funding guidelines, 7) administrator performance criteria, and 8) information systems. Reports on these reports will be made available to the public and will be utilized in creating the reports and filings to the Commission. We find that they are reasonable undertakings by LIGB and its consultants, and do not overlap or duplicate any studies conducted by the utilities or new administrators.

In its filing, CBEE presents a detailed explanation of 1998 activities for energy efficiency market assessment, evaluation and analysis. During the first three quarters of 1998, the utilities will perform some projects independently in their capacity as interim administrators. For example, they will conduct studies to measure the achievement of program milestones required under the adopted shareholder incentive mechanisms, subject to review by CBEE and the Commission. Some of the 1998 utility projects will fall under a "co-management approach," where CBEE's technical advisors or consultants will work closely with the utilities in managing selected studies.

CBEE has identified five initial studies to be performed under the co-management approach, totaling \$590,000 to \$940,000. For example, one study will

evaluate the current status of the residential performance contracting market, including the number, size, market share and type of services provided by energy efficiency providers. A similar but separate study will evaluate the status of the non-residential performance contracting market. PG&E will serve as contracting agent and project manager for the residential study, and SCE for the non-residential study. These initial studies are designed to characterize the market baseline for energy efficiency, so that progress in transforming that market can be measured. They will also serve to identify where important gaps in baseline data currently exist. Based on the results of these five initial studies, CBEE will identify additional market assessment and evaluation efforts to be initiated in 1998. CBEE is coordinating closely with the interim administrators to identify the types of market assessment and evaluation studies that complement and supplement any activities planned by the utilities for their 1998 program evaluation efforts.

As explained in CBEE's filing, the actual activities and studies funded under the co-management approach will be performed by interim administrators and their contractors, new administrators and their contractors, or CBEE contractors selected via competitive bid. In addition, CBEE will need to independently evaluate and review the program performance of the interim and new administrators. CBEE currently projects that the 1998 market assessment, evaluation and analysis efforts will require up to \$7.5 million over and above what has been budgeted to date (\$7.03 million) for 1998 program evaluation and other PGC-funded analysis by the interim administrators. This funding would be allocated out of the total 1998 budget of \$297 million. (See Attachment A.)³

In considering CBEE's proposal for 1998 market assessment, evaluation, and analysis efforts, it is important to review our expectation of CBEE's overall assignment.

³ CBEE's proposed 1998 operating budget does not include funding for these studies, but does include \$120,000 to \$175,000 in funding for technical services to assist CBEE in planning and overseeing these efforts.

Subject to our review and oversight, CBEE has been directed to "develop and oversee limited term contracts for the administration of market transformation programs." (D.97-02-014, mimeo., p. 29.) To this end, it is entirely appropriate that CBEE assist the Commission in identifying and overseeing the analytic activities needed to support these contracts and programs. In addition to these broad responsibilities, we have also provided more specific guidance on the issue of CBEE's responsibilities for analytic support functions. In response to concerns over objectivity and potential anti-competitiveness, we specifically directed CBEE to obtain qualified analytic support services to review program effectiveness, independent from the administrators. (D.97-09-117, mimeo., pp. 28, 31.) Our 1998 policy rules for interim administrators similarly identifies CBEE as responsible for assisting us in verifying the performance results of the interim administrators by making recommendations with regard to reward payments. (D.97-12-103, Attachment 2, p. 5.)

In view of the above, we believe that the market assessment, evaluation, and analysis activities identified by CBEE in its proposed operating budget and overall 1998 energy efficiency budget (Attachment A) are reasonable and consistent with our expectation of advisory support from CBEE. In particular, it is clear that our evaluation of market transformation programs will rely on the establishment of a reasonable baseline for the market. CBEE's advisory role in identifying what baseline data is currently available, as well as identifying what additional information needs to be gathered, is a critical first step in our program evaluation process. We commend CBEE for planning early to ensure that we have the necessary analytic support and activities well underway in 1998.

In terms of overall budget level, CBEE recommends that we allocate a maximum of \$14.531 million to 1998 market assessment, evaluation, and analysis, including activities currently budgeted for the interim administrators' Measurement, Forecasting

and Regulatory Reporting (MFRR) activities.⁶ This amount appears reasonable when compared to the range of market assessment and evaluation funding we have authorized in past years. According to the analysis performed by CBEE's technical service consultants, between 1993 and 1996 the utilities spent on average \$12.7 to \$22.3 million on market assessment and evaluation to support each program year. In this context, CBEE's recommended 1998 budget for these functions is well within the range of prior expenditure levels.

Based on the above considerations, we will authorize the high range proposals for CBEE's and LIGB's operating budgets, but require that the Boards apply 1997 carryovers to these amounts before allocating additional PGC funds to their operations. We also authorize CBEE's proposed budget allocations for the total 1998 energy efficiency budget, as set forth in Attachment A.

In approving these Board administrative budgets, we note that the activities of both Boards will continue to be considerable during 1998. We have set out specific milestones and expectations for each of the Boards to 1) develop and issue a Request for Proposals for new program administrators, 2) review proposals and recommend new program administrators, 3) assist in the identification and transference of utility assets, and 4) provide advisory support on other transition matters. Allocating approximately 1% of program funds to these activities is reasonable for 1998, given the scope of Board activities scheduled over the next year.

At the same time, we recognize that Board responsibilities and activities are expected to change in the future, as the new program administrators become operational. We require a process for reviewing the Boards' proposed budgets on a regular basis. We believe that the Advice Letter process is appropriate for this review. Accordingly, LIGB and CBEE are directed to jointly submit to the Commission an

⁶ As indicated in Attachment A, a portion of MFRR funding for the interim administrators is for regulatory reporting and management support, such as the required filings for the Annual Earnings Assessment Proceeding. This funding does not fall under the \$14.531 cap proposed by CBEE.

Advice Letter by October 1 of each year, which sets forth proposed Board administrative budgets for the following year and an explanation of differences between them.

This submittal should include an estimate of unexpended Board administrative funds from prior authorizations. It should also present the Boards' request in the context of total estimated program funding for energy efficiency and low-income assistance programs for the following year, broken down by expense or program category. During the time that the Commission is considering approval of the proposed budget, each Board shall act in accordance with its existing budget as though it had been extended for another year. The Boards may prepare and submit supplemental budget requests to the Commission if such requests are necessary to adequately fulfill the duties of the Boards. This procedure may be modified by Executive Director letter, as appropriate.

Findings of Fact

1. The Boards' compliance filings with respect to the revised bylaws, per diem and expense reimbursement rules and conflict of interest provisions require minor language modifications to improve clarity and ensure conformance with D.97-09-117.

2. LIGB's use of the word charter in its start-up documents does not dictate the legal structure of the Board, nor does it commit this Commission to any particular legal structure in the future.

3. The Boards' compliance filings with respect to trust agreements require modifications to 1) improve the consistency with one another and in relation to advisory board trusts which have previously received federal income tax exempt status 2) clarify the Commission's control over the Boards and the funds governed by the agreement, 3) clarify the dedication of funds to the beneficiaries of the trust, and 4) bring the documents into conformity with a more standardized format.

4. CBEE's and LIGB's proposed operating budgets reflect reasonable differences given the expected activities and the manner in which the Boards intend to operate in 1998.

5. CBEE's and LIGB's proposed operating budgets (high range) represent approximately 1% of total 1998 program funds for energy efficiency and low-income assistance programs, respectively.

6. The reports to be developed by LIGB's technical consultants pertain directly to creating independent administration of the rate assistance, energy efficiency, and energy education programs.

7. CBEE's proposal for 1998 market assessment, evaluation, and analysis is consistent with the Commission's expectation of its advisory support and falls within the range of historical spending for these activities. CBEE's proposal ensures that the Commission will have the necessary analytic support and activities well underway in 1998, particularly with regard to establishing a reasonable baseline for the energy efficiency market.

8. LIGB anticipates that it will have at least \$200,000 in carryover funding for Board operations from 1997 authorizations. CBEE anticipates a carryover of approximately \$20,000.

9. Because the Boards' functions and responsibilities will change over time, a process is needed to update and review their administrative budgets.

Conclusions of Law

1. The start-up documents filed by the CBEE and LIGB in compliance with D.97-09-117 should be modified as set forth in Attachments 1-5 of this decision.

2. CBEE and LIGB should not expend PGC funds for errors and omissions insurance where individuals are already covered through another source.

3. In order to ensure adequate funding of Board operations, it is reasonable to authorize the high range proposals of CBEE and LIGB as set forth in Table 1, and require that the Boards apply 1997 carryover funding to these amounts.

4. CBEE's proposed budget allocations for the total 1998 energy efficiency budget, as set forth in Attachment A, are reasonable.

5. As described in this decision, LIGB and CBEE should be directed to jointly submit to the Commission an Advice Letter by October 1 of each year, which sets forth

proposed Board administrative budgets for the following year and an explanation of differences between them.

6. In order for the Boards to proceed expeditiously with their 1998 activities, this order should be effective today.

INTERIM ORDER

1. The revised start-up documents for the California Board for Energy Efficiency (CBEE) and the Low-Income Governing Board (LIGB), as presented in Attachments 1 to 5 of this decision, are adopted.

2. LIGB is authorized a 1998 operating budget of \$2,023,395 million, as set forth in Table 1.

3. CBEE is authorized a 1998 operating budget of \$2,811,446 as set forth in Table 1.

4. CBEE and LIGB shall apply all carryover funding from their 1997 budget authorizations before allocating additional funds from the public goods charge to their operations.

5. The total budget allocations proposed by CBEE for 1998 energy efficiency programs, as set forth in Attachment A, are adopted.

6. LIGB and CBEE (jointly referred to as "the Boards") shall submit to the Commission an Advice Letter by October 1 of each year, which sets forth the Boards' proposed administrative budgets for the following year and an explanation of differences between their respective budgets. This submittal shall include an estimate of each Board's unexpended administrative funds from prior authorizations. It shall also present the Boards' request in the context of total estimated program funding for energy efficiency and low-income assistance programs for the following year, broken down by expense or program category. During the time that the Commission is considering approval of the proposed budget, each Board shall act in accordance with its existing budget as though it had been extended for another year. The Boards may prepare and submit supplemental budget requests to the Commission if such requests

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are necessary to adequately fulfill the duties of the Boards. This procedure may be modified by Executive Director letters, as appropriate.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

TABLE 1
COMPARISON TABLE

**Proposed 1998 Budgets for the
California Board for Energy Efficiency and Low-Income Governing Board**

Expense Category	CBEE Low	% of total budget	CBEE High	% of total budget	LIGB Low	% of total budget	LIGB High	% of total budget
I. Professional Services								
A. Administrative and Financial Services	\$ 389,700		\$ 531,000		502,000		627,500	
B. Legal Services	99,000		178,000		200,000		225,000	
C. Technical Services	800,000		1,350,000		127,000		380,000	
D. Executive Coordinator	---		---		125,000		175,000	
Subtotal -- Professional Services	1,288,700	81.4%	2,059,000	73.2%	954,000	69.1%	1,407,500	69.6%
II. Board Meetings								
A. Meeting fees	18,000		36,000		20,000		26,000	
B. Per diem and expenses	107,280		226,560		152,000		197,600	
C. Board Facilitation	0		3,000		(incl. in admin. services)		(incl. in admin. services)	
D. Committee meetings	16,800		33,600		38,000		57,000	
Subtotal -- Board Meetings	142,080	9.0%	299,160	10.6%	210,000	15.2%	280,600	13.9%
III. TAC Meetings								
A. Meeting fees	2,400		14,400		8,400		12,600	
B. Per diem and expenses	0		54,000		27,000		40,500	
C. Facilitation	0		5,000		(incl. in admin. services)		(incl. in admin. services)	
D. Subcommittee meetings	6,000		39,300		25,500		38,250	
Subtotal -- TAC Meetings	8,400	0.5%	112,700	4.0%	60,900	4.4%	91,350	4.5%
IV. Other								
A. Staff recruitment fees	0		10,000					
B. Liability insurance	0		75,000		30,000		60,000	
Subtotal -- Other	0	0.0%	85,000	3.0%	30,000	2.2%	60,000	3.0%
Subtotal	\$ 1,439,180	90.9%	\$ 2,555,860	90.9%	\$ 1,254,900	90.9%	\$ 1,839,450	90.9%
Contingency (@10%)	\$ 143,918	9.1%	\$ 255,586	9.1%	\$ 125,490	9.1%	\$ 183,945	9.1%
TOTAL	\$ 1,583,098	100.0%	\$ 2,811,446	100.0%	\$ 1,380,390	100.0%	\$ 2,023,395	100.0%

Attachment A, Table 1

1998 Energy Efficiency Budget

28-Jan-98

All amounts in 1998\$, millions

Table 1: Funding Available in 1998

	Total Funding			PG&E			SDG&E			SCE	SoCal
	Total	Electric	Gas	Total	Electric	Gas	Total	Electric	Gas	Total	Total
1. Electric Public Goods Charge (PGC)	228.000	228.000		106.000	106.000		32.000	32.000		90.000	
2. Gas DSM	45.383		45.383	12.688		12.688	5.500		5.500		26.995
3. Pre-1998 Carryover for MFRR	21.213	16.857	4.356	12.200	10.476	1.724	2.354	2.001	0.353	4.380	2.279
4. Gas Rates (Performance Incentives)	2.601		2.601	0.618		0.618	0.395		0.395		1.588
5. Total	297.197	244.857	52.340	131.706	116.476	15.230	40.249	34.001	6.248	94.380	30.862

Notes:

1. Electric Public Goods Charge (PGC) funds authorized in D 97-02-014, OP 2, as set forth in AB 1890, Section 381(c)(1).
2. Gas DSM funds authorized in rate cases. PG&E Gas DSM funds for Low Income Direct Assistance are not included (\$15.032 million).
3. Pre-1998 carryover funds to be used to fund certain categories of Interim Administrator MFRR (Pre-PY98 Program Evaluation, CEC Data Collection, and Other MFRR).
4. Performance incentives associated with gas energy efficiency activities to be recovered through changes in rates, per D 97-12-103, OP 10.
5. All budget figures will require very minor adjustments based on D 97-12-093, which applies to small and multi-jurisdictional utilities.

Attachment A, Tables 6 and 7

Table 6: MFRR Expenditures Funded With Carryover Funds

	Total	PG&E	SDG&E	SCE	SoCal
Pre-PY98 Program Evaluation	11.582	6.200	1.400	3.180	0.802
CEC Data Collection	9.631	6.000	0.954	1.200	1.477
Other MFRR	0				
Total MFRR Funded With Carryover	21.213	12.200	2.354	4.380	2.279

Table 7: Relationship to Authorized Funding for Interim Administrators, D.97-12-103

	Total			PG&E			SDG&E			SCE	SoCal
	Total	Electric	Gas	Total	Electric	Gas	Total	Electric	Gas	Total	Total
Program Budget	163.457	133.867	29.590	65.866	59.176	6.690	22.850	19.428	3.422	55.263	19.478
MFRR (PY98, Other PGC, RR, Mng)	13.532	10.796	2.736	4.600	4.109	0.491	1.973	1.677	0.296	5.010	1.949
Performance Award Cap	20.610	18.039	2.571	9.221	8.603	0.618	3.199	2.804	0.395	6.632	1.558
CBEE Set-Aside	9.950	9.725	0.225	4.450	4.450		1.500	1.275	0.225	4.000	
Total Authorized for 1998 Interim Admin (Authorized in D.97-12-103, Attach. 4)	207.549	172.427	35.122	84.137	76.338	7.799	29.522	25.184	4.338	70.905	22.985
Adjustments:											
Minus CBEE Set-Aside*	9.950	9.725	0.225	4.450	4.450		1.500	1.275	0.225	4.000	
Minus Interim Admin. MFRR, PY98**	5.621	4.074	1.547	2.600	2.408	0.192	1.607	1.366	0.241	0.300	1.114
Minus Int. Admin. MFRR, Other PGC**	1.410	1.380	0.030	0.400	0.370	0.030				1.010	
Total 1998 Interim Period Budget (Consistent With Table 3, Above)	190.568	157.248	33.320	76.687	69.110	7.577	26.415	22.543	3.872	65.595	21.871

* CBEE set-aside used to fund 1993 CBEE operating budget, 1997 CBEE operating expenditures, and a portion of Market Assessment, Evaluation, and Analysis (Table 5 above).

** These amounts are for Market Assessment, Evaluation, and Analysis activities, and are accounted for in Table 5 above.

Overall Budget Notes and Fund Shifting Principles:

1. Any unspent 1998 budget will be carried over into 1999.
2. Any unspent 1998 Interim Administrator budget will be transferred to the 1998 New Administrator period, to the CBEE Bu Operating Budget (subject to the cap below) or to the 1999 program year.
3. The 1998 Operating CBEE Budget (in Table 2) will not exceed \$2.972 million (1% of the total funding in Table 1), without the prior approval of the Commission.
4. Total 1998 Market Assessment, Evaluation, and Analysis expenditures (Table 5.5) will not exceed \$14.531 million, without the prior approval of the Commission.
5. All budget figures will require very minor adjustments based on D.97-12-093, which applies to small and multi-jurisdictional utilities.

**California Board for Energy Efficiency -- 1997 Operating Budget
Financial Status Report
as of December 31, 1997**

Expense Category	High Estimate	Billed to Date (Dec. 31, 1997)	Estimated Remaining Funds * (Dec. 31, 1997)
I. Professional Services			
A. Administrative Services	\$150,000.00	\$188,166.64	(\$38,166.64)
B. Legal Services	65,000.00	109,082.33	(44,082.33)
C. Tech Consulting Services	334,000.00	471,964.31	(137,964.31)
D. Accounting Services	8,000.00	0.00	8,000.00
II. Board Meetings			
A. Room fees	12,500.00	7,496.55	5,003.45
B. Per diem, expenses	100,000.00	87,376.99	12,623.01
C. Board Facilitation	3,000.00	0.00	3,000.00
III. Board Committee Meetings and Participation in TAC Meetings			
A. Per diem, expenses	25,000.00	0.00	25,000.00
IV. Technical Advisory Committee Meetings			
A. Room fees	10,500.00	10,254.33	245.67
B. Per diem, expenses	25,000.00	1,278.57	23,721.43
C. Facilitation	5,000.00	0.00	5,000.00
V. Other Expenses			
A. Prof. liability insurance	75,000.00	0.00	75,000.00
B. Staff recruitment fees	10,000.00	0.00	10,000.00
Subtotal	\$823,000.00	\$875,619.72	(\$52,619.72)
Contingency (10%)	82,300.00	0.00	82,300.00
TOTAL	\$905,300.00	\$875,619.72	\$29,680.28

* There are a small number of outstanding 1997 expenses not yet billed. The CBEE estimates that total 1997 expenses will not exceed \$885,000.

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BYLAWS OF THE
CALIFORNIA BOARD FOR ENERGY EFFICIENCY

ARTICLE ONE

NAME

1.1. Name. The name of this board shall be the California Board for Energy Efficiency (the "Board").

ARTICLE TWO

PURPOSE OF THE BOARD

2.1. Purpose of Board. The California Public Utilities Commission ("CPUC") in Decisions No. 97-02-014 and 97-04-044 created the Board to implement certain energy efficiency programs. The Board is funded by an end user's surcharge for energy efficiency services, as determined by Public Utilities Code Section 381, beginning as of January 1, 1998. The CPUC has ordered certain utility distribution companies to collect the surcharges from their customers and has ordered the Board to serve as an advisory board to oversee contracts for the administration of energy efficiency services. The purpose of the Board is to serve in an advisory capacity to the CPUC, in which the Board shall make recommendations to the Commission concerning the independent administration of energy efficiency programs designed to transform the market by privatizing the provision of cost-effective energy services by (a) promoting a vibrant self-sufficient energy efficiency industry through programs that encourage direct interactions and negotiations between private energy efficiency providers and customers, and (b) promoting the "upstream market" (e.g., manufacturers and retailers) so that energy efficient products and services are available and advertised by private vendors and builders.

ARTICLE THREE

MEMBERSHIP

3.1. Members. The Board shall be composed of nine (9) members. One member shall be a representative of the California Energy Commission ("CEC") and one member shall be a representative of the CPUC (the "Institutional Seats"). The remaining members shall represent the general public (the "Public Seats").

¹ Additions made to the October 14, 1997 filing of the California Board for Energy Efficiency are indicated by double underline. Deletions are indicated by strike-outs.

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3.2. Selection. The CPUC shall appoint all Board members, who shall be chosen from nominees submitted by the Board and by interested members of the general public. The Board shall publish notice seeking nominees to the Board in the CPUC daily calendar at least thirty (30) days prior to September 1, 1999 for Board terms beginning January 1, 2000, and shall publish comparable written notice in the CPUC Daily Calendar seeking nominees for all other Board positions which shall become available. Only individuals appointed as members may serve as members of the Board; no alternate, substitute, or proxy representation of Board members may occur.

3.3. Term of Appointment. Each member shall hold office from April 1, 1997 through December 31, 1999, unless removed sooner in accordance with Paragraph 3.4 or unless such member has resigned sooner in accordance with Paragraph 3.5. New Board member nominations solicited in accordance with Article 3.2 shall be forwarded to the CPUC by September 1, 1999 to allow the CPUC to appoint new Board members with terms beginning January 1, 2000 and running through December 31, 2001. If, for any reason, a member representing the CPUC or the CEC ceases to be an employee of the respective organization upon which his or her membership is based, that member's appointment will terminate as of the date the member ceases to be such an employee.

3.4. Removal. The CPUC may remove any member at any time. A majority of the Board members may recommend removal of a member upon a demonstration of reasonable cause; provided, however, that reasonable cause may not include any policy position taken by a Board member. The CPUC must approve the Board's recommendation to remove any Board member.

3.5. Resignation. Any member may resign upon giving thirty (30) days written notice to the Chairperson of the Board. The member's appointment shall terminate upon the expiration of the thirty (30) day notification period.

3.6. Vacancies. If an Institutional Seat is vacated, the institution represented by such individual shall appoint a replacement; provided, however, that the CPUC must approve the appointment of any individual to the CEC Seat. If a Public Seat is vacated, the Board shall solicit nominations of candidates to fill such vacancy in accordance with the provisions of Article 3.2, and shall forward such nominations, including the Board's own recommendations, to the CPUC for approval.

3.7. Indemnification. Members of the Board who are not members of the CPUC staff are uncompensated servants of the CPUC within the meaning of Government Code Section 810.2. As stated in D.97-04-044, the State will accordingly indemnify them as it indemnifies its compensated employees and will provide them representation for their acts done within the course and scope of the services they perform for the Boards, as provided in Government Code §§ 825-825.6 and §§ 995-996.6, and thus, pursuant to

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Government Code Sections 825 et seq. and 995 et seq., are eligible for indemnification by the State under the same terms as compensated State employees. The Board may, in addition, use Board funds to purchase errors and omissions liability insurance for indemnification and legal representation of its members, officers, and employees, and for any members of Advisory Committees or task forces reporting to the Boards, for their acts done agents for such persons' acts or failures to act occurring within the course and scope of the services they perform for the Board. The Board shall use such insurance to the extent that such activities are held not to be indemnified by the State and/or defense is not provided by the State pursuant to Government Code Sections 810.2, 825 et seq. and/or 995 et seq.

3.8. Expenses. Members of the Board shall be entitled to reimbursement of reasonable expenses incurred in connection with their service on the Board and may be entitled to per diem allowances as determined by the CPUC.

ARTICLE FOUR
DUTIES AND RESPONSIBILITIES

4.1. Duties and Responsibilities of the Board. The Board shall have the duties and responsibilities enumerated in subsections 4.1(a) through (p) below. While performing these duties and responsibilities, the Board members are at all times subject to the direction, control and approval of the CPUC. The CPUC has all policy and program decision making authority. The Board shall act in an advisory capacity to the CPUC.

- (a) Develop Policy Guidelines to Govern Delivery of Programs. Articulate policy and programmatic guidelines for programs and services procured using Program funds consistent with CPUC policy and approval. These guidelines shall include at a minimum the energy efficiency activities that are eligible for funding consistent with the Commission's objectives. (Decision 97-02-014, pages 29-30.) They may also include the development of program objectives and performance indicators for programs and program administrators.
- (b) Select and Contract for Program Administrators. Develop a procurement process to select one or more program administrators who will manage the delivery of energy efficiency programs and services funded by the Board.
- (c) Oversee the Delivery of Energy Efficiency Goods and Services. Oversee the administrator's procurement process for the delivery of energy efficiency services or initiatives designed to transform the market.

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- (d) Develop a Transition Strategy and Manage the Transfer of Utility Program Funding and Assets. Oversee the pace and schedule for the transition from utility-administered demand-side management programs to energy efficiency programs managed by one or more program administrators.
- (e) Encourage Public Participation. Develop a process to solicit broad input from the public and from market participants.
- (f) Establish an Advisory Committee. Establish and maintain a technical advisory committee composed of private market participants, technical experts, end user groups, and governmental entities to provide constructive input and feedback on the Board's policies and programs.
- (g) Track, Assess, and Report on Program and Market Performance. Monitor the performance of surcharge-funded programs and the performance of broader markets for energy efficiency services.
- (h) Coordinate with Other Boards and Agencies. Develop and maintain a process for coordinating Board decisions with the Low Income Governing Board, the CEC and other personnel responsible for the oversight of public purpose funds.
- (i) Disseminate Information. Develop and maintain a process for collecting and disseminating information regarding efficiency opportunities that exist in the market; market barriers to the widespread acceptance of energy efficiency measures and services; market entry barriers; and areas of potential or actual market abuse within the energy efficiency services industry.
- (j) Produce an Annual Report. Produce an annual report to the CPUC that contains a summary of previous year expenditures of energy efficiency funds, a review of past and current program activities, and a preview of anticipated expenditures in the year ahead.
- (k) Develop and Maintain Conflict of Interest Rules. Develop and maintain a conflict of interest policy consistent with the CPUC's guidance and direction. On an interim basis, the Board shall comply with the Fair Political Practices Commission Standard Conflict of Interest Code as described in Article 4.3.

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- (l) Develop Financial Controls to Effectively Manage the Energy Efficiency Fund. Oversee and approve expenditures in the Energy Efficiency Fund to ensure that all funds are spent prudently and appropriately, and can be accounted for clearly and completely.
- (m) Develop Investment and Money Managing Policies. Develop a policy, subject to CPUC approval, for investing and managing Energy Efficiency Fund monies. This may include retaining a trustee to hold surcharge funds and/or an appropriate financial advisor to advise the Board or to manage the investment of those funds. The Board's selection of who it would contract with to perform these functions would be subject to CPUC approval.
- (n) Create Committees and Task Forces. Create such committees and task forces as are necessary to carry out Board functions.
- (o) Develop Operating Rules. Develop and maintain operating rules as necessary to perform the Board's functions.
- (p) Other Duties and Responsibilities. Perform all other acts reasonably necessary to carry out the Board's purpose.

4.2. Committees. The Board may designate, as necessary, committees of Board members to exchange information and report to the Board. Committees shall not have the authority of the Board, but shall act in an advisory capacity only.

4.3. Interim Conflict of Interest Rules. Until affirmed as final rules or modified by CPUC order, the Board shall comply with the following Conflict of Interest rules:

- (a) The Board shall comply with the Fair Political Practices Commission Conflict of Interest Code, 2 Cal. Code of Regulations § 18730.
- (b) For purposes of applying 2 Cal. Code of Regulations § 18730, "designated employees" shall include all Board members.
- (c) As its "disclosure categories" the purposes of these rules, the Board's "designated employees" shall disclose:
 - (l) Any investment or business position in, or income from, any of the following:

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- a. An electric utility corporation, gas utility corporation, or energy service company ("ESCO");
 - b. A parent or subsidiary of an entity described in subsection 1a; or
 - c. Any entity which regularly supplies energy to an entity described in subsection 1a.
- (2) Any investment or business position in, or income from, any of the following:
- a. An entity seeking to provide any product or service related to the Board's function or that has plans to come before the Board or its Program Administrator seeking funds that this Board administers or oversees; or
 - b. A parent or subsidiary of an entity described in subsection 2a.
- (d) The Board shall designate a liaison to obtain the necessary reporting and disclosure forms from the CPUC's filing officer.

ARTICLE FIVE
MEETINGS

5.1. Open Meetings. Board meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act in Government Code Sections 11120 et seq. (the "Act"). Every member of the Board shall receive a copy of the Act.

5.2. Notice. The Board shall act only in the course of a duly noticed meeting. Notification of the date, place, and time of each meeting shall be given to each member and shall be published in the CPUC's Daily Calendar at least ten (10) calendar days in advance of the meeting. Notice will include the name, address, and telephone number of a person who can provide additional information prior to the meeting, as well as a brief, general description of the business to be transacted by the Board. No item will be added to the agenda after the notice is published. The notice will highlight important pending Board decisions, including those to be sent to the CPUC for approval.

5.3. Quorum and Teleconferencing. A majority of the members of the Board in office shall constitute a quorum for the transaction of business. The members may be

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present in person or by conference telephone, so long as the place of the meeting is open to the public and so long as the following requirements are met:

- (a) There is a quorum physically present ~~in one location~~ at the location specified in the notice of the meeting;
- (b) The teleconferencing meeting shall comply with all requirements of Part 1, Chapter 1, Article 9 of the Government Code applicable to other meetings;
- (c) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting;
- (d) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public;
- (e) All votes taken during a teleconferenced meeting shall be by rollcall;
- (f) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5 of the Government Code; and
- (g) ~~At least one Board member shall be physically present at the location specified in the notice of the meeting;~~

~~provided, however, that notwithstanding the foregoing, attendance by teleconferencing shall not be permitted on or after January 1, 1998, unless the Legislature reenacts the provisions of Government Code Section 11123(b).~~

5.4. Board Decisions. Each voting member present shall have one vote. Decisions shall be made by majority vote of those voting members present, provided that no measure shall pass unless, under all circumstances, a minimum of four members vote in support of the measure.

5.5. Records. The Board will assign the task of recording and preparing written minutes of Board meetings. A tape recording of the meeting may be made. The person assigned the task of preparing the written minutes of a meeting will submit them to the Board at its next meeting for review and approval. Written minutes will identify the date, time, and place of the meeting and the Board members in attendance and will contain a summary of Board actions and consensus agreements. The Board will place copies of all documents distributed at the meeting with the official record of the Board. The Board will maintain records of all decisions made by the Board and all contracts entered into by

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the Board for staff, outside consultants and any other office expenses. The Board should also maintain records of all per diem and expenses paid out by the Board.

5.6. Public Participation. The Board will provide an opportunity for members of the public to address the Board directly on each agenda item before or during the Board's discussion or consideration of the item. The Board will provide a sign-up sheet for members of the public who wish to address the Board. Copies of Board documents may be requested from the Board. The sign-up sheet will be available prior to the commencement of the public meeting and will provide space for the name of the member of the public wishing to address the Board, whom that individual represents, and the agenda item to be addressed. The Board shall make its best efforts to recognize public members during the appropriate public comment periods at each meeting, consistent with its obligation to conduct business in an orderly fashion.

ARTICLE SIX

OFFICERS

6.1. Officers. The Board shall have three officers, a Chairperson, a Vice - Chairperson, and a Treasurer, all of whom shall be members of the Board. The officers shall be elected by the members of the Board to serve a term of one year. Officers may be re-elected for successive terms. An officer shall continue to hold office until a successor has been elected and assumed office. However, if an officer occupies an Institutional Seat and ceases his or her employment with that Institution, such officer's appointment shall terminate upon the date he or she ceases such employment.

6.2. Chairperson. The Chairperson shall be the executive officer of the Board and preside over its meetings. In the event the Chairperson cannot attend a meeting, the Vice Chairperson shall perform the duties of the Chairperson. The Chairperson shall sign all Board contracts, and supervise staff hired by the Board. The Chairperson may delegate all or some of his or her duties to the Vice Chairperson. The Chairperson shall perform such other duties as are assigned by the Board.

6.3. Vice Chairperson. The Vice Chairperson shall perform the duties of the Chairperson when the Chairperson is not available. The Vice Chairperson shall review and correct Board minutes and distribute the minutes to Board members at least two days before the next Board meeting. The Vice Chairperson shall perform such other duties as are assigned by the Board.

6.4. Treasurer. The Treasurer shall prepare quarterly financial reports with respect to the Board's administrative expenses, review all Board member claims for reimbursement of expenses, and serve as a liaison with any committee formed to develop

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a budget for the Board. The Treasurer shall perform such other duties as are assigned by the Board.

ARTICLE SEVEN
EFFECTIVE DATE AND AMENDMENTS

7.1. Effective Date. These Bylaws shall become effective on the date they are approved by the CPUC.

7.2. Amendments. These Bylaws may be amended by vote of the majority of the members of the Board. Said amendment shall be submitted promptly to the CPUC for its approval. No amendment shall become final until CPUC approval. The CPUC may amend, terminate or revoke these Bylaws at any time.

ARTICLE EIGHT
LIMITATION ON BOARD POWER AND AUTHORITY

8.1. Advisory Capacity. Under the direction, control, and approval of the CPUC, The Board shall have the power to carry out its duties and responsibilities as specified in Paragraph 4.1 of these Bylaws. The Board acts in a purely advisory capacity and has no decision making authority over policy or program issues.

8.2. Authority over Utilities. The Board shall not have the authority to direct utility distribution companies to act or refrain from acting. Such authority shall remain solely with the CPUC, which shall have sole authority over the regulated utilities involved in energy efficiency programs, the Board's programs.

8.3. CPUC Review and Approval. The Board members are at all times subject to the direction, control and approval of the CPUC while performing their duties and actions on behalf of the Board. The circumstances under which the Board shall seek CPUC review and approval before moving forward with its duties shall include the following:

- (a) determination and naming of Board membership;
- (b) approval of Board filings (charters, bylaws, including Board member reimbursement guidelines and conflict of interest rules, trust agreements, etc.) and amendments thereto as required by the CPUC;
- (c) approval of Board operating budgets;

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(d) approval of all guidelines, including proposed modifications to DSM rules, that delineate the scope of energy efficiency activities that will be eligible for funding, that define allocation and accounting principles, including applicable cost-effectiveness criteria, that specify how administrative performance shall be monitored and evaluated, and that establish rules governing affiliate roles, potential conflicts of interest, market power abuse and self-dealing;

(e) approval of the RFPs for program administration; and

(f) approval of the contracts with selected program administrators.

These Bylaws are adopted on _____, 19978.

David Gamson

Charles Goldman

Ortensia Lopez

Michael Messenger

Peter Miller

Sara Steck Myers

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Don Schultz

Michael Shames

Mark Thayer

(END OF ATTACHMENT 1)

ATTACHMENT 2

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**CALIFORNIA BOARD FOR ENERGY EFFICIENCY
INTERIM PER DIEM AND EXPENSE REIMBURSEMENT RULES**

Background

Commission Decision (D.) 97-02-014 and D.97-04-044 permit reimbursement for reasonable expenses incurred by members of the California Board for Energy Efficiency (Board) and for \$300.00 per diem per Board meeting for public members, with a \$200.00 per diem for a meeting running less than 2 hours. The Board is to establish rules for reimbursing members' legitimate expenses incurred as a result of Board duties, using Commission Resolution F-621 as a guide.

Commission Resolution F-621 finds that it is reasonable for public members of Commission authorized advisory committees to be reimbursed for "reasonable expenses," "as defined by the current government codes and regulations." Eligible expenses are those incurred by advisory committee members attending scheduled committee meetings or Commission ordered workshops or formal hearings directly related to the advisory committee's duties. The adopted "Standard" of expense reimbursement for advisory committees is "actual expenses up to the current limits in effect for such items as travel, meals, parking, and other incidentals as are applicable for Commission staff on official duty." Public Utilities Code Section 1801, et seq., governing intervenor fees and expenses does not apply to advisory committees. Discretionary exceptions to the "Advisory Committee Standard of Expense Reimbursement may be granted by the Commission on a case by case basis." (Resolution F-621, at p. 5.)

On April 16, 1997, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) each filed procedures for effectuating the transfer of start-up funds to the Board in compliance with Ordering Paragraph 3 of D. 97-04-044. The utilities provide in their filings that, prior to the Board creating the necessary bank accounts or trusts required to receive the start-up funds, each will establish accounts in the amount of \$100,000.00 each in the case of PG&E and SCE and \$50,000.00 in the case of SDG&E. From these accounts, each utility proposes to issue checks in payment of invoices approved by this Board and the Low Income Governing Board. PG&E asks that approved invoices be sent to Steven L. Kline, PG&E's Vice President Regulation. SCE states that it will provide a check to the payee within five working days of the receipt of a Board-approved invoice which

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is accompanied by the following information: identification of payee (name and account number) and address of payee.

On May 6, 1997, the Commission issued D.97-05-041 which, among other things, responded to the utilities' filings and adopted the following interim procedures for submitting per diem and expense claims to the utilities during this period of initial funding for the Board's operating costs:

"The invoices for staff assistance and other start-up costs will be submitted to the Boards for their approval. The Board-approved invoices will then be sent to a designated utility (or prorated among utilities) for payment from the accounts established for recording and tracking IIGB and EEIB [now California Board for Energy Efficiency] start-up costs. Payments will be made by the utility or utilities within ten days of receiving them from either Board. The Boards and utilities should work together to refine and improve these procedures, as appropriate, based on actual operating experience." (D.97-05-041, at p. 6.)

Interim Reimbursement Rules

The following interim rules have been developed consistent with the findings and directives of D.97-04-044, D.97-05-041, D.97-09-117, and Resolution F-621. The business and travel reimbursement rates applicable to Commission staff have been used as guidelines to establish the limits of reasonable expense reimbursement.

Per Diem

Each public Board member is entitled to receive \$300 per day for attending a meeting of the Board or a Board subcommittee meeting that complies with the Bagley-Keene Open Meeting Act. The per diem provision for subcommittee meetings shall apply until December 31, 1998, unless extended by Commission order. Per diem is not extended to Board member attendance at Advisory Committee meetings. The per diem will be \$200 if the meeting lasts less than two hours. A Board member may also receive per diem for meeting attendance by teleconference.

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Employees of state governmental agencies and utilities will not receive per diem.

Other governmental employees (including from academic institutions) may receive per diem "if appropriate arrangements are made with their employers." (D.97-04-044, at p. 11.) Board members in this category will inform the Board as to the arrangements that have been made.

Reasonable Expenses

Reasonable expenses of all Board members related to attendance and participation in Board activities will be reimbursed as described in this section. Until December 31, 1998, unless extended by Commission order, the provisions of this section shall apply to expenses of Board members related to attendance and participation in Board subcommittee meetings that are public and noticed in accordance with the provisions of the Bagley-Keene Open Meeting Act.

Actual expenses related to travel, meals, parking and other incidentals will be reimbursed up to the current limits currently in effect and applicable to Commission staff on official duty. Those limits include up to \$37.00 for meals during each 24-hour period and up to \$ 79.00 plus tax for lodging per night, except that in state-designated high-cost areas, including San Francisco, the limit shall be \$110.00 plus tax per night (or, for each, the current government reimbursement rate). Mileage will be reimbursed at a rate of up to 24 cents per mile or the current government reimbursement rate. Airfare will be reimbursed up to the lowest available airfare with reference to the amount of notice given for the meeting being attended. Board members will be reimbursed for reasonable miscellaneous expenses including cab fare, parking, and bridge tolls.

Each item of travel expense claimed in the amount of \$5.00 or more must be substantiated by a receipt, except for meals.

Board members may not be reimbursed for meal or lodging expenses incurred within 50 miles of their headquarters or for lodging expenses incurred within 50 miles of their primary residence.

Board members will also be reimbursed for all reasonable costs necessarily incurred by them related to the operation of the Board, including photocopying, FAXing, telephone calls and supplies.

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Payment of Per Diem and Reasonable Expenses

For the interim, all requests for reimbursement of per diem and reasonable expenses by Board members and for reimbursement of approved Board member expenses and expenses for support services provided under contract with the Board will be paid according to the following procedures. These procedures have been developed consistent with Commission decision and in cooperation with Pacific Gas and Electric Company, the utility designated by the Board for first making payments on invoices from the Board. The procedures for invoice payment are the same for both reimbursement of Board member per diem and expenses and for expenses incurred by consulting and support services pursuant to contracts negotiated, signed and approved by the Board.

1. Until such time as a uniform Travel Expense Claim is developed and approved by the Board, each Board member or individual or entity providing support services under contract to the Board will submit an invoice addressed to the chair or acting chair of the Board which provides the following information: the Board member's or support service provider's name and social security number; their address and telephone number; specification of the expense incurred or the per diem earned; the reason for incurring the expense; and the date, time (if appropriate), and location the expense was incurred or the per diem earned. The invoice will include receipts for expense claims in excess of \$5.00. An example invoice form is attached and may be used to claim expenses and per diem in the interim.
2. All invoices submitted to the chair or acting chair of the Board will be reviewed and approved by the Board. The chair or acting chair will sign invoices upon approval.
3. Until the Board has established its own bank or trust accounts for the receipt of funding for Board operations, the following procedures shall apply:
 - All invoices approved by the Board will be submitted by the chair or acting chair of the Board to the designated utility for payment with a statement that the invoice has been approved by the Board.
 - The utility will be acting solely as the agent for the Board. When the Board establishes its own account and assumes responsibility for its own disbursements, the utility will provide an accounting of the disbursements made to that date. The Board, and not the utility, will be responsible for the preparation and distribution of any tax or

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other forms, such as Form 1099, as required, resulting from disbursements which the utility has made on behalf of the Board.

- Invoices will be submitted no more than once a month and shall total no less than \$100.00 at the time of submission.
- Payment will be made by the designated utility directly to the Board member or identified support service within ten working days of receipt of the approved invoice from the Board.
- The first designated utility will be Pacific Gas and Electric Company, whose obligation to pay invoices for the Board will not exceed \$100,000.00 total.
- Invoices in this first period will be submitted to Steven L. Kline, PG&E Vice President Regulation, Mail Code B10A, P.O. Box 770000, San Francisco, CA 94177.

A copy of these interim rules on reimbursement will be provided to the affected utility.

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CALIFORNIA BOARD FOR ENERGY EFFICIENCY
INVOICE FOR PER DIEM AND EXPENSE REIMBURSEMENT

Date: _____

Board Member (Payee) Name: _____ Social Security # _____

Address: _____

Telephone/FAX: _____

PER DIEM CLAIM

<u>Date Incurred</u>	<u>Meeting Hours Spent</u>	<u>Meeting Location</u>	<u>Per Diem Allowance</u>
----------------------	----------------------------	-------------------------	---------------------------

\$

Subtotal \$ _____

EXPENSE CLAIM

<u>Date Incurred</u>	<u>Type of Expense</u>	<u>Reason/Location</u>	<u>Amount Claimed</u>
----------------------	------------------------	------------------------	-----------------------

Subtotal \$ _____

TOTAL REIMBURSEMENT CLAIM \$ _____

Payee _____ on _____ Approved by: _____ on _____
Board Member Treasurer

(END OF ATTACHMENT 2)

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**CHARTER AND BYLAWS OF
THE LOW-INCOME GOVERNING BOARD**

MISSION STATEMENT

The primary mission of the Low-Income Governing Board is to oversee and administer low-income electricity programs in a restructured electric services industry, subject to oversight and approval by the California Public Utilities Commission. The purpose of this assistance is to enable low-income California households to manage and afford basic utility energy services in a restructured electric services industry. This mission reflects the mandates of the California Public Utilities Commission Decisions creating the Board (D.97-04-044 and D.97-02-014) and of the California Legislature in enacting AB 1890, and in particular Sections 381-383 of the Public Utilities Code. The Board acts in a purely advisory capacity and has no decision-making authority over low-income policies or programs. [pp. 33-48, 81-82 (¶ 18).]²

**ARTICLE ONE
GENERAL PROVISIONS**

SECTION 1.1 NAME

The name of the board shall be the Low-Income Governing Board ("LIGB" or "Board").

SECTION 1.2 AUTHORITY FOR CHARTER AND BYLAWS

This Charter and Bylaws are adopted by the Public Utilities Commission ("the CPUC" or "Commission") pursuant to CPUC Decision ("D.") 97-09-117, D.97-04-044, and D.97-02-014. The Charter and Bylaws (hereinafter "Charter") were approved by the Commission and became effective on _____.

¹ Additions made to the October 16, 1997 filing of the Low-Income Governing Board are indicated by double underline. Deletions are indicated by strike-outs.

² Material in brackets cross reference pages and ordering paragraphs in Decision 97-09-117.

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SECTION 1.3 PURPOSE OF CHARTER

The purpose of this Charter is to provide for the structure and governance of the Board and for the orderly and fair conduct of the meetings of the Board.

ARTICLE TWO PURPOSE OF BOARD

SECTION 2.1 ESTABLISHMENT BY THE COMMISSION

The Commission in 1997 established a new administrative structure for low-income electricity programs as part of its efforts to restructure the electric utility industry. Under the new structure, the low-income programs currently implemented by the energy utilities will be integrated and administered on a statewide basis. The Commission established the LIGB as a means of overseeing and administering the low-income programs, subject to Commission oversight and approval. See D.97-09-117, D.97-04-044, and D.97-02-014. Those Decisions further reflected low-income ratepayer and energy efficiency policies set forth in the Commission's December 1995 Electric Restructuring Decision (D.95-12-063, as modified by D.96-01-009). The Commission's policy direction provided for continued funding of these programs through a nonbypassable surcharge, with low-income rate assistance programs to be based on need and uncapped. Public Utilities Code Section 382 also directs that the low-income programs be funded at not less than 1996 authorized levels based on an assessment of customer need.

SECTION 2.2 PRINCIPAL PURPOSE

The principal purpose of the LIGB is to develop, establish, and oversee a new state-wide administrative structure for the low-income bill assistance and energy efficient services funded by California energy utility customers, subject to the Commission's approval and pursuant to the policies embodied in state legislation. Specifically, the LIGB is charged with developing and issuing a Request for Proposals ("RFP"), subject to the Commission's approval, to hire a Program Administrator. As part of the RFP development process, the LIGB is charged with proposing appropriate modifications to the Commission's Demand Side Management Rules with respect to low-income energy efficiency programs. The LIGB will oversee its interim administrative staff, as well as the Program Administrator, who will be responsible for collecting and disbursing funding for rate discounts and making energy efficiency and education services available to eligible low-income ratepayers. [pp. 33-48, 81-82 (¶ 18).] The LIGB also makes recommendations to the Commission regarding implementation

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of the appropriate mechanism to receive, invest, account for and disburse the nonbypassable surcharges, including, but not limited to, the establishment of a trust, recommendations concerning the appropriate form of trust instrument, the establishment of procedures for administration of the trust, and the securing of a qualified financial institution or institutions to handle the deposit and disbursement of the monies derived from the surcharge.

SECTION 2.3 ADVISORY ROLE

The Board is purely advisory and has no decisionmaking authority over low-income policies or programs. Board members are at all times subject to the direction, control, and approval of the Commission while performing their duties and in actions taken by the Board. The Commission has sole authority over the regulated utilities involved in the programs. [pp. 33, 81 (§ 18.a-c).]

SECTION 2.4 COORDINATION

The CPUC has ordered that the LIGB coordinate closely with the Energy Efficiency Independent Board,³ particularly with regard to weatherization and energy efficiency, in a manner consistent with the LIGB's specific mission of assisting low-income ratepayers with managing their energy bills, subject to Commission oversight, approval and auditing. To ensure that the two Boards effectively communicate with each other and work together to accomplish overlapping and mutual purposes, the LIGB shall take the following measures:

- (a) Provide the CBEE with agendas, minutes, and other relevant documents from Board meetings, as well as copies of letters sent by the Board;
- (b) Avoid scheduling overlapping meetings where possible;
- (c) Appoint a Board member or subcommittee to coordinate with the CBEE;
- (d) Hold joint meetings as appropriate;

³ The Energy Efficiency Independent Board has been renamed as the California Board for Energy Efficiency ("CBEE") and will henceforth be referred to as such in this Charter.

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- (e) Direct its administrative and other staff to communicate and coordinate with their CBEE counterparts on common issues;
- (f) Ensure that utility filings on costs, assets and liabilities, and related matters appropriately reflect splits between low-income and non low-income energy efficiency programs, and coordinate information in the Boards' filings on these matters; and
- (g) Cooperate with the CBEE in utilizing CPUC legal and other staff, to the extent feasible.

ARTICLE THREE MEMBERSHIP

SECTION 3.1 NUMBER

The Board shall be composed of ~~seven (7)~~nine (9) members consisting of the following: one (1) representative from the Commission and ~~six (6)~~eight (8) members from the public. The Commission's Board representative shall not be employed in the Office of Ratepayer Advocates ("ORA"). However, ORA staff may be appointed as public members. Regulated utility and energy service company members may not sit on the Board unless they agree not to bid as an administrator of low-income programs. All members will be subject to all conflict of interest provisions adopted by the Board to mitigate potential conflicts.

SECTION 3.2 SELECTION

The CPUC shall appoint all Board members, who shall be chosen from nominees submitted by the Board and by interested members of the general public. The Board shall publish notice seeking nominees to the Board in the CPUC daily calendar at least thirty (30) days prior to September 1, 1999 for Board terms beginning January 1, 2000, and shall publish comparable written notice in the CPUC Daily Calendar seeking nominees for all other Board positions which shall become available. [pp. 39, 84 (§ 27.a).]

SECTION 3.3 PROHIBITION ON PROXIES

Only individuals appointed as members may serve as members of the Board; no alternate, substitute, or proxy representation of Board members may occur.

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SECTION 3.4 TERMS OF APPOINTMENT

The terms of four of the initial Board Members shall expire on December 31, 1999; the terms of the remaining three initial Board members shall expire on December 31, 2000. The Board shall determine which initial positions expire in 1999 and which in 2000. The Board shall forward new board member nominations solicited in accordance with Section 3.2 to the Commission by September 1 of the year in which the term of the members to be replaced expires, to allow the Commission to approve new Board members prior to January 1 of the following year. Following the expiration of the terms of the initial Board, all Board member terms shall be of a two-year duration and shall be staggered, as provided herein. [pp. 39, 84 (¶ 27.c).]

SECTION 3.5 REMOVAL

Members may be removed for repeated failure to attend Board meetings or other reasonable cause, including failure to adhere to established procedures, this Charter, Board conflict of interest policies, or for any other reasonable cause apart from an independent policy position taken by the Board member. A majority of Board members then in office may recommend removal of any Board member for reasonable cause upon written notice to the member and approval by the Commission. A Board member who has received such written notice may within ten calendar days file a letter of opposition to the proposed removal setting forth the reasons in opposition; this letter shall be directed both to the LIGB chairperson and to the Commission. After such period of time, the Board may take official action by a vote to recommend removal or not. If the Board votes to remove the member, the Commission must approve the decision for it to become effective. Notwithstanding the foregoing, the Commission's representative may be removed and replaced any member at any time by the Commission.

SECTION 3.6 RESIGNATION

Resignation of a Board member shall be effective upon receipt by the Board and the Commission of a written letter of resignation.

SECTION 3.7 VACANCIES

If a public member's seat is vacated, the Board shall solicit nominations of candidates to fill such vacancy in accordance with the provisions of Section 3.2, and shall forward such nominations, including the Board's own recommendations, to the CPUC for approval. [pp. 39, 84 (¶ 27.c).]

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SECTION 3.8 INDEMNIFICATION

Members of the Board who are not members of the Commission staff are uncompensated servants of the Commission and the State of California within the meaning of Section 810.2 of the Government Code. Board members are at all times subject to the direction, control, and approval of the Commission while performing their duties and in actions taken by the Board. [pp. 33, 81 (§ 18c).] The State accordingly will indemnify ~~the Board, the Board members, and a trust if so created,~~ as it indemnifies its compensated employees and will provide members representation for acts done within the course and scope of services they perform for the Board, as provided in Government Code Sections 825-825.6 and 995-996.6. In addition, the Board may obtain Errors and Omissions Insurance to indemnify ~~the Board, Board members, Board employees, a trust if so created,~~ and any members of Advisory Committees or task forces reporting to the Board, for their acts done within the course and scope of the services they perform for the Board. The premiums for any such insurance shall be paid through the Board's administrative funding mechanisms.

SECTION 3.9 EXPENSES AND PER DIEM

Board membership is a public service and accordingly Board members shall serve without compensation. However, except for employees of state governmental agencies and utilities, Board members shall be allowed and paid a per diem of \$300 ~~for each day of Board meetings.~~ attending a meeting of the Board or a Board subcommittee meeting that complies with the Bagley-Keene Open Meeting Act. For Board meetings that last less than two hours, the per diem will be \$200. These same per diem rates shall also apply to Board members attending meetings of official Board Subcommittees, until December 31, 1998, unless extended further by Commission order. [pp. 41-42, 85 (§ 28).] Members shall not receive any per diem for preparation and other work completed outside of meetings. Other governmental employees, including university and academic employees, may receive a per diem if appropriate arrangements are made with their employers.

Board members shall be reimbursed for their actual travel, lodging, and meal expenses in accordance with Board reimbursement guidelines. A copy of the Board Member Reimbursement Guidelines and Procedures is attached as Appendix A to this Charter.

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ARTICLE FOUR
DUTIES, POWERS AND RESPONSIBILITIES

SECTION 4.1 DUTIES

The Board shall have the following powers, duties, and responsibilities. While performing these duties and responsibilities, the Board members are at all times subject to the direction, control, and approval of the CPUC. The CPUC has all policy and program decisionmaking authority. The Board shall act in a purely advisory capacity to the CPUC. [pp. 34, 82 (¶ 19).]:

- (a) Perform any and all duties imposed by law, including duties imposed by the Decisions of the Commission and this Charter;
- (b) Appoint a Low-Income Advisory Committee and other committees, subcommittees, or task forces, as necessary to accomplish the Board's mission and purposes;
- (c) Appoint and remove, procure, engage, and discharge, and, prescribe the duties of all officers, agents, employees, and independent contractors of the Board necessary to accomplish the Board's mission and purposes, subject to the requirements and restrictions imposed by law, the Decisions of the Commission, and this Charter;
- (d) Supervise all officers, agents, employees, contractors and advisory committees of the Board to assure that their duties are performed properly;
- (e) Meet at such times and places as required by this Charter; and
- (f) Comply with the Low-Income Governing Board's Conflict of Interest Code, attached hereto as Appendix B.
- (g) With respect to the receipt of nonbypassable surcharges by a trust or otherwise: (1) maintain records, or cause records to be maintained, on a monthly basis, of the amount of surcharges transmitted by all energy providers; (2) notify the CPUC of any providers which are delinquent; (3) recommend surcharge rate changes to the CPUC.
- (h) Prepare and submit to the CPUC an annual budget for the LIGB; during the time that the CPUC is considering approval of the

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proposed budget, the Board shall act in accordance with its existing budget as though it had been extended for another year. Prepare and submit supplemental budget requests to the CPUC if such requests are necessary adequately to fulfill the duties of the LIGB.

- (i) With respect to the payment of claims submitted by the Independent Program Administrator(s) or program implementors: (1) pay, or cause to be paid, claims which are approved in accordance with procedures authorized by the CPUC; (2) provide, or cause to be provided, monthly receipts and expenditures reports to the CPUC.
- (j) Pay LIGB expenses.
- (k) Perform functions delegated to it by the Commission in connection with a CPUC powers and duties under a trust agreement with a financial institution.

SECTION 4.2 LIMITATION ON BOARD POWERS

The Board is a purely advisory body. It does not have and shall not attempt to exercise any decisionmaking authority over low-income policies or programs. The Commission has sole authority over the regulated utilities involved in low-income programs. [pp. 33, 81 (¶ 18a.-c.).]

SECTION 4.3 COMMISSION APPROVAL REQUIRED

In keeping with its purely advisory capacity, the Board shall seek Commission review and approval before moving forward with, among others, the following duties:

- (a) determination and naming of Board membership;
- (b) approval of Board filings (charters, bylaws, including Board member reimbursement guidelines and conflict of interest rules, trust agreements, etc.) and amendments thereto as required by the Commission;
- (c) approval of Board operating budgets;
- (d) approval of all guidelines, including proposed modifications to DSM rules, that delineate the scope of energy efficiency or low-income assistance activities that will be eligible for funding, that define

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allocation and accounting principles, including applicable cost-effectiveness criteria, that specify how administrative performance shall be monitored and evaluated, and that establish rules governing affiliate roles, potential conflicts of interest, market power abuse and self-dealing;

- (e) approval of the RFPs for program administration; and
- (f) approval of the contracts with selected program administrators. [pp. 33-34, 81-82 (¶ 18.a-b., d.(1)-(6).]

ARTICLE FIVE
MEETINGS OF THE BOARD

SECTION 5.1 GENERAL

The Board shall take action only in the course of a duly noticed meeting. The Board shall hold such meetings as needed to accomplish official business during each calendar year. Notification of the date, place, and time of each meeting shall be given to each member and posted in accordance with the Bagley-Keene Open Meeting Act, Government Code Section 11120 et seq.

SECTION 5.2 OPEN MEETINGS

Meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act. A copy of that Act shall be given to every existing and new member of the Board, and to the members of all advisory committees, subcommittees, and similar bodies created by formal action of the Board and consisting of three or more persons.

SECTION 5.3 SPECIAL MEETINGS

Special meetings of the Board may be called by order of the Chairperson or by a majority of the members. The order calling the special meeting shall specify the time of the meeting and the business to be transacted at such meeting, and shall be noticed pursuant to the Bagley-Keene Open Meeting Act.

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SECTION 5.4 CLOSED AND EMERGENCY MEETINGS

Closed and emergency meetings may be held only in accordance with the Bagley-Keene Open Meeting Act.

SECTION 5.5 CONTINUED MEETINGS

Any meeting of the Board may be continued to any subsequent meeting. Continued hearings shall be noticed as required under Government Code Section 11129.

SECTION 5.6 CANCELLATION OF MEETINGS

Any meeting of the Board may be canceled by the Chairperson for good cause. Notification of cancellation shall be provided to all parties who are notified of regular meetings of the Board.

SECTION 5.7 EFFECT OF HOLIDAY

If any regular meeting day falls on a holiday, the meeting shall not be held. A special meeting may be called in accordance with Section 5.3 of this Charter.

SECTION 5.8 QUORUM AND ATTENDANCE

A majority of the members of the Board shall constitute a quorum for the transaction of business. No vacancy in the Board impairs the right of the remaining Board members to exercise all the powers of the Board. The members may be present in person or, subject to the provisions of Section 5.9, by conference telephone.

SECTION 5.9 TELECONFERENCING

Board members may attend meetings by teleconference only if at least a quorum is physically present ~~in one location~~, at the location specified in the notice of the meeting subject to all of the following conditions, as specified in Government Code § 11123(a)(1)(A)-(F):

“(A) The teleconferencing meeting shall comply with all requirements of [the Bagley-Keene Act] applicable to other meetings.

“(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

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"(C) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.

"(D) All votes taken during a teleconferenced meeting shall be by rollcall.

"(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5 of the Government Code. [pp. 53-56, 86 (¶¶ 33-36).]

~~"(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting;"~~
~~[pp. 53-56, 86 (¶¶ 33-36).]~~

SECTION 5.10 ABSENCE OF QUORUM

In the absence of a quorum, the members present shall continue the meeting to a stated time and place pursuant to Section 5.5, and the absent members shall be notified.

ARTICLE SIX

CONDUCT OF MEETINGS AND OPERATING PROCEDURES

SECTION 6.1 ORDER OF BUSINESS

The business of each meeting of the Board shall be transacted as far as is practicable in the following order:

- (a) Call to order;
- (b) Roll call;
- (c) Announcements by the Chairperson;
- (d) Approval of minutes of prior meetings;
- (e) Review of Agenda;
- (f) Public Comment on items not on Agenda;
- (g) Regular calendar (including public comment on each agenda item);
 - (1) Unfinished business;
 - (2) New business;

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- (h) Member Comments and Communications; and
- (i) Closing.

The above order of business may be suspended or changed at any time upon order of the Chairperson.

SECTION 6.2 PUBLIC PARTICIPATION

Members of the public shall be provided an opportunity to directly address the Board on each agenda item immediately before or during the Board's discussion or consideration of the item. The Board may foreclose public comment only when the Board is conducting a closed session or where an agenda item has already been considered by a Committee composed exclusively of members of the Board at a public meeting where interested members of the public were afforded the opportunity to address the Committee on the item.

The Board may accept testimony from members of the public on matters not previously noticed. The Board may not take action on such matters, however, until they are considered at a subsequent meeting, except as expressly provided for in the Bagley-Keene Open Meeting Act.

The Chairperson may limit the time for public testimony.

SECTION 6.3 PARLIAMENTARY RULES

The rules and procedures set forth in Robert's Rules of Order are hereby adopted for the government of this Board in all cases not otherwise provided for by State law, Decisions of the Commission, or this Charter.

SECTION 6.4 VOTE REQUIRED

Decisions shall be made by a majority vote of those Board members present. The Board shall not take action, other than to cancel or continue a meeting, unless at least a quorum of current members is physically present. [pp. 53-57, 86-87 (¶¶ 35 and 38).]

Board decisions shall be subject to Commission oversight, jurisdiction and, where required by law, Decisions of the Commission, or Section 4.3, to prior Commission approval before taking effect.

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SECTION 6.5 ROLL CALL NOT REQUIRED

The roll must be called in voting upon a motion (1) when requested by a member, or (2) for any vote taken during a teleconferenced meeting, but need not be called otherwise. If the roll is not called, in the absence of objection, the Chairperson may order the motion unanimously approved.

Each roll call of the Board shall be in alphabetical order of the last name of the member, except that the Chairperson shall be called last.

SECTION 6.6 VOTING INELIGIBILITY

Any Board member ineligible to vote on any matter under consideration by the Board shall leave the Board table before the matter is considered and refrain from participation in any action concerning the matter.

ARTICLE SEVEN
OFFICERS

SECTION 7.1 NUMBER AND OFFICES

The officers of the Board shall be a Chairperson, Vice Chairperson, Secretary, and Treasurer.

SECTION 7.2 QUALIFICATION, ELECTION, AND TERM OF OFFICE

Any Board member may serve as an officer of the Board. Officers shall be elected by a majority of the Board at any time, and each officer shall hold office for one year from the date of election, unless he or she resigns, is removed, or is otherwise disqualified to serve. Officers may be re-elected.

SECTION 7.3 SUBORDINATE OFFICERS

The Board may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board.

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SECTION 7.4 REMOVAL AND RESIGNATION

Any officer may be removed, either with or without cause, by the Board at any time, except that officers may not be removed on the basis of an independent policy position taken by an officer. Any officer may resign at any time by giving written notice to the Chairperson or Secretary of the Board. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 7.5 VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board. In the event of a vacancy in any office other than that of Chairperson, such vacancy may be filled temporarily by appointment by the Chairperson until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board shall determine.

SECTION 7.6 DUTIES OF CHAIRPERSON

The Chairperson shall be the executive officer of the Board and shall preside over its meetings. In the event that the Chairperson cannot attend a meeting, the Vice Chairperson shall perform the duties of the Chairperson. The Chairperson is also responsible for overseeing any legal, technical, or clerical staff assigned to the Board. The Chairperson has the discretion to delegate all or some of his or her duties to the Vice Chairperson in the event of extended illness or absence. In the event that the Vice Chairperson also cannot attend a meeting, the Chairperson may designate another member to perform his or her functions. The Chairperson shall perform all duties incident to his or her office and such other duties as may be required by law, the Decisions of the Commission, or by this Charter, or which may be prescribed from time to time by the Board.

SECTION 7.7 DUTIES OF VICE CHAIRPERSON

In the absence of the Chairperson, or in the event of his or her inability or refusal to act, the Vice Chairperson shall perform all the duties of the Chairperson, and when so acting shall have all the powers of, and be subject to all the restrictions on, the Chairperson. The Vice Chairperson shall have other powers and perform such other duties as may be prescribed by law, by the Decisions of the Commission, or by this Charter, or as may be prescribed by the Board.

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SECTION 7.8 DUTIES OF SECRETARY

The Secretary is responsible for reviewing the minutes and proposed summary of key decisions made at Board meetings, making any necessary corrections, and distributing the minutes to Board members at least two days prior to Board meetings. He or she is also responsible for ensuring that sufficient copies are made available to the public and that at least one copy is included in the Board's records. The Secretary shall also be responsible for attending all closed sessions of the Board and keeping and entering in a "minute book" a record of topics discussed and decisions made at the meeting. Pursuant to the Bagley-Keene Open Meeting Act, Government Code Section 11126.1, the minute book containing a record of the topics discussed and decisions made during closed sessions is not a public record subject to disclosure, and may, but need not, consist of a recording of the closed session. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Decisions of the Commission, or by this Charter, or which may be assigned to him or her from time to time by the Board. The Secretary may delegate administrative duties to Board staff.

SECTION 7.9 DUTIES OF TREASURER

The Treasurer is responsible for coordinating the Board's compliance with the interim arrangements and procedures for payments and contract signing established by the Commission in Decision 97-05-041, dated May 6, 1997, and in any subsequent Decisions of the Commission.

ARTICLE EIGHT ADVISORY COMMITTEES

SECTION 8.1 GENERAL PROVISIONS

There shall be a Low-Income Advisory Committee and such other advisory committees and task forces as the Board determines are necessary to accomplish the mission and purposes established by the Commission and set forth in this Charter. All advisory committees formally created by the Board and consisting of three or more persons shall comply with the Bagley-Keene Open Meeting Law. Except as otherwise required by law or directed by the Commission, such advisory committees shall not be subject to the Board's conflict of interest procedures. The Board may propose that the Commission adopt separate conflict of interest procedures for such advisory committees.

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SECTION 8.2 LOW-INCOME ADVISORY COMMITTEE

The Board shall appoint a Low-Income Advisory Committee. The Low-Income Advisory Committee shall advise the Board, as requested, on program design options for California Alternate Rates for Energy ("CARE") program, low-income energy efficiency services, the design and implementation of a needs analysis for low-income customers, and on other matters related to the Board's mission.

SECTION 8.3 OTHER COMMITTEES

The Board shall appoint additional advisory committees, whether permanent or temporary, as it deems necessary.

ARTICLE NINE

INDEPENDENT PROGRAM ADMINISTRATOR(S)

SECTION 9.1 INDEPENDENT PROGRAM ADMINISTRATOR(S)

Pursuant to the Commission's Decisions, a principal task of the Board shall be to develop and issue a Request for Proposals ("RFP"), subject to Commission approval, for retaining one or more Independent Program Administrator(s). The Board shall also be responsible for overseeing the selected Independent Program Administrator(s), subject to Commission approval. The Board shall develop and submit to the Commission proposed Bylaw amendments respecting these tasks as it proceeds with the development of the RFP.

ARTICLE TEN

AMENDMENTS TO THE CHARTER AND BYLAWS

SECTION 10.1 AMENDMENTS

The Board has the power to amend this Charter by a two-thirds majority vote, subject to the subsequent approval of the Commission. Appendices to this Charter are not themselves part of this Charter and may be modified by a simple majority of the Board, subject to Commission approval. [pp. 33-34, 81-82 (¶ 18d.2).]

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This Charter and Bylaws are executed and approved on _____, 1997:

Diana Brooks

P. Gregory Conlon, President
Geoffrey Meloche

Jessie J. Knight, Jr., Commissioner
Susan Brown

Henry M. Duque, Commissioner
Maggie Cuadros

Josiah L. Neeper, Commissioner
Henry Knowls

Richard A. Bilas, Commissioner
Nancy Brockway

Katherine McKenney

Roberto Haro

Karen Lindh

APPENDICES

Appendix A -- Board Member Reimbursement Guidelines and Procedures

Appendix B -- Conflict of Interest Code

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LIGB CHARTER APPENDIX A

**BOARD MEMBER REIMBURSEMENT GUIDELINES AND PROCEDURES
FOR THE LOW-INCOME GOVERNING BOARD**

The Low-Income Governing Board ("LIGB" or "Board") was created by the California Public Utilities Commission ("the CPUC" or "Commission") in 1997 to assist the CPUC in overseeing and administering low-income electricity programs in a restructured electric services industry. The LIGB is subject to Commission jurisdiction and oversight, and the Commission has directed the LIGB to adopt and file these Board Member Reimbursement Guidelines and Procedures ("Reimbursement Guidelines"). These Reimbursement Guidelines incorporate the standards set forth below from Commission Resolution F-621, the Commission's Interim Advisory Committee Standard of Expense Reimbursement, and have been revised in accordance with (D.) 97-09-117.

I. REIMBURSEMENT STANDARD

(1) The Standard of Expense Reimbursement for LIGB Board members for attending scheduled Board meetings or Commission ordered workshops or formal hearings directly related to the Board's duties shall be that reasonable expenses are reimbursed in accordance with the Department of Personnel Administration ("DPA") regulations for Exempt Employees, pursuant to Government Code Section 19820. This expense reimbursement shall be updated as Section 19820 is updated from time to time.

(2) Public Utilities Code Sections 1801-1808, governing Intervenor's Fees and Expenses, shall not apply to Board members for expenses incurred in the scope of their duties performed for the Board.

(3) Board Members with funding available to support Board activities should use such funding to defray their expenses and will not be eligible for reimbursement pursuant to these Reimbursement Guidelines until they have first exhausted such available funding.

(4) To the extent that the DPA regulations referenced above conflict with the per diem rates authorized by the Commission in D.97-04-044 and restated in the Board's Bylaws, the per diem set forth in the Board's Bylaws shall apply.

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II. REIMBURSEMENT PROCEDURE

Pursuant to Commission Decision 97-05-041, Board members shall be reimbursed under the procedure for payments set forth in that Decision, until such time as the Board has the legal and accounting capability to pay reimbursement and other expenses. Board members shall submit expense receipts to the interim Board administrative staff, who shall compile totals on a monthly basis for presentation to, and approval by, the Board. These same procedures shall apply to expenses incurred by consulting and support services pursuant to contracts negotiated, signed, and approved by the Board. Board-approved reimbursements shall be sent to a designated utility for payment from the accounts established for recording and tracking Board start-up costs. Once the funds subject to Board oversight are transferred to the Board, the designated utility will be relieved of this responsibility and the Board will revise this procedure, subject to Commission approval.

III. INTERIM REIMBURSEMENT PROCEDURE

Until such time as the Board's interim administrative staff has implemented the procedures set forth in Section II above, the Board will continue to operate under the interim reimbursement procedures adopted by the Board on May 28, 1997, and set forth below.

INTERIM RULES

REIMBURSEMENT FOR PER DIEM AND REASONABLE EXPENSES

Background

Commission Decision (D.) 97-02-014 and D.97-04-044 permit reimbursement for reasonable expenses incurred by Board members and for \$300.00 per diem per meeting of the Board for public members, with a \$200.00 per diem for a meeting running less than 2 hours. The Board is to establish rules for reimbursing members' legitimate expenses incurred as a result of Board duties, using Commission Resolution F-621 as a guide.

Commission Resolution F-621 finds that it is reasonable for public members of Commission authorized advisory committees to be reimbursed for "reasonable expenses," "as defined by the current government codes and regulations." Eligible expenses are those incurred by advisory committee members attending scheduled committee meetings or Commission ordered workshops or formal hearings directly related to the advisory committee's duties. The adopted "Standard" of expense

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reimbursement for advisory committees is "actual expenses up to the current limits in effect for such items as travel, meals, parking, and other incidentals as are applicable for Commission staff on official duty." Public Utilities Code Section 1801, et seq., governing intervenor fees and expenses does not apply to advisory committees. Discretionary exceptions to the "Advisory Committee Standard of Expense Reimbursement may be granted by the Commission on a case by case basis." (Resolution F-621, at p. 5.)

On April 16, 1997, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) each filed procedures for effectuating the transfer of start-up funds to the Board in compliance with Ordering Paragraph 3 of D.97-04-044. The utilities provide in their filings that, prior to the Board creating the necessary bank accounts or trusts required to receive the start-up funds, each will establish accounts in the amount of \$100,000.00 each in the case of PG&E and SCE and \$50,000.00 in the case of SDG&E. From these accounts, each utility proposes to issue checks in payment of invoices approved by this Board and the Low-Income Governing Board. PG&E asks that approved invoices be sent to Steven L. Kline, PG&E's Vice President Regulation. SCE states that it will provide a check to the payee within five working days of the receipt of a Board-approved invoice which is accompanied by the following information: identification of payee (name and account number) and address of payee.

On May 6, 1997, the Commission issued D.97-05-041 which, among other things, responded to the utilities' filings and adopted the following interim procedures for submitting per diem and expense claims to the utilities during this period of initial funding for the Board's operating costs:

"The invoices for staff assistance and other start-up costs will be submitted to the Boards for their approval. The Board-approved invoices will then be sent to a designated utility (or prorated among utilities) for payment from the accounts established for recording and tracking LIGB and EEIB start-up costs. Payments will be made by the utility or utilities within ten days of receiving them from either Board. The Boards and utilities should work together to refine and improve these procedures, as appropriate, based on actual operating experience." (D.97-05-041, at p. 6.)

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Interim Reimbursement Rules

The following interim rules have been developed consistent with the findings and directives of D.97-04-044, D.97-05-041, D.97-09-117 and Resolution F-621. The business and travel reimbursement rates applicable to Commission staff have been used as guidelines to establish the limits of reasonable expense reimbursement.

Per Diem

Each public Board member is entitled to receive \$300 per day for attending a meeting of the Board or a Board subcommittee meeting that complies with the Bagley-Keene Open Meeting Act. The per diem will be \$200 if the meeting lasts less than two hours. A Board member may also receive per diem for meeting attendance by teleconference.

Employees of state governmental agencies and utilities will not receive per diem.

Other governmental employees (including from academic institutions) may receive per diem "if appropriate arrangements are made with their employers." (D.97-04-044, at p. 11.) Board members in this category will inform the Board as to the arrangements that have been made.

Reasonable Expenses

Reasonable expenses of Board members related to attendance and participation in Board activities will be reimbursed as described in this section. Until December 31, 1998, unless extended by Commission order, the provisions of this section shall also apply to expenses of Board members related to attendance and participation in Board subcommittee meetings that are public and noticed in accordance with the provisions of the Bagley-Keene Open Meeting Act.

Actual expenses related to travel, meals, parking and other incidentals will be reimbursed up to the current limits currently in effect and applicable to Commission staff on official duty. Those limits include up to \$37.00 for meals during each 24-hour period and up to \$79.00 plus tax for lodging per night except that in state-designated high cost areas, including San Francisco, the limit shall be \$110.00 plus tax for lodging per night for, for each, the current government reimbursement rate. Mileage will be reimbursed at a rate of up to 24 cents per mile or the current government reimbursement rate. Airfare will be reimbursed up to the lowest available airfare with reference to the amount of notice given for the meeting being attended. Board members

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will be reimbursed for reasonable miscellaneous expenses including cab fare, parking, and bridge tolls.

Each item of travel expense claimed in the amount of \$5.00 or more must be substantiated by a receipt, except for meals.

Board members may not be reimbursed for meal or lodging expenses incurred within 50 miles of their headquarters or for lodging expenses incurred within 50 miles of their primary residence.

Board members will also be reimbursed for all reasonable costs necessarily incurred by them related to the operation of the Board, including photocopying, FAXing, telephone calls, and supplies.

Payment of Per Diem and Reasonable Expenses

For the interim, all requests for reimbursement of per diem and reasonable expenses by Board members will be paid according to the following procedures. These procedures have been developed consistent with Commission decision and in cooperation with Southern California Edison Company, the utility designated by the Board for making payments on invoices from the Board. The procedures for invoice payment are the same for both reimbursement of Board member per diem and expenses and for expenses incurred by consulting and support services pursuant to contracts negotiated, signed and approved by the Board.

Until such time as a uniform Travel Expense Claim is developed and approved by the Board, each Board member will submit an invoice addressed to the Commission's designated representative to the Board which provides the following information: the Board member's name and social security number (and, in the case of a Board member whose employer has paid for the member's expenses, the name, address and federal ID number of the employer, and a statement from an authorized representative of the employer that the invoiced expenses have been paid by the employer); the Board member's address and telephone number; specification of the expense incurred or the per diem earned; the reason for incurring the expense; and the date, time (if appropriate), and location the expense was incurred or the per diem earned. The invoice will include receipts for expense claims in excess of \$5.00.

The Commission's designated representative to the Board will review all invoices. If the invoices meet these guidelines, the designated representative will sign the invoices to indicate approval.

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Until the Board has established its own bank or trust accounts for the receipt of funding for Board operations, the following procedures shall apply:

- All invoices approved by the Commission's designated representative will be submitted by the Commission's designated representative to the designated utility for payment.
- The utility will be acting solely as the agent for the Board. When the Board establishes its own account and assumes responsibility for its own disbursements, the utility will provide an accounting of the disbursements made to that date. The Board, and not the utility, will be responsible for the preparation and distribution of any tax or other forms, such as Form 1099, as required, resulting from disbursements which the utility has made on behalf of the Board.
- Invoices will be submitted no more than once a month and shall each total no less than \$100.00 at the time of submission.
- Payment will be made by the designated utility directly to the Board member within ten working days of receipt of the approved invoice from the Board.
- The designated utility will be Southern California Edison Company.
- Pacific Gas and Electric and San Diego Gas & Electric will transfer their LIGB funding allocations to Southern California Edison, in accordance with D.97-09-117.
- Invoices will be submitted to Mr. Eric Helm, Financial Manager, Southern California Edison Company, 2244 Walnut Grove Avenue, Room 453, Rosemead, CA 91770-3714.

A copy of these interim rules on reimbursement will be provided to each utility.

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- Page 24**

**LIGB CHARTER APPENDIX B
CONFLICT OF INTEREST CODE
FOR THE
LOW-INCOME GOVERNING BOARD**

The Low-Income Governing Board ("LIGB" or "Board") was created by the California Public Utilities Commission ("the CPUC" or "Commission") in 1997 to assist the CPUC in overseeing and administering low-income electricity programs in a restructured electric services industry. The LIGB is subject to Commission jurisdiction and oversight, and the Commission has directed the LIGB to adopt and file this Conflict of Interest Code.

The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission ("FPPC") has adopted a regulation, 2 Cal. Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code. The FPPC's regulation, which is attached to this Appendix as Attachment 1, authorizes its incorporation by reference.

Accordingly, pursuant to the Commission's Decisions and the FPPC regulations, the terms of Section 18730, along with the attached Appendix listing Designated Employees and Disclosure Categories, are hereby incorporated by reference and adopted as the Conflict of Interest Code of the LIGB. Pursuant to Section 4 of the standard Conflict of Interest Code, all designated employees of the LIGB shall file annual statements of economic interest with the CPUC.

This Conflict of Interest Code was approved by the Commission in D.97-09-117 and shall become effective on the same date as the LIGB Charter, to which it is attached.

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APPENDIX TO LIGB CONFLICT OF INTEREST CODE

I. DESIGNATED EMPLOYEES

"Designated employee" means all members of the LIGB Board.

II. DISCLOSURE CATEGORIES

Designated employees of the LIGB shall disclose:

A. Any investment or business position in, or income from, any of the following:

1. An electric utility corporation, gas utility corporation, or energy service company ("ESCO");
2. A parent or subsidiary of an entity described in subsection (A)(1);
or
3. An entity which regularly supplies energy to an entity described in subsection (A)(1).

B. Any investment or business position in, or income from, any of the following:

1. An entity seeking to provide any product or service related to the Board's function or that has or plans to come before the Board or its Program Administrator seeking funds that this Board administers or oversees; or
2. A parent or subsidiary of an entity described in subsection (B)(1).

(END OF ATTACHMENT 3)

ATTACHMENT 4¹

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CALIFORNIA BOARD FOR ENERGY EFFICIENCY
TRUST FUND AGREEMENT

The CALIFORNIA PUBLIC UTILITIES COMMISSION ("CPUC"), in exercising its governmental authority, has designated the California Board for Energy Efficiency to carry out administrative functions necessary is hereby entering into this TRUST AGREEMENT for the purpose of delegating authority to receive, distribute and invest CALIFORNIA BOARD FOR ENERGY EFFICIENCY FUND monies to a third party. NOW THEREFORE, this CALIFORNIA BOARD FOR ENERGY EFFICIENCY TRUST FUND AGREEMENT is entered into by and between the CPUC by the California Board for Energy Efficiency as Trustor and _____ as Trustee.

ARTICLE ONE
INTRODUCTION

1.1 Control of Funds. This agreement is for administrative convenience only; the CPUC controls the funds governed by this agreement.

1.2 Purpose of Agreement. The Legislature of the State of California has, in Sections 381-383 of the Public Utilities Code (the "Legislation"), mandated that the CPUC develop and implement a suitable program to promote the goal of energy efficiency (the "Energy Efficiency Programs"). By Decisions 97-02-014 and 97-04-044, the CPUC created the California Board for Energy Efficiency (the "Board") to implement the Energy Efficiency Programs. By Decision 97-04-044, the CPUC directed the Board to take all steps necessary to establish bank accounts or trusts to receive and disburse funds for Energy Efficiency Programs (the "Fund"). The funding for the Fund will be by means of an end user surcharge for energy efficiency services. The Board hereby enters into this Trust Agreement to fulfill its duties under CPUC Decisions 97-02-014 and 97-04-044, and as clarified by Decision 97-09-117.

1.3 Composition of the Board. The Board is composed of nine (9) members, who have been appointed and may be removed at any time by the CPUC. The current Board consists of the following members: David Gamson, Charles Goldman, Ortensia Lopez, Michael Messenger, Peter Miller, Sara Steck Myers, Don Schultz, Michael Shames and Mark Thayer. Notice of any change in Board membership will be provided in writing

¹ Additions made to the October 14, 1997 filing of the California Board for Energy Efficiency are indicated by double underline. Deletions are indicated in strike-outs.

ATTACHMENT 4

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to the Trustee. The Trustee shall be subject to the control and direction of the Board, but if any disagreement arises between the CPUC and the Board concerning the Trust, the Trustee shall act in accordance with the CPUC's written direction.

1.4 Beneficiaries. The Trust is ultimately for the benefit of residents of the State of California (the "Beneficiaries"). Such benefit shall be accomplished by means of the funding of Energy Efficiency Programs, which will increase energy efficiency through market transformation.

1.5 Effective Date. This agreement shall be effective immediately upon execution by all parties.

ARTICLE TWO
ESTABLISHMENT OF TRUST

2.1 Trust Assets. At the direction of the CPUC, the Board hereby establishes a trust for: ~~The CPUC has established the Fund as a fund for:~~ (a) the receipt of any and all monies which are provided by California utilities as a result of surcharges imposed authorized by the Legislation and collected and remitted to the Fund by such utilities; (b) the receipt of any other money or property remitted to the Fund as ordered by the CPUC; and (c) the receipt of any income earned attributable to the Fund. Such receipts of principal and income earned on the Fund shall comprise the assets of the Trust. The Trustee shall hold, administer and distribute the Trust assets as provided in this Trust Agreement.

2.2 Acceptance of Trust. The Trustee hereby accepts the Trust subject to all of the terms and conditions of this Trust Agreement.

2.3 Remittances to the Trust. Remittances to the Trust shall be made to the Trustee by utilities at such times and in such amounts as the CPUC shall from time to time determine. The Trustee shall be responsible only for sums actually received by it as Trustee under this Trust Agreement and shall not have any duty or right to dispute any amount it pays pursuant to this Trust Agreement or to collect any sums from utilities for the Fund.

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ARTICLE THREE
DISTRIBUTIONS

3.1 Purpose of Distributions. At the written direction of the Board and subject to Section 3.3 herein, the Trustee shall make distributions from the Trust for the following purposes:

- (a) Payments as authorized by the CPUC, or the Board as authorized by the CPUC, Board with respect to the Energy Efficiency Programs.
- (b) Payment of reasonable administrative costs incurred by or on behalf of the Board in the performance of its duties.
- (c) Reimbursement or direct payment of reasonable expenses incurred by the Board or any other party as ordered by the CPUC for administration of the Fund.

3.2 Time of Distributions. Distributions from the Trust shall be made not more often than once per month unless the Board or the CPUC specifically directs otherwise.

After CPUC approval of the Board's budget, Reimbursement from the Trust to Board members and to consultants and support services providers under contract with the Board shall be made on a monthly basis.

3.3 Non-liability of Trustee. The Trustee shall incur no liability for the acts, omissions, or defaults of any of its agents (other than its officers or employees) or depository selected with reasonable care. The Trustee shall incur no liability for any distribution it makes according to the written directions of the Board or CPUC, nor for action upon any written direction or document it believes in good faith to be genuine. The Trustee shall not be responsible for the adequacy of the Trust assets to discharge any and all of its obligations. Any payment by the Trustee may be made by mailing its check to the address furnished by the Board, or by electronically transferring funds to the payee.

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ARTICLE FOUR
AMENDMENT, REVOCATION AND TERMINATION;
DISTRIBUTION UPON TERMINATION

4.1 This Trust Agreement may be terminated, revoked or amended at any time pursuant to the CPUC's written direction.

4.2 Upon any revocation or termination of the Trust pursuant to the CPUC's written direction, the Trust assets shall be distributed by the Trustee as and when directed by the CPUC or by the Board in accordance with the CPUC's direction. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement as are necessary and expedient for the orderly liquidation and distribution of the Trust assets.

ARTICLE FIVE
POWERS AND DUTIES OF THE BOARD

5.1 Administrative Powers and Duties of the Board. The Board shall address and resolve any questions regarding receipt or collection of remittances by the Fund or payment of amounts by the Fund. In administering the Fund, the Board shall act exclusively in accordance with its Bylaws and for the benefit of the Beneficiaries. For example, Board actions shall be taken by majority vote and shall be recorded in minutes, copies of which shall be provided to the CPUC and to the Trustee upon their request. In performing their duties under this Trust Agreement, the members of the Board shall at all times be subject to the CPUC's direction, control, and approval. The CPUC shall have the power to decide conclusively any question involving the Trust.

ARTICLE SIX
PROVISIONS REGARDING TRUSTEE

6.1 The CPUC shall approve the Trustee appointed by the Board. The Trustee shall hold all assets of the Trust and receive all income of the Trust as directed by the Board. The Trustee shall maintain or cause to be maintained the records of Trust activity. After the end of each month and each fiscal year of the Trust (as established by the Board), the Trustee shall prepare reports as provided in Article Nine showing how the Trust funds are invested and the receipts and disbursements of the Trust for the preceding period, and shall furnish copies of such statements to the Board and to the CPUC.

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6.2 Resignation or Removal of Trustee. Subject to Paragraph 6.3, the Trustee may resign at any time upon the giving of sixty (60) days written notice to the Board. The Board may remove the Trustee at any time upon the giving of sixty (60) days written notice to the Trustee.

6.3 Successor Trustee. Upon the resignation or removal of the Trustee, the Board shall appoint a successor Trustee or Trustees, subject to CPUC approval. The resignation or removal shall become effective upon acceptance of the appointment by a successor Trustee unless otherwise agreed between the Board and the Trustee. Any successor Trustee shall have the same rights, powers, and duties as it would have had as an original Trustee.

6.4 Own Acts and Omissions. All rights, powers, authority, immunity and discretion herein granted or conferred upon the original Trustee shall survive to and may be exercised or applied in the same manner and to the same extent by or for any successor Trustee that may at any time be acting hereunder. Each Trustee shall be responsible only for its own acts or omissions. A successor Trustee shall not be required to audit or investigate the acts or administration of any predecessor unless otherwise directed by the Board or by the CPUC.

6.5 Successor to Corporate Business. Reference herein to the Trustee shall include any corporation or association that may become a successor Trustee or any successor corporation which may succeed to a corporate Trustee's business.

ARTICLE SEVEN
TRUSTEE'S POWERS

7.1 General Powers. Subject to the investment policy described in Section 7.2, in administering the Trust, the Trustee shall have all of the powers and discretion conferred upon Trustees by California law.

7.2 Investment Policy. In accordance with its Bylaws, and subject to approval by the CPUC, the Board, with the possible assistance of an appropriate financial consultant, shall determine from time to time an investment policy and method consistent with the objectives of the Fund, taking into consideration the Fund's short-term and long-term financial needs. The Board shall advise the Trustee of this investment policy and method, which shall be implemented by the Trustee in conformity with the Board's instructions.

7.3 Standard of Care. In carrying out each of its responsibilities under this Trust Agreement, the Trustee shall exercise the care, skill, prudence, and diligence under the

ATTACHMENT 4

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circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use.

7.4 Limitation on Trustee's Power. The Trustee shall be subject to the Board's control and direction, but if any disagreement arises between the CPUC and the Board concerning the Trust, the Trustee shall act in accordance with the CPUC's written direction.

ARTICLE EIGHT
COMPENSATION OF TRUSTEE AND EXPENSES

8.1 Compensation of Trustee. The Trustee and any agents it reasonably employs shall be entitled to reasonable compensation for services under this Trust Agreement and for any extraordinary services at a rate to be agreed upon from time to time between the Trustee and Board.

8.2 Expenses. The Trustee shall be reimbursed for reasonable expenses incurred on behalf of the Trust after written approval by the Board.

8.3 Limitations on Fees and Costs. The amount of fees and costs to be paid to or at the request of the Trustee for services under this Trust Agreement shall be limited to that fixed amount contained in a written agreement between the Trustee and the Board.

8.4 Allocation of Expense to Principal or Income. The Trustee shall charge its compensation and expenses to the Trust's principal or income as agreed upon from time to time between the Trustee and the Board.

ARTICLE NINE
BOOKS, RECORDS AND REPORTS

9.1 Books and Records. The Trustee shall keep accurate books and records reflecting investments, receipts, and disbursements of the Trust. The books and records shall be open to inspection at all reasonable times by the CPUC and the Board or by their designated representatives.

9.2 Daily Reports. The Trustee shall submit daily receipt activity reports to the designated representative of the Board.

9.3 Monthly Reports. Not more than ten (10) business days after the end of each month, the Trustee shall submit to the designated representative of the CPUC and to

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the designated representative of the Board (for distribution to each Board member) reports for such month setting forth the following information:

- (a) Monthly bank statements;
- (b) All disbursements of funds from the Trust;
- (c) Purchases, sales, redemptions, or exchanges of all securities and other financial instruments;
- (d) Receipt of all interest or other income on invested assets;
- (e) Other disbursements;
- (f) Asset list showing market values, cost and approximate annual income of all holdings;
- (g) Such other information as the Board or the CPUC may require from time to time.

9.4 Annual Reports. The Trustee shall provide, within ten (10) days after the close of each fiscal year of the Trust, an annual reconciliation statement summarizing Trust activity. The Board shall arrange for an annual audit of the financial statements and transactions of the Trust and its distributions. The audit shall contain such detail as the CPUC or the Board may request. The Trustee shall assist and cooperate in any reasonable manner to achieve the timely completion of the annual audit. The Board shall provide the CPUC and the Trustee with copies of the audit report.

ARTICLE TEN
MISCELLANEOUS

10.1 Accounting Method.

- (a) The Board shall designate the Trust's fiscal year.
- (b) The accounting for annual reports shall use generally accepted accounting principles.

10.2 Request for Instructions. The Trustee may at any time seek written instructions from the Board or the CPUC on any matter.

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10.3 Indemnification. The Trustee shall indemnify and hold harmless the members of the Board and their successors against all liabilities, demands, claims, actions, losses, taxes, and expenses (including reasonable attorneys' fees) arising out of the Board members' acts or omissions in the administration of the Trust, except in the case of Board members' willful misconduct, gross negligence, fraud, or illegal acts.

10.4 Diversion of Assets Prohibited. Except as may be required by order of the CPUC, the Board is responsible for directing the Trustee in a manner so that no portion of the assets or income of the Trust shall be diverted to purposes other than for the purposes described in Section 3.1, or for reasonable expenses of administering the Trust, and to provide CPUC authorized funds to the Beneficiaries of the Trust.

10.5 Applicable Law. All questions concerning the validity, interpretation, and administration of this Trust Agreement shall be governed by the laws of the State of California, regardless of the domicile of any Trustee.

10.6 Severability Clause. If any provision of this Trust Agreement is invalid, that provision shall be disregarded, and the remainder of this Trust Agreement shall be construed as if the invalid provision had not been included.

10.7 Counterparts. This document may be executed in counterparts.

IN WITNESS WHEREOF, the Trustor and Trustee hereby execute this Agreement on _____, 1997.

TRUSTOR:

CPUC, by the California Board for Energy
Efficiency

David Gamson

Charles Goldman

Ortensia Lopez

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Michael Messenger

Peter Miller

Sara Steck Myers

Don Schultz

Michael Shames

Mark Thayer

TRUSTEE:

By: _____

Its: _____

(END OF ATTACHMENT 4)

ATTACHMENT 5¹

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PROPOSED
[10/16/97]

CALIFORNIA PUBLIC UTILITIES COMMISSION LOW-INCOME
GOVERNING BOARD PROGRAMS TRUST FUND AGREEMENT

The CALIFORNIA PUBLIC UTILITIES COMMISSION ("CPUC"), in exercising its governmental authority, has designated the California Low-Income Governing Board to carry out Administrative Functions necessary is hereby entering into this ~~TRUST AGREEMENT~~ for the purpose of delegating authority to receive, distribute and invest CALIFORNIA PUBLIC UTILITIES COMMISSION LOW-INCOME FUND PROGRAM monies to a third party. NOW THEREFORE, the ~~CALIFORNIA PUBLIC UTILITIES COMMISSION~~ this LOW-INCOME GOVERNING BOARD TRUST FUND AGREEMENT is entered into by and between the LIGB CPUC as Trustor and _____ as Trustee. Pursuant to the direction of the CPUC, the California Low-Income Governing Board ("LIGB") shall act as the administrative agent of the CPUC in overseeing the Trustee.

ARTICLE ONE
INTRODUCTION

1.1 Control of Funds. This agreement is for administrative convenience only; the CPUC controls the funds governed by this instrument.

1.2 Name of Trust. The Trust established by this Agreement shall be referred to as the California Low-Income Program Fund ("Fund").

1.3 Purpose of Agreement. The Legislature of the State of California has, in Sections 381 and 382 of the Public Utilities Code, mandated that the CPUC continue to fund low-income electricity programs, and that such programs must be funded by a nonbypassable end use or distribution charge on the local distribution of electricity, collected on the basis of electricity usage. These low-income programs include, but are

¹ Additions made to the October 16, 1997 filing of the Low-Income Governing Board are indicated by double underline. Deletions are indicated by strike-outs.

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not limited to, the California Alternate Rates for Energy Program established under Public Utilities Code § 739.1 and Low-Income Energy Efficiency Program established under Public Utilities Code § 2790. The surcharge funds must be identified by electric distribution corporations as a separate rate component, within levels approved by the CPUC pursuant to Sections 368, 381, and 382 of the Public Utilities Code. By Decisions D.97-09-117, D.97-04-044, and D.97-02-014, the Commission has established the Low-Income Governing Board ("LIGB") to oversee the administration of these low-income funds and programs. The LIGB-CPUC hereby enters into this Trust Agreement to fulfill its duties under California Public Utilities Code Sections 368, 381, and 382 and Decisions D.97-09-117, D.97-04-044, and D.97-02-014 regarding the funding and implementation of low-income energy programs.

1.4 Administrative Powers and Duties of the LIGB. The LIGB shall address and resolve any questions regarding receipt or collection of remittances by the Fund or payment of amounts by the Fund. In administering the Fund, the Board shall act exclusively in accordance with its Bylaws and Charter and for the benefit of the Beneficiaries. For example, Board actions shall be taken by majority vote and shall be recorded in minutes, copies of which shall be provided to the CPUC and to the Trustee upon their request. In performing their duties under this agreement, the members of the Board shall at all times be subject to the CPUC's direction, control and approval. The CPUC shall have the power to decide conclusively any question involving the Trust. ~~CPUC Authority and Delegation. The Trustee shall be subject to the direction and control of the CPUC, and the CPUC shall have the authority to decide conclusively any matter involving the Trust. The CPUC may delegate to the LIGB all or a portion of the CPUC's authority over the Trustee, and the LIGB shall act pursuant to such delegation of authority exclusively in accordance with its Charter and for the benefit of the Beneficiaries. In performing their duties under this Trust Agreement, the members of the LIGB shall at all times be subject to the direction, control, and approval of the CPUC. The Trustee may rely on any written direction from the LIGB without confirmation from the CPUC, unless the Trustee has actual knowledge that the LIGB is acting beyond the scope of its authority. "CPUC" as used in this Agreement includes the LIGB if the CPUC has delegated the authority in question.~~

1.5 Beneficiaries. The Trust is for the benefit of low-income energy customers as designated by the CPUC for the purpose of enabling low-income California households and nonprofit group living facilities to manage and afford basic utility energy services in a restructured electric services industry.

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1.6 Effective Date. This agreement shall be effective immediately upon execution by both parties.

1.7 Composition of the LIGB. The LIGB is composed of nine (9) members, who have been appointed and may be removed at any time by the CPUC. The current Board consists of the following members: Diana Brooks, Geoffrey Meloche, Susan Brown, Maggie Cuadros, Henry Knowls, Nancy Brockway, Katherine McKenney, Robert Haro, and Karen Lindh. Notice of any change in Board membership will be provided in writing to the Trustee. The Trustee shall be subject to the direction and control of the Board, but if any disagreement arises between the CPUC and the Board concerning the Trust, the Trustee shall act in accordance with the CPUC's written direction.

ARTICLE TWO
ESTABLISHMENT OF TRUST

2.1 Trust Assets. At the direction of the CPUC, the LIGB hereby establishes a Trust ~~has established the Fund as a fund~~ for the receipt of any and all monies which are from time to time charged by California electric utilities ~~distribution corporations~~ as a result of low-income surcharges set by the CPUC pursuant to Section 382 of the Public Utilities Code, and collected and remitted to the Fund by such providers, for the receipt of any other money or property remitted to this Fund as ordered by the CPUC, and for the receipt of any income earned attributable thereto. Such receipts of principal and income earned thereon shall comprise the assets of the Trust. The Trustee shall hold, administer and distribute the Trust assets as provided in this Trust Agreement.

2.2 Acceptance of Trust. The Trustee hereby accepts the Trust subject to all of the terms and conditions of this Trust Agreement.

2.3 Remittances to the Trust. Remittances to the Trust shall be made to the Trustee by electric utilities at such times and in such amounts as the CPUC shall from time to time ~~determine~~ determine ~~distribution corporations at the direction of the Trustor.~~ The Trustee shall be responsible only for sums actually received by it as Trustee under this Trust Agreement and shall not have any duty or right to dispute any amount to be paid by it pursuant to this Trust Agreement or to collect any sums from electric utilities ~~distribution corporations~~.

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ARTICLE THREE
DISTRIBUTIONS

3.1 Purpose of Distributions. At the written direction of the LIGB~~CPUC~~ and subject to Section 3.3 herein, the Trustee shall make distributions from the Trust for the following purposes:

- (a) Payments as authorized by the CPUC or the LIGB as authorized by the CPUC to Beneficiaries and those providing services to the Beneficiaries ~~as authorized by the CPUC~~ for the purposes of this Trust.
- (b) Payment of reasonable administrative costs incurred by or on behalf of the LIGB in the performance of duties delegated to it.
- (c) Reimbursement or direct payment of reasonable expenses incurred by the LIGB or any other party as ordered by the CPUC for administration of the Fund.

3.2 Time of Distributions. Distributions from the Trust shall be made not more often than once per month unless the LIGB or the CPUC specifically directs otherwise. After CPUC approval of the LIGB's budget ~~Reimbursement from the Trust to LIGB members and to consultants and support service providers under contract with the LIGB from the Trust~~ shall be made on a monthly basis.

3.3 Non-liability of Trustee. The Trustee shall incur no liability for the acts, omissions, or defaults of any of its agents (other than its officers or employees) or depository selected with reasonable care in accordance with the standard of care set forth in Section 6.3 herein. The Trustee shall incur no liability for any distribution it makes according to the written directions of the CPUC, nor for action upon any written direction or document it believes in good faith to be genuine. The Trustee shall not be responsible for the adequacy of the Trust assets to discharge any and all of its obligations. Any payment by the Trustee may be made by mailing its check to the address furnished by the CPUC or by electronically transferring funds to the payee.

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ARTICLE FOUR
DISTRIBUTION UPON TERMINATION

~~4.1 Dedication Clause.~~ The property of this Trust is irrevocably dedicated to social welfare purposes, and no part of the net income or assets of this Trust shall ever inure to the benefit of any Trustee, director, officer or member thereof or to the benefit of any private person. Upon the termination of this Trust, its assets remaining after payment, or provision for payment, of all debts and liabilities of this Trust shall be distributed to the CPUC or, at the direction of the CPUC, to a tax-exempt fund, foundation or corporation which operates for purposes consistent with the purposes of this Trust and which has established its tax-exempt status under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

4.12 Final Distribution. Upon any revocation or termination pursuant to a written direction of the CPUC, the assets of the Trust shall be distributed by the Trustee as and when directed by the CPUC or by the LIGB in accordance with the CPUC's direction. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

ARTICLE FIVE
PROVISIONS REGARDING TRUSTEE

5.1 Maintenance of Trust. The Trustee shall hold all assets of the Trust and receive all income of the Trust as directed by the LIGB ~~CPUC~~. The Trustee shall maintain or cause to be maintained the records of Trust activity. After the end of each month and each fiscal year of the Trust, the Trustee shall prepare reports as provided in Article Eight showing how the property of the Trust is invested and the receipts and disbursements of the Trust for the preceding period and shall furnish copies of such statements to the LIGB and the CPUC.

5.2 Resignation or Removal of Trustee. Subject to Paragraph 5.3, the Trustee may resign at any time upon the giving of sixty (60) days written notice to the LIGB ~~CPUC~~. The LIGB ~~CPUC~~ may remove the Trustee at any time upon the giving of sixty (60) days written notice to the Trustee.

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5.3 Successor Trustee. Upon the resignation or removal of the Trustee, the LIGBPUC shall appoint a successor Trustee or Trustees, subject to CPUC approval. The resignation or removal shall become effective upon acceptance of the appointment by a successor Trustee unless otherwise agreed between the LIGBPUC and the Trustee. Any successor Trustee shall have the same rights, powers, and duties as it would have had as an original Trustee.

5.4 Own Acts and Omissions. All rights, powers, authority, immunity and discretion herein granted or conferred upon the original Trustee shall survive to and may be exercised or applied in the same manner and to the same extent by or for any successor Trustee that may at any time be acting hereunder. Each Trustee shall be responsible only for its own acts or omissions. A successor Trustee shall not be required to audit or investigate the acts or administration of any predecessor unless otherwise directed by the LIGB or by the CPUC.

5.5 Successor to Corporate Business. Reference herein to the Trustee shall include any corporation or association that may become a successor Trustee or any successor corporation which may succeed to a corporate Trustee's business.

ARTICLE SIX
TRUSTEE'S POWERS

~~6.1 Administrative Provisions. With respect to the trust created hereunder, the Trustee shall have the following powers and duties, subject to any conditions, or limitations stated elsewhere in this Agreement, including Section 4.4, all of which shall be exercised in a fiduciary capacity and manner:~~

~~(a) General Powers:~~

~~(i) To receive, handle, manage and control any and all property, real or personal, comprising the Trust;~~

~~(ii) To collect and receive any and all rents, issues and profits of real property and interest and dividends and other benefits and returns from personal property;~~

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(iii) ~~To grant options on, sell (for cash or deferred payment with or without security), partition, divide, subdivide, exchange, improve, repair and lease for any purpose, including exploration for and removal of gas, oil and other minerals (including community oil leases, pooling and utilization agreements) for a term within or extending beyond the duration of any trust and upon such terms as meet the Trustee's judgment, any property of the Trust, and to create any restrictions, easements or other servitude on such property;~~

(iv) ~~To carry insurance of such kinds and in such amounts as the Trustee may deem advisable, at the expense of the Trust both to protect against damage or loss and to protect the Trustee against liability with respect to third parties;~~

(v) ~~With respect to any securities held in Trust, to have all the rights, powers and privileges of an owner, including, but not limited to, the power to vote, give proxies, consent to the reorganization, consolidation, merger or dissolution of any corporation; to subject any of said securities to, to include the same in, any voting trust or pooling agreement in effect or then or thereafter effected of the security or securities in question, whatsoever the life thereof, and to exercise and participate in all privileges, powers, rights and benefits conferred by the voting trust or pooling agreement upon the shareholders subscribing thereto; to exchange securities belonging to the Trust for securities issued in connection therewith, and to exercise or sell any rights issued in connection with any of said securities and to hold said securities in the Trustee's own name or in the name of a nominee or in an unregistered form such that ownership will pass by delivery;~~

(vi) ~~Subject to the provisions of Section 6.2 to invest and reinvest any funds coming into the Trustee's possession in any kind of property, whether real, personal or mixed, and in every kind of investment, whether or not such property or investment is unproductive, underproductive, overproductive or wasting in nature, as a prudent investor, considering the purposes, terms, distribution requirements and other circumstances of this Agreement or any trust created hereunder and exercising reasonable care, skill and caution, would select;~~

(vii) ~~To continue the operation of any business entity, in any business form, with all or any part of the Trust, and to reorganize or liquidate any such entity at any such time;~~

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(viii) ~~To discharge all taxes, insurance premiums, operating expenses, overhead and other charges imposed upon or incurred in connection with the Trust and properly incident to its care, preservation and management, and all other reasonable and necessary costs and charges incident to the administration thereof, including but not limited to, the employment of any custodian, attorney, accountant, or any other agent or other fiduciary to assist and advise the Trustee in the administration of the Trust, and to rely on such advice, and to pay reasonable compensation for all such services out of income or principal or partially out of income and partially out of principal without decreasing any compensation to which the Trustee is otherwise entitled; and~~

~~(b) Limitation on Powers. Except as specifically authorized in writing by CPUC, the Trustee shall not be authorized to do the following:~~

~~(i) To borrow money from any lender (including any corporate Trustee) for any purpose and as security therefor or otherwise to encumber in any manner, including by mortgage or deed of trust, pledge and/or hypothecation, any of the properties, real or personal, constituting the Trust or in which any such trust has an interest; and when any of said properties consist of an undivided interest in real or personal property, or any interest therein less than the entire ownership, to join with the owner or owners of the other interests therein in the performance of any of the aforesaid acts; and~~

~~(iii) (iii) To compromise, submit to arbitration, abandon or otherwise adjust any claims against or in favor of the Trust, and to commence or defend such litigation with respect thereto or the property thereof as the Trustee may deem advisable at the expense thereof;~~

~~(iv)~~

6.12 Investment Policy. In accordance with its Bylaws, and subject to approval by the CPUC, the LIGB with the possible assistance of an appropriate financial consultant, shall determine from time to time an investment policy and method consistent with the objectives of the Fund, taking into consideration the Fund's short-term and long-term financial needs. The LIGB shall advise the Trustee of this investment policy and method, which shall be implemented by the Trustee in conformity with LIGB's instructions. The CPUC shall direct the Trustee as to its investment policy for the Fund, taking into consideration the Fund's short-term and long-term financial needs, which policy shall be implemented by the Trustee in conformity with backing procedures that the Trustee shall disclose to the CPUC.

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6.23 Standard of Care. In carrying out each of its responsibilities under this Trust Agreement, the Trustee shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use.

ARTICLE SEVEN
COMPENSATION OF TRUSTEE AND EXPENSES

7.1 Compensation of Trustee. The Trustee and any agents it reasonably employs shall be entitled to reasonable compensation for services under this Trust Agreement and for any extraordinary services at a rate to be agreed upon from time to time between the Trustee and LIGBthe CPUC.

7.2 Expenses. The Trustee shall be reimbursed for reasonable expenses incurred on behalf of the Trust after written approval by the LIGBthe CPUC.

7.3 Limitations on Fees and Costs. The amount of fees and costs to be paid to or at the request of the Trustee for services under this Trust Agreement shall be limited to that fixed amount contained in a letter agreement between the Trustee and the LIGBthe CPUC.

7.4 Allocation of Expense to Principal or Income. The Trustee shall charge its compensation and expenses to the Trust's principal or income as agreed upon from time to time between the Trustee and the LIGBthe CPUC.

ARTICLE EIGHT
BOOKS, RECORDS AND REPORTS

8.1 Books and Records. The Trustee shall keep accurate books and records reflecting investments, receipts, and disbursements of the Trust. The books and records shall be open to inspection at all reasonable times by the CPUC and the LIGB or its designated representatives.

8.2 Daily Reports. The Trustee shall submit receipt activity reports to the LIGBthe CPUC's designee on a daily basis or as otherwise directed by the CPUC.

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8.3 Monthly Reports. Not more than ten (10) business days after the end of each month, the Trustee shall submit to the designated representative of the CPUC and to the designated representative of the LIGB reports for such month setting forth the following information:

- (a) Monthly bank statements;
- (b) Disbursements of funds to each Beneficiary or energy service provider;
- (c) Purchases, sales, redemptions, or exchanges of all securities;
- (d) Receipt of all interest or other income on invested assets;
- (e) Other disbursements;
- (f) Asset list showing market values, cost and approximate annual income of all holdings;
- (g) Such other information as the LIGB or the CPUC may require from time to time.

8.4 Annual Reports. The Trustee shall provide, within ten (10) days after the close of each fiscal year, an annual reconciliation statement summarizing Trust activity. The Trustee shall assist and cooperate in any reasonable manner to achieve the timely completion of the annual audit, performed by the CPUC Energy Division. The CPUC shall provide the Trustee with copies of the audit report. Trustee shall account only to the CPUC or the CPUC's representatives or designees, and the approval of such accounting by such person or persons shall be final and conclusive on all beneficiaries and contingent beneficiaries under the Trust created hereunder. The LIGB shall arrange for an annual audit of the financial statements and transactions of the Trust and its distributions. The audit shall contain such detail as the CPUC or LIGB may request. The Trustee shall assist and cooperate in any reasonable manner to achieve the timely completion of the annual audit. The LIGB shall provide the CPUC and the Trustee with copies of the audit report.

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ARTICLE NINE
AMENDMENT, REVOCATION AND TERMINATION

9.1 This Trust Agreement may be terminated, revoked or amended at any time pursuant to a written direction of the CPUC.

ARTICLE TEN
MISCELLANEOUS

10.1 Accounting Method.

- (a) The Trust's fiscal year shall be designated by the LIGB CPUC.
- (b) The accounting for annual reports shall use generally accepted accounting principles.

10.2 Request for Instructions. The Trustee may at any time seek written instructions from the LIGB or the CPUC on any matter.

10.3 Applicable Law. All questions concerning the validity, interpretation, and administration of this Trust Agreement shall be governed by the laws of the State of California, regardless of the domicile of any Trustee or Beneficiary.

10.4 Indemnification. The Trust shall indemnify and hold harmless the members of the CPUC and LIGB and their successors, against all liabilities, demands, claims, actions, losses, taxes, and expenses (including reasonable attorneys' fees) arising out of acts or omissions to act with respect to the purposes of the Trust except in the case of willful misconduct, gross negligence, fraud, or illegal acts. For the purposes of this Trust Agreement, any payments to be made under this section shall be considered to be payment of reasonable administrative costs incurred by or on behalf of the LIGB in the performance of duties delegated to it, in accordance with section 3.1(b).

10.5 Severability Clause. If any provision of this Trust Agreement is invalid, that provision shall be disregarded, and the remainder of this Trust Agreement shall be construed as if the invalid provision had not been included.

10.6 Counterparts. This document may be executed in counterparts.

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IN WITNESS WHEREOF, the Trustor and Trustee hereby execute this
Agreement on _____, 1998.

TRUSTOR:

The California Public Utilities
Commission

By: Wesley M. Franklin
Its: Executive Director

Diana Brooks

Geoffrey McCloche

Susan Brown

Maggie Cuadros

Henry Knawls

Nancy Brockway

Katherine McKenney

Roberto Haro

Karen Lindh

R.94-04-031, I.94-04-032 ALJ/MEG/tcg

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TRUSTEE:

By: _____

Its: _____

By: _____

Its: _____

(END OF ATTACHMENT 5)