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Decision 98-08-035 August 6, 1998

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates.	Rulemaking 97-04-011 (Filed April 9, 1997)
Order Instituting Rulemaking to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates.	Investigation 97-04-012 (Filed April 9, 1997)

OPINION ON CERTAIN PETITIONS FOR MODIFICATION OF DECISION 97-12-088

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I. Summary

This decision grants in part and denies in part several outstanding petitions for modification to our Affiliate Transaction Rules (Rules), which we adopted in Decision (D.) 97-12-088. The specific petitions for modification we address are listed in Section III below. The major changes to our Rules as a result of today's decision include the following:

- We carve a narrow exception to our Rules, which do not currently permit a utility to temporarily assign its employees to affiliates. We will now permit the utility to make temporary or intermittent assignments or rotations of utility employees, except those employees involved in marketing, to its affiliates covered by these Rules, except to the utility's energy marketing affiliates, under specific conditions set forth in today's decision;

- We modify our Rules to provide the utility an opportunity to demonstrate that no fee, or a lesser percentage than 15%, is appropriate for rank-and-file (non-executive) employees whose positions are impacted as a result of electric industry restructuring, under the specific conditions set forth in today's decision;

- We clarify existing Rules regarding corporate oversight and governance;

- We modify our Rule addressing utility products and services; and

- We modify our Rules addressing the timing of the compliance audit and regarding service provider information.

Appendix A contains a copy of the Rules, as modified by this decision, with the modifications clearly delineated. Appendix B contains a copy of the Rules as modified by this decision.

II. The Affiliate Transaction Rules

In D.97-12-088, we adopted rules governing the relationship between California's energy utilities and certain of their affiliates. Our adopted Rules are comprehensive, and address nondiscrimination, disclosure and information, and separation standards. They also address to what extent a utility should be required to have its nonregulated or potentially competitive activities conducted by its affiliate.

III. The Petitions

Since the Commission issued D.97-12-088, many parties have filed petitions for modification of this decision. This decision addresses the following Petitions for Modification:

- San Diego Gas & Electric Company's (SDG&E) January 15, 1998, petition seeking modification of Affiliate Transaction Rule V.G regarding the temporary use of utility employees by affiliates;

- Southern California Gas Company's (SoCalGas) January 15, 1998, petition seeking modification of Rule V.G regarding the temporary use of utility employees by affiliates;

- Southern California Edison Company's (Edison) January 30, 1998, petition seeking modification of many of the Rules on various issues discussed below;

- Edison and SoCalGas' January 30, 1998, petition seeking modification of Rule VII regarding utility products and services; and

- SoCalGas and SDG&E's March 16, 1998, petition seeking various modifications of Rule VI.C regarding the affiliate audit, and Rule IV.C regarding service provider information.

We recognize that there are also outstanding applications for rehearing, as well as various new applications, motions, complaints, and compliance filings

arising from our adopted Rules. This decision does not address or prejudge these filings. Nor does this decision address two other outstanding petitions for modification filed on February 4, 1998, by Western Gas Resources, Inc. and on June 30, 1998, by SDG&E and SoCalGas. Western Gas Resources, Inc.'s petition is tied to a related application for rehearing, and we anticipate addressing the issues raised by both the petition and application shortly. Because SDG&E and SoCalGas served their petition for modification addressing the application of the Rules' disclaimer requirement on June 30, 1998, the matter is not yet ripe for decision.

IV. SDG&E's and SoCalGas' January 15, 1998 Petitions/Edison's January 30, 1998 Petition

SDG&E's and SoCalGas' January 15 petitions address the same issue, namely, whether the portion of Rule V.G addressing the temporary use of utility employees by affiliates should be modified.[1] Edison's petition addresses a similar issue, although it recommends a different modification. Therefore, we address the issues raised by all three utilities below. In this section, we also address the remaining issues raised by Edison's January 30 petition.

The SDG&E and SoCalGas petitions were opposed by the Office of Ratepayer Advocates (ORA); the City of San Diego; and jointly by Enron Capital and Trade Resources (Enron), Southern California Utility Power Pool and Imperial Irrigation District (SCUPP and IID), The Utility Reform Network (TURN), and Utility Consumers Action Network (UCAN) (Joint Opposition).

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[1] By letter dated July 17, 1998, SoCalGas requests permission to withdraw eight pages of what SoCalGas has stamped as "Privileged and Confidential" information attached to Appendix A of its Petition from the record. This request is granted.

SoCalGas and SDG&E filed a response to Edison's petition, which response concurs with Edison's request, except on the issue of joint marketing, where SoCalGas and SDG&E do not take a position. Edison's petition was opposed by the California Association of Plumbing, Heating, Cooling Contractors (CAPHCC), City of San Diego, Enron, ORA, TURN, UtiliSys Corp., and UCAN, who all filed a joint opposition (Joint Opposition).

Temporary Use of Employees

As indicated above, SDG&E, SoCalGas, and Edison all raise this issue in some form in their petitions for modification. SDG&E and SoCalGas seek "clarification" on whether the Commission should permit utility employees who are not providing shared corporate support services to be used by affiliates on out-of-state or out-of-country projects that involve no marketing of products or services in California. SDG&E does not propose specific changes to our Rules in its petition. However, SoCalGas recommends the Commission add the following language to the end of Rule V.G.1: "Nothing in these Rules prohibits the temporary use of utility employees by affiliates of the utility on projects entirely outside California."

Petitioners argue that this proposal raises no market power concerns because the utility's business is not pursued outside of its service territory. They further argue that any cross-subsidization concerns are addressed by Rule V.H governing transfer pricing, which is pricing at fully loaded cost plus 5% of direct labor costs. Petitioners emphasize that this results in revenue to the utility, and, in turn, a benefit to the ratepayers. For example, in 1997, utility employees

working on out-of-state projects generated over $1.5 million of revenue for SoCalGas.[2]

Petitioners emphasize that concerns regarding inappropriate transfer of information do not apply when the utility employee is working for an affiliate on an out-of-state project, since a utility does not have a monopoly position outside of California. Petitioners also state that this proposed modification will result in a more diverse scope of employment for utility employees, which will enable the utility to continue to attract high-quality-employees. Petitioners do not believe the utility is overstaffed, but is staffed to meet normal and peak demand periods, and there are inevitably periods when part of the utility workforce is not utilized.

Petitioners state that this proposed modification will also help affiliates compete outside the state nationally and internationally, and that the current rule disadvantages them in this regard. Petitioners state that they will adopt procedures consistent with current practice to ensure that an employee's duties to the utility always have priority.

Edison's petition also addresses the temporary use of employees, but Edison proposes a different modification. Edison proposes to modify Rule V.G.2, which does not permit a utility to make temporary or intermittent assignments or rotation to affiliates governed by these Rules, so that the prohibition against temporary assignments extends only to energy marketing affiliates. Edison believes that this modification will provide direct and indirect ratepayer benefits,

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[2] SoCalGas also states that the Commission established its rates in its performance-based rate (PBR) application on the forecast that SoCalGas would generate $0.833 million in revenue from work performed on projects outside California, and it would be unfair to now deny SoCalGas an opportunity to generate this revenue.

with no negative impact on fair competition. Edison argues that the proposed modification will benefit ratepayers, since over the last five years, Edison ratepayers have received about $11 million in reimbursement for affiliate use of utility employees. Edison proposes that revenues accruing from such use during the rate freeze flow directly back to ratepayers through the Streamlining Residual Memorandum Account, so that ratepayers can receive benefits that would not accrue without the requested modification.

Edison also believes that its proposal will lead to enhanced productivity of a more highly motivated and skilled workforce. Edison does not believe this modification will cause the utility to retain unneeded labor to support affiliates, because under PBR, Edison has the incentive to increase productivity by 1.6% per year. In its reply, Edison also states that it would be amenable to a rule that did not permit affiliates to temporarily employ any utility employee involved in marketing.

These petitions were opposed by parties sponsoring the Joint Oppositions discussed above, as well as by ORA and the City of San Diego. The parties in opposition argue that the utility should be staffed at levels designed to meet its needs, not the needs of its affiliates. For example, ORA states that SoCalGas' filing indicates that some employees may have on average two months to devote to affiliate projects, which, according to ORA, is too much time. The parties believe that these proposals could compromise service quality. Moreover, they state that the utility is not adequately compensated for these employees, and the compensation also does not reflect the risk of additional ratepayer harm posed by the affiliate's temporary use of utility employees.

These parties also argue that there is no indication that the amounts of money the utility receives as compensation for these employees will go to ratepayers, as opposed to shareholders, under PBR. They also stress that the

proposals may be anticompetitive in that they create the potential to distort the electric and gas markets within California. In addition, these parties also raise concerns that the proposed modifications will make it more difficult to enforce the Rules.

The current Rules do not permit a utility to temporarily assign its employees to affiliates. We believe in general that our Rules, as a package and as modified by this decision, strike an appropriate balance to achieve our goals articulated in this rulemaking. Nevertheless, we are concerned that Rule V.G.2.e, as it currently stands, may disadvantage utilities and their affiliates in other competitive markets, especially internationally. Therefore, we create a narrow exception to this Rule, and grant the Edison, SDG&E, and SoCalGas petitions on this issue on the following terms.

We will permit the utility to make temporary or intermittent assignments or rotations of utility employees, except those employees involved in marketing, to certain of the utility's affiliates, on the following conditions and as specifically delineated in Appendix A. Temporary assignment of certain utility employees can be made to the utility's affiliates except its energy marketing affiliates. Energy marketing affiliates include but are not limited to Energy Service Providers. We define temporary as less than 30% of an employee's chargeable time in any calendar year. This is consistent with Edison's recommendation in its comments to the draft decision issued this past November in this proceeding. Also, in order to address the concerns that a utility's quality of service might be compromised by the modification, we direct that no more than 5% of full time equivalent utility employees may be on loan at a given time, and that utility needs for utility employees always take priority over any affiliate requests. In order to guard against the possibility of inappropriate information transfer, we require that utility employees agree in

writing to abide by the Rules before affiliates use their services on a temporary basis. Any breach will be taken as a serious event.

We view this modification as a narrow exception, the effects of which are, in part, mitigated because the utility employees will still be subject to the Rules, and because of the limitation between which employees and which affiliates the transfer may take place. We also adopt a provision recommended by Edison in its comments to the November draft decision that affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

When we adopted the Rules' provision on transfer pricing (Rule V.H), we did so with the understanding that the utility should not make temporary or intermittent assignment or rotations of its employees. We do not believe that the pricing guidelines set forth in Rule V.H would adequately compensate the utility for the temporary employee use authorized by this decision, nor would they adequately reflect the risk of additional ratepayer harm posed by the narrow exception we adopt today. For example, the utilities state that they would have to search for, hire, and utilize consultants if we did not grant this modification. We also agree with ORA that utility employees, with their skills, training, familiarity, and loyalty, are more desirable for the affiliates' projects than outside consultants. We also wish to ensure that the staffing needs of the utility come first.

Therefore, for non-executive employees, we believe it is reasonable to require a minimum compensation of the greater of twice the percentage set forth in Rule V.H (fully loaded cost plus 10% of direct labor cost), or fair market value. For executive employees, we require compensation of the greater of three times the percentage set forth in Rule V.H (fully loaded cost plus 15%), or fair market value. Only with this increase in transfer pricing for this limited situation

do we believe the proper balance between all competing interests is struck. Consistent with this discussion, we therefore modify Rule V.G.2.e and Rule V.H, as set forth in Appendix A.

We also adopt Edison's proposal that revenues accruing from the use of employees authorized by Rule V.G.2.e during the rate freeze should flow back to ratepayers as a credit to the Streamlining Residual Memorandum Account.

Use of Joint Call Centers

Edison requests a modification of Rule V.F.4.a, which states in part, "A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers." Edison states that the Rule's reference to joint call centers is unclear. Edison uses its utility phone center facilities and employees to make solicitations for affiliate products and services not related to the competitive energy marketplace. Edison believes that, if Rule V.F.4.a is interpreted to prevent this activity, the Rule is inconsistent with Rule V.F.3, which permits the utility to provide its affiliates access to the utility billing envelope or other form of utility customer written communication, if it provides access to all other unaffiliated service providers on the same terms and conditions. Edison requests that the rule addressing its call center be treated in the same way as the billing envelope, i.e., to permit the affiliates to use the call centers if the utility provides access to all other unaffiliated service providers on the same terms and conditions. Although it is not part of its preferred recommendation, Edison would agree to a limitation on the use of the call centers by its energy-marketing affiliates.

The Joint Opposition opposes this recommendation. It states that the call center is different from the billing envelope in that the call center is the

primary point of contact between the utility and the customer for all service needs other than routine billing. It believes that the utility should have no incentive to compromise call center service in order to provide access to affiliates or anyone else. The Joint Opposition argues that the utility already has the incentive not to compromise the integrity of the billing envelope since the utility has a strong incentive to get the bill to customers. The Joint Opposition also believes that permitting call center sharing blurs the separation between the utility and the affiliate, and increases the opportunity for the violation of other rules, such as improper sharing of information and other assets.

We deny Edison's requested modification as vague. It is unclear exactly how Edison envisions this call center activity would operate; how such operation would promote competition; how such operation would prevent cross-subsidization; and how call center activity would provide access to all competitors on the same terms and conditions. It is equally unclear how the call center activity would not serve as a vehicle for violating these Rules and for disrupting the primary purpose of the call center, which is to provide a point of contact between the utility and customer for service needs (other than monthly billing). This list of concerns is merely illustrative, not inclusive.

However, Edison may apply for an exemption from these Rules and seek authority for a more detailed proposal concerning its call center if it wishes. Because we anticipate a detailed and specific filing, such request should be in the form of a new application, which should be served on, at a minimum, the service list of this proceeding. Edison's application should clearly indicate it seeks a modification of these Rules, and should also clearly set forth its detailed proposal.

Joint Marketing

Edison requests that we modify Rule V.F.4.b to permit a utility to jointly market with its affiliate to customers outside of the utility's service territory and to utility customers "above the AB 1890 firewall" (i.e., large, sophisticated utility customers). According to Edison's proposed modification of this Rule, a utility would be precluded from participating with its affiliates in "joint activities"[3] involving residential or small commercial customers within the utility's service territory. Edison believes that no legitimate concerns exist to prohibit joint marketing to large, sophisticated utility customers or to customers outside the utility's service territory. Edison believes that this requested modification is consistent with AB 1890, which provides for a number of protective mechanisms for residential and small commercial users and excludes all others from the scope of these protections.

The Joint Opposition objects to this proposed modification, which it believes should be rejected because it is a new proposal raised for the first time in this petition. It also believes that Edison's proposal should be rejected for the reasons set forth in D.97-12-088 adopting our joint marketing rules, because of cross-subsidization concerns, and because of the difficulty of enforcing the proposed rule.

We discussed the reasons for adopting our joint marketing rules at length in D.97-12-088, *slip op.* at pp. 47-52, and do not repeat that discussion in full here. However, we stated that we believed our joint marketing rule strikes an appropriate balance by allowing utilities to respond to customer inquiries

[3] Rule V.F.4.b defines "joint activities" as including, but not limited to, "advertising, sales, marketing, communications and correspondence with any existing or potential customer."

without allowing the utilities to provide preferential treatment to their affiliates, especially in light of our resolution of the joint use of the name and logo. We adopted our joint marketing rules to promote competition and to prevent cross-subsidization. Edison's new proposal does not allay the concerns we articulated in D.97-12-088. We therefore deny Edison's petition with respect to this issue.

We note that under our adopted Rules, Edison's affiliates are permitted to market any product to customers of any size in any location. However, they may not do so jointly with the utility. The adopted Rules further permit the utility and its affiliates to jointly participate in trade shows, conferences, or other marketing events outside of California. (D.97-12-088, *slip op.* at p. 51.) Thus, the adopted Rules do not prevent Edison affiliates from marketing their products and services.

Corporate Oversight

Edison requests that the Commission clarify the rules addressing joint corporate officers, and particularly requests that the Commission clarify that the Chief Executive Officer (CEO) and Chairman of the Board of the utility are able to serve as a director and Board Chairman of affiliates covered by these Rules.

Edison believes this change is appropriate in light of the interplay of both Rule V.G.1 and Rule V.E. Rule V.G.1 states, for a utility such as Edison which is not a multi-state utility, that, except as permitted in Rule V.E addressing corporate support, a utility and its affiliate shall not jointly employ the same employees. This Rule also applies to Board Directors and corporate officers, except when the Rules are applicable to holding companies. In that instance, a board member or corporate officer may serve on the holding company and with either the utility or affiliate but not both.

Rule V.E begins with the language that, "as a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems, and personnel."

Edison argues that the above two Rules clearly contemplate and allow that certain individuals fulfilling functions that are critical to corporate governance and oversight may serve as both officers of the utility and directors of the nonutility affiliates. Edison explains that, in making governance structure changes to comply with the Rules, the utility and affiliates have limited the officers and directors who serve both the utility and the affiliates covered by these Rules to those categories which are clearly within the scope of permitted shared activities described in Rule V: financial reporting, planning and analysis, legal and corporate secretary functions. For example, Edison explains that the Executive Vice-President and Chief Financial Officer of the holding company and utility will also serve as a director of the affiliates in order to provide the financial oversight necessary to the fulfillment of fiduciary responsibilities. Edison applies the same logic to the Executive Vice-President and General Counsel.

Edison also believes that it is appropriate under the overall intent of the Rules for the CEO and Chairman of the Board of the utility to serve as a director and Board Chairman of all affiliates covered by these Rules. Edison explains that the Chairman of the Board and CEO of Edison International (EIX) has the highest level of governance and oversight responsibility for all EIX subsidiaries. However, Edison explains that until it receives Commission confirmation on this issue, it has not implemented this proposal in its compliance plan.

The Joint Opposition states that there is no ambiguity in the Rule regarding corporate oversight. Rule V.G.1 states that the chairman or CEO may

serve on the board of the holding company and either the utility or affiliate, but not both. The Joint Opposition also states that Rule V.E. on shared corporate support does not create any exception to the rule on sharing employees.

We clarify that Rules V.E and V.G.1, when read together, can provide for limited sharing of directors and officers not only as explicitly set forth in Rule V.G.1, but also in their performance of the corporate support functions set forth in Rule V.E, and as set forth in the examples cited above which Edison has provided, namely, the Chief Financial Officer or General Counsel. However, we view Rule V.E as a limited exception which would not encompass Edison's proposal for the CEO and Chairman of the Board of the utility to be able to serve as a director and Board Chairman of affiliates covered by these Rules. We make this determination, in light of the nascent state of competition in the energy marketplace and our competitive concerns. However, we will reconsider this after the industry moves to a more competitive structure, and when we review the Rules as provided for in D.97-12-088, *slip op.* at 87.

We also point out that this Rule addressing the sharing of officers and directors applies only to the sharing of officers and directors between the utility and affiliates that are covered by our Rules. Nothing in our Rules precludes the holding company and all affiliates from sharing the same officers and directors, provided they are not also directors of the utility. Similarly, the Rules do not address the sharing of officers and directors between the utility and affiliates not covered by our Rules.

We also clarify that corporate communications and public relations functions are permitted corporate support services which may be shared, provided that these activities are not used to engage in joint marketing or advertising by the utility and any affiliate covered by these Rules. We make this clarification so that the corporation can prepare such publications as its annual

report. Such shared corporate support services should not include any activity that would violate the Federal Energy Regulatory Commission's rules concerning marketing affiliates.

As stated in Rule V.E, as a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. Again, as stated in Rule V.E, in the compliance plan, a corporate officer from the utility and holding company should verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates set forth above, and to ensure that the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

We also require that in the compliance plan required in Rule VI, the utility should list all shared directors and officers between the utility and an affiliate. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and parties to the service list of R.97-04-011/I.97-04-012 of any change to this list. We modify Rule V.G.1 accordingly.

Employee Transfer Fee

Rule V.G.2.c provides for a 25% transfer fee when utility nonclerical personnel transfer from the utility to the affiliate, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee involved. Edison wants to eliminate the 15% floor for employee transfers and give the utility the opportunity to demonstrate that no fee, or a lower fee, is appropriate. Edison believes this modification is necessary as a result of electric industry restructuring, which might eliminate certain utility

jobs. Edison believes that if employees are eliminated as a result of restructuring, a 15% transfer fee is punitive, because the utility does not have to hire replacement employees, and ratepayers would not receive that fee if employees retire or work for companies other than the utility's affiliate.

The Joint Opposition states that the Joint Utility Respondents proposed the 15% floor prior to the Commission's adoption of D.97-12-088, that there has been no change in circumstances warranting a modification to that decision, and that the Commission still has discretion to propose a lower or higher transfer fee if conditions warrant.[4]

Although we recognized in D.97-12-088 that a transfer of utility personnel can result in advantages for the affiliate, we grant Edison's requested modification, in part, because we do not want to disadvantage certain employees whose positions are impacted by electric industry restructuring from obtaining other employment. Therefore, we modify Rule V.G.2.c to provide a limited exception to the higher transfer fee. We provide the opportunity for the utility to demonstrate that no fee, or a lesser percentage than 15% is appropriate for rank-and-file (nonexecutive) employees whose positions are impacted as a result of electric industry restructuring. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of

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[4] In its reply, Edison claims that D.97-12-088 is ambiguous, because Rule V.G.e states the transfer fee shall be capped at "equal to at least 15%" of an employee's base annual compensation, and the text of the decision speaks of "up to 15%" fee. D.97-12-088, *slip op.*, at p. 65 referenced Pacific Gas and Electric Company's (PG&E) and SDG&E's holding company cases, where the utility was permitted to demonstrate that some lesser percentage of the 25% transfer fee, equal to at least 15%, is appropriate. We therefore correct the text of D.97-12-088, *slip op.* at p. 65, to state that the parenthetical in the last line of the first full paragraph should read "(equal to at least 15%)."

employees working at divested plants. In that instance, the Board must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners..

V. Edison and SoCalGas January 30, 1998 Petition Regarding Rule VII (Utility Products and Services)

PG&E, ORA, and TURN filed responses to this petition. The following parties filed a Joint Opposition: Enron, New Energy Ventures, Inc., the School Project for Utility Rate Reduction and the Regional Management Coalition, UCAN, the City of San Diego, and CAPHCC.

Petitioners request modification of Rule VII which addresses utility products and services. They request that the Rule be modified to: (1) explicitly permit activities that involve additional shareholder capital investment, assumption of business risk or management control; (2) eliminate the 1% limit on nontariffed new product and service offerings; and (3) eliminate the language that the utility must demonstrate that it has not received recovery in the Transition Cost Proceeding or other applicable proceeding for the portion of the utility asset dedicated to the non-utility venture. In their reply, Petitioners state they are amenable to adoption of clarifying language to Rule VII, as suggested in the Joint Opposition, to limit the provision to the stranded cost proceeding, or other related competition transition charge (CTC) proceeding, rather than to eliminate this provision.

Petitioners believe that these modifications are necessary because the Rule, as currently adopted, limits or eliminates opportunities for additional revenues for utility ratepayers in situations where there seems no possibility of competitive harm. Petitioners state that these modifications will make Rule VII more consistent with the October 23, 1997, joint proposal of many parties to this

proceeding, which proposal the Commission adopted only in part in D.97-12-088.[5]

PG&E agrees with Petitioners and notes the similarity between the proposed modifications and the Commission's treatment of Category III products and services in D.89-10-031. ORA generally agrees with Petitioners, but proposes some additional modifications if the Commission adopts the proposal. Although TURN joined in the joint proposal last October, TURN agrees with Petitioners that only a minor modification is appropriate to address the third issue which Petitioners raise. Otherwise, TURN opposes this petition on the grounds that the Commission should turn its attention to enforcing, and not modifying, the adopted rules.

The Joint Opposition opposes the petition. It believes that the proposed modifications significantly change Rule VII to create a more favorable environment for the utilities at the expense of the safeguards designed to protect the competitive market, and that ultimately, the ratepayers will be more harmed than benefited by these proposals.

Additional Shareholder Capital Investment, Assumption of Business Risk, or Management Control

Petitioners believe that a modification expressly permitting activities involving additional shareholder capital investment, assumption of business risk or management control is appropriate, and that the Commission may have inadvertently eliminated the possibility of many new and existing nontariffed products or services. This is so, Petitioners contend, because to optimize the use of utility assets that have temporarily available capacity or compatible secondary

[5] The parties to this joint proposal were ORA, TURN, SCUPP and IID, SDG&E, SoCalGas, Edison, and PG&E.

uses, shareholders must almost always make some incremental investment in the underlying utility assets, or assume new business risks.

ORA agrees with Petitioners' first proposal, but requests Rule VII.C.4.d be further modified to require that the Commission has adopted a revenue-sharing mechanism before the utility makes an offering.

The Joint Opposition believes there is no ambiguity in this language, and that the Commission adopted this rule to preserve the development of a competitive market. It states that if shareholders seek to make investments in nontariffed products and services, the option remains of making such investments through an affiliate.

In its comments, ORA agrees that ratepayers stand to benefit from the revenue generated by shareholder investments in nontariffed products and services, provided that a revenue-sharing mechanism is in place for the utility. Based on this recommendation, we believe it is reasonable to adopt Petitioners' requested modification here, as more fully set forth in Appendix A. We do not adopt ORA's requested modification to Rule VII.C.4.d specifying that the Commission will adopt a revenue-sharing mechanism before the utility makes an offering, because Rule VII.D.2. requires, as a condition precedent to a utility's offering new products and services, that the Commission has adopted and the utility has established a reasonable mechanism for treatment of benefits and revenues derived from offering such products and services. According to Rule VII.F, a utility must request by advice letter filing continued authorization to provide existing product and services offerings, and must demonstrate that the continued provision of this product or service complies with the criteria set forth in Rule VII. Therefore, ORA's proposed modification appears unnecessary.

We also note that Rule VII requires the utility's advice letter to show both that the provision of a given product or service does not threaten the

provision of utility service, and that the new product or service will not degrade the cost, quality, or reliability of tariffed goods and services.

The "1% Limitation"

Petitioners also propose that Rule VII.C.4.e, which limits each nontariffed product and service offering to "less than 1% of the number of customers in its customer base," is unnecessary and does not support any interest, such as to minimize competitive market concerns. Petitioners point out many other aspects of Rule VII which ensure that the nontariffed utility product and service offerings will not negatively impact competition, including: (1) the restriction on offering natural gas or electricity commodity service on a nontariffed basis; (2) the requirement that mechanisms be established to prevent cross-subsidies and for treatment of benefits and costs; (3) periodic reporting and auditing requirements; and (4) the advice letter process.

ORA agrees to eliminate the "1% limitation" discussed above, but suggests that the number of customers offered and receiving nontariffed products and services be reported under the requirements, so that nontariffed utility product and service offerings do not swell to an inappropriate magnitude. Petitioners do not object to this proposal, but believe that it would be difficult to implement, because they anticipate many offerings to be made via the internet where it would be quite difficult to estimate to whom the offerings were made.

The Joint Opposition opposes eliminating the "1% limitation." It believes that this provision is appropriate as a regulatory tool to ensure that when the utilities offer nontariffed products and services, they do not use their monopoly position in the energy and energy services market to hinder the growth of the competitive market. They also believe that the existing rule permits the utilities to offer the types of products and services described by the utilities during this proceeding.

We adopted the "1% limitation," in part, because of our concerns regarding competition, and our concerns that nontariffed utility products and services do not increase to an inappropriate magnitude. However, we believe that we can address these concerns by adopting in part the modifications proposed by Petitioners and supported by ORA.

We will now permit the utilities to offer new products and services without the "1% limitation," provided the utilities meet the other criteria in Rule VII, which criteria, in part, address competitive concerns. (See, e.g., Rule VII.E.1.d, where the utility advice letter should address the potential impact of the new product or service on competition in the relevant market.) We also modify Rule VII to include further elaboration in Section E regarding the type of showing on competition in the relevant market the utility should make. We also modify Rule VII.C.4 to include an additional condition necessary for the utility to offer new products and services, namely, that the utility's offering of such nontariffed products or services does not violate any law, regulation, or Commission policy regarding anticompetitive practices. Both these provisions were in the joint proposal filed before the Commission last October.

We also modify Rule VII to provide that utility may not commence offering the new products or services which are targeted and offered[6] to 1% or more of the number of customers in a utility's customer base 30 days after submission of an advice letter if there are no objections to the advice letter. In this instance, the utility must wait to commence such offering until the

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[6] We change the word from "offered" to "targeted and offered" to indicate that we are interested in offerings aimed at a large portion of the customer base, rather than, for example, an offering to lease a certain parcel of land which might be place on the internet but in fact is targeted to a small group of customers.

Commission issues a resolution approving the advice letter. Finally, we provide that the utility shall serve any advice letter filed pursuant to Rule VII on all parties to this proceeding, as well as on any other party appropriately designated by the rules governing our advice letter process. Our specific modifications are set forth in Appendix A.

Utility Showing in Advice Letter

Petitioners propose to eliminate Rule VII.E.1.c, which states that the utility's advice letter should, among other things, demonstrate that the utility has not received recovery in the Transition Cost Proceeding, or in other applicable proceedings, for the portion of the utility asset dedicated to the non-utility venture. Petitioners specifically object to the words "other applicable proceeding," because if read literally, this provision could prohibit all new utility asset utilization opportunities. This is so, they argue, because under Rule VII, all nontariffed utility products and service offerings must be based upon the use of necessary and useful utility assets or capacity. The costs of these utility assets are by definition recoverable in utility rates.

The Joint Opposition suggests modifying language to state that the utility must demonstrate that it has not received CTC recovery in the Transition Cost Proceeding or other related CTC Commission proceeding. TURN offers a similar, but not identical, proposal. Edison agrees with the Joint Opposition's proposed modification.

Our intent in adopting Rule VII.E.1.c was to limit the provision to transition cost proceedings, not all Commission proceedings. We believe the modification suggested by the Joint Opposition, and agreed to by all parties, reflects our intent, and we will modify Rule VII.E.1.c accordingly, as more fully set forth in Appendix A.

VI. SoCalGas and SDG&E March 16, 1998 Petition

SoCalGas and SDG&E jointly request three further modifications of the Rules. PG&E and Edison have filed responses agreeing in whole or in part with this request. There is no opposition to this request.

Timing of Audit

SoCalGas and SDG&E request that the Commission conform the time period for the annual utility compliance audit required by Rule VI.C with the time period for the annual Affiliate Transaction Report, so that the Rule VI.C compliance audit includes the entire 1998 calendar year, and is filed on May 1, at the same time as the annual Affiliate Transaction Report. No party opposes this request. We believe this requested modification is appropriate and modify Rule V.C as set forth in Appendix A, because it will make comparisons between the two reports easier and will provide for uniform reporting periods for all utilities.

SoCalGas and SDG&E also request minor modifications of Rule VI.C to clarify that an audit report is "prepared" by an independent auditor and that an audit "report" is produced thereby. We adopt similar, but not identical, clarifying language as that proposed by Petitioners, to clarify our intent that the independent auditors perform the audit and prepare the audit report.

Lists Approved By Other Governmental Agencies

SoCalGas and SDG&E also request that Rule IV.C.1 be modified to permit the utilities to provide customers with lists approved by other governmental agencies. Rule IV.C.1 provides that, except upon request by a customer or as otherwise authorized by the Commission, a utility shall not provide its customers with any list of service providers that includes or identifies a utility's affiliates. The Rule also establishes a procedure for the utility to submit semi-annual advice letter filings for the submission and approval of lists.

SoCalGas and SDG&E state that these requirements are appropriate in the context of certain lists, such as those of Commission-authorized direct access electricity service providers, but are too broad with respect to other lists that involve providers approved by other governmental bodies. Petitioners argue that in such circumstances, the utility should be permitted to provide the list to customers immediately and then simply notify the Commission that such lists were provided in the semi-annual advice letter filing. They further clarify that if the name of the utility's affiliate is on this list, it would not receive special treatment, such as bold typeface or graphics. SoCalGas and SDG&E's requested modification, which is not opposed, is reasonable and we adopt it, as set forth in Appendix A.

Yellow Pages Referral

SoCalGas and SDG&E seek modification to Rule IV.C.2 to clarify that the utilities are permitted to refer a customer to the Yellow Pages in any situation where a Commission-approved or authorized list is not available. Petitioners explain that the Commission has not yet approved lists pursuant to the first semi-annual advice letter filing, and there will always be a six-month lag period between Commission approval of such lists, since they are filed semi-annually. Petitioners explain there is no competitive harm or advantage to a utility affiliate in referring customers to the Yellow Pages when customers inquire about product or service providers. We find SoCalGas and SDG&E's clarification reasonable and modify Rule IV.C.2 as set forth in Appendix A, because this modification will permit the utility to respond appropriately to a customer's requests if the utility does not have a Commission-approved list in a given area, or the Commission has not yet acted on the advice letter filing.

VII. Findings of Fact

1. The current Affiliate Transaction Rules do not permit a utility to temporarily assign its employees to affiliates covered by these Rules. Rule V.G.2.e, as it currently stands, may disadvantage utilities and their affiliates in other competitive markets, especially internationally.

2. Our modification concerning the temporary use of employees is a narrow exception, the effects of which are, in part, mitigated because the utility employees will still be subject to the Affiliate Transaction Rules, and because of the limitation on the employees and affiliates between which the transfer may take place.

3. The pricing guidelines set forth in Rule V.H prior to today's decision will not adequately compensate the utility for the temporary employee use authorized by today's decision, nor will they adequately reflect the risk of additional ratepayer harm posed by the narrow exception adopted today.

4. Edison's requested modification concerning joint call centers is vague.

5. Edison's requested modification concerning joint marketing does not allay the concerns we articulated in D.97-12-088 which led to the promulgation of Rules concerning joint marketing.

6. We clarify that Rules V.E and V.G.1, when read together, can provide for limited sharing of directors and officers not only as explicitly set forth in Rule V.G.1, but also to perform the limited corporate support functions set forth in Rule V.E, and as set forth in the examples which Edison cited, namely, the Chief Financial Officer or General Counsel. However, the exception in Rule V.E is a limited exception which would not encompass Edison's proposal for the CEO and Chairman of the Board of the utility to be able to serve as a director and Board Chairman of affiliates covered by these Rules.

7. Corporate communications and public relations functions are permitted corporate support services which may be shared, provided that these activities are not used to engage in joint marketing or advertising by the utility and any affiliate.

8. We do not want to disadvantage certain employees whose positions are impacted by electric industry restructuring from obtaining other employment.

9. In agreeing to modify Rule VII, we are influenced by the fact that ORA agrees that ratepayers stand to benefit from the revenue generated by shareholder investments in nontariffed products and services, provided that a revenue-sharing mechanism is in place for the utility.

10. We adopted the "1% limitation," in part, because of our concerns regarding competition, and our concerns that nontariffed utility products and services do not increase to an inappropriate magnitude. However, we can address these concerns by adopting, in part, the modifications proposed by Petitioners and supported by ORA.

11. Our intent in adopting Rule VII.E.1.c was to limit the provision to transition cost proceedings, not all Commission proceedings.

12. The requested modifications of Rule VI.C concerning the timing of the affiliate audit, as set forth in Appendix A, are reasonable because they will make comparison between the compliance audit and the Affiliate Transaction Report easier and will provide for uniform reporting periods for all utilities. The requested modifications of Rule IV.C regarding service provider information, issues raised by SoCalGas and SDG&E's March 16, 1998 petition for modification, are also reasonable as clarified in this decision and Appendix A.

VIII. Conclusions of Law

1. The modifications to the Affiliate Transaction Rules, attached to this order as Appendix A and B, are reasonable and should be adopted.

2. SoCalGas' July 17, 1998 letter request to withdraw eight pages of what SoCalGas has stamped as "Privileged and Confidential" information attached to Appendix A of its Petition from the record should be granted.

3. SDG&E's and SoCalGas' January 15, 1998, petitions seeking modification of Rule V.G regarding the temporary use of utility employees by affiliates should be granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision.

4. Edison's January 30, 1998, petition seeking modification of many of the Rules on various issues should be granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision.

5. Edison and SoCalGas' January 30, 1998, petition seeking modification of Rule VII regarding utility products and services should be granted in part, as more specifically set forth in the discussion and findings of this decision.

6. SoCalGas and SDG&E's March 16, 1998, petition seeking various modifications of the Rule VI.C regarding the affiliate audit and Rule IV.C regarding service provider information should be granted in part, as more specifically set forth in the discussion and findings of this decision.

7. Revenues accruing from the use of employees authorized by Rule V.G.2.e during the rate freeze should flow back to ratepayers as a credit to the Streamlining Residual Memorandum Account.

8. Because we wish to implement these modifications to the Affiliate Transaction Rules immediately, this order should be effective today.

ORDER

IT IS ORDERED that:

1. The modifications to the Affiliate Transaction Rules (Rules) attached to this order as Appendices A and B are adopted.

2. San Diego Gas & Electric Company's (SDG&E) and Southern California Gas Company's (SoCalGas) respective January 15, 1998, petitions seeking modification of Rule V.G regarding the temporary use of utility employees by affiliates are granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

3. Southern California Edison Company's (Edison) January 30, 1998, petition seeking modification of many of the Rules on various issues is granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

4. Edison and SoCalGas' January 30, 1998, petition seeking modification of Rule VII regarding utility products and services is granted in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

5. SoCalGas and SDG&E's March 16, 1998, petition seeking various modifications of the Rule VI.C regarding the affiliate audit and Rule IV.C regarding service provider information is granted in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

6. Revenues accruing from the use of employees authorized by Rule V.G.2.e during the rate freeze shall flow back to ratepayers as a credit to the Streamlining Residual Memorandum Account.

7. The text of Decision 97-12-088, *slip op.* at 65, is corrected so that the parenthetical in the last line of the first paragraph should read "(equal to at least 15%)."

8. SoCalGas' July 17, 1998 letter request to withdraw eight pages of what SoCalGas has stamped as "Privileged and Confidential" information attached to Appendix A of its Petition from the record is granted.

This order is effective today.

Dated August 6, 1998, at San Francisco, California

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

We will file a partial dissent.

/s/ HENRY M. DUQUE
Commissioner

/s/ JESSIE J. KNIGHT, JR.
Commissioner

Affiliate Transaction Rules

I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

A. "Affiliate" means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.

C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.

D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.

E. "FERC" means the Federal Energy Regulatory Commission.

F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.

G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

II. Applicability

A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.

B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that

relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.

D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.

E. Existing Rules: Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.

F. Civil Relief: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.

G. Exemption (Advice Letter): A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:

1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and

2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:

   a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a

letter to the Executive Director, served on all parties to this proceeding; and

b. Agree in this notice to comply with the Rules in their entirety.

H. **Limited Exemption (Application):** A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

III. Nondiscrimination

A. **No Preferential Treatment Regarding Services Provided by the Utility:** Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or

2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

B. **Affiliate Transactions:** Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

1. **Provision of Supply, Capacity, Services or Information:** Except as provided for in Sections V D, V E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.

2. **Offering of Discounts:** Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.

3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.

4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.

5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.

C. **Tying of Services Provided by a Utility Prohibited:** A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

D. **No Assignment of Customers:** A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

E. **Business Development and Customer Relations:** Except as otherwise provided by these Rules, a utility shall not:

1. provide leads to its affiliates;

2. solicit business on behalf of its affiliates;

3. acquire information on behalf of or to provide to its affiliates;

4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;

5. request authorization from its customers to pass on customer information exclusively to its affiliates;

6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or

7. give any appearance that the affiliate speaks on behalf of the utility.

F. **Affiliate Discount Reports:** If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;

2. the rate charged;

3. the maximum rate;

4. the time period for which the discount or waiver applies;

5. the quantities involved in the transaction;

6. the delivery points involved in the transaction;

7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and

8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;

10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);

11. the duration of the discount or waiver;

12. the maximum rate;

13. the rate or fee actually charged during the billing period; and

14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

IV. Disclosure and Information

A. Customer Information: A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.

B. Non-Customer Specific Non-Public Information: A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or

operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

C. Service Provider Information:

1. Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.

2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no

Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages.) The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

D. **Supplier Information:** A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

E. **Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

G. **Maintenance of Affiliate Contracts and Related Bids:** A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

H. FERC Reporting Requirements: To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

V. Separation

A. Corporate Entities: A utility and its affiliates shall be separate corporate entities.

B. Books and Records: A utility and its affiliates shall keep separate books and records.

1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).

2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.

C. Sharing of Plant, Facilities, Equipment or Costs: A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).

D. Joint Purchases: To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint

purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

E. Corporate Support: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

F. Corporate Identification and Advertising:

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:

   a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";

   b. the affiliate is not regulated by the California Public Utilities Commission; and

   c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

   The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.

3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:

   a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;

b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

G. Employees:

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan required in Rule VI, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.

2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:

a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report

this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.

c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of

these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.

e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:

i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.

ii. Utility needs for utility employees always take priority over any affiliate requests;

iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;

iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and

v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

H. Transfer of Goods and Services: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, and except for as provided by Rule V.G.2.e, all such transfers shall be subject

to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.

2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.

3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.

4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.

5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.

6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

VI. Regulatory Oversight

A. Compliance Plans: No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter served on all parties to this proceeding where there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

B. New Affiliate Compliance Plans: Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these Rules with respect to the new affiliate.

C. Affiliate Audit: No later than December 31, 1998, and every year thereafter, the utility shall have audits ~~prepared~~ performed by independent auditors that cover the calendar year which ends on December 31, and that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file~~this audit~~ the independent auditor's report with the Commission's Energy Division beginning no later than ~~December 31, 1998,~~ May 1, 1999, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.

D. Witness Availability: Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

VII. Utility Products and Services

A. General Rule: Except as provided for in these Rules, new products and services shall be offered through affiliates.

B. Definitions: The following definitions apply for the purposes of this section (Section VII) of these Rules:

1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.

2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.

3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.

4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory

Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.

C. Utility Products and Services: Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;

2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;

3. New products and services that are offered on a tariffed basis; and

4. Products and services which are offered on a nontariffed basis and which meet the following conditions:

   a. The nontariffed product or service utilizes a portion of a utility asset or capacity;

   b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;

   c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;

   d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by ~~the~~ utility ratepayers, and ~~minimal or~~ no ~~direct~~ undue diversion of utility management attention; ~~control~~; and

   e. ~~the utility offering is restricted to less than 1% of the number of customers in its customer base.~~ The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

D. Conditions Precedent to Offering New Products and Services: This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed

products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;

2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.

3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and

4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

E. **Requirement to File an Advice Letter:** Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:

   a. demonstrate compliance with these rules;

   b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;

   c. demonstrate that the utility has not received competition transition charge (CTC) recovery in the Transition Cost Proceeding, A.96-08-001, or other ~~applicable~~ related CTC Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and

d. address the potential impact of the new product or service on competition in the relevant market, including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market.

e. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.

2. For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, In the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.

3. A protest of an advice letter filed in accordance with this paragraph shall include:

   a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or

   b. An explanation of the specific harm the protestant will allegedly suffer.

4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.

5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.

F. Existing Offerings: Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.

G. Section 851 Application: A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.

H. Periodic Reporting of Nontariffed Products and Services: Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:

1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;

2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);

3. The costs allocated to and revenues derived from each category; and

4. Current information on the proportion of relevant utility assets used to offer each category of product and service.

I. **Offering of Nontariffed Products and Services to Affiliates:** Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

(END OF APPENDIX A)

Affiliate Transaction Rules

I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

A. "Affiliate" means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.

C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.

D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.

E. "FERC" means the Federal Energy Regulatory Commission.

F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.

G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

II. Applicability

A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.

B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that

relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.

D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.

E. Existing Rules: Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.

F. Civil Relief: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.

G. Exemption (Advice Letter): A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:

1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and

2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:

   a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a

letter to the Executive Director, served on all parties to this proceeding; and

b. Agree in this notice to comply with the Rules in their entirety.

H. Limited Exemption (Application): A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

III. Nondiscrimination

A. No Preferential Treatment Regarding Services Provided by the Utility: Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or

2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

B. Affiliate Transactions: Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

1. **Provision of Supply, Capacity, Services or Information:** Except as provided for in Sections V D, V E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services; or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.

2. **Offering of Discounts:** Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.

3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.

4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.

5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.

C. **Tying of Services Provided by a Utility Prohibited:** A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

D. No Assignment of Customers: A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

E. Business Development and Customer Relations: Except as otherwise provided by these Rules, a utility shall not:

1. provide leads to its affiliates;

2. solicit business on behalf of its affiliates;

3. acquire information on behalf of or to provide to its affiliates;

4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;

5. request authorization from its customers to pass on customer information exclusively to its affiliates;

6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or

7. give any appearance that the affiliate speaks on behalf of the utility.

F. Affiliate Discount Reports: If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;

2. the rate charged;

3. the maximum rate;

4. the time period for which the discount or waiver applies;

5. the quantities involved in the transaction;

6. the delivery points involved in the transaction;

7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and

8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;

10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);

11. the duration of the discount or waiver;

12. the maximum rate;

13. the rate or fee actually charged during the billing period; and

14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

IV. Disclosure and Information

A. Customer Information: A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.

B. Non-Customer Specific Non-Public Information: A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or

operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

C. Service Provider Information:

1. Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.

2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no

Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages.) The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

D. **Supplier Information:** A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.

E. **Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

G. **Maintenance of Affiliate Contracts and Related Bids:** A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

H. FERC Reporting Requirements: To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

V. Separation

A. Corporate Entities: A utility and its affiliates shall be separate corporate entities.

B. Books and Records: A utility and its affiliates shall keep separate books and records.

1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).

2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.

C. Sharing of Plant, Facilities, Equipment or Costs: A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).

D. Joint Purchases: To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint

purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

E. Corporate Support: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

F. Corporate Identification and Advertising:

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:

   a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";

   b. the affiliate is not regulated by the California Public Utilities Commission; and

   c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

   The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.

3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:

   a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;

b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

G. Employees:

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan required in Rule VI, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.

2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:

a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report

this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.

c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of

these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.

e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:

i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.

ii. Utility needs for utility employees always take priority over any affiliate requests;

iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;

iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and

v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

H. Transfer of Goods and Services: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, and except for as provided by Rule V.G.2.e, all such transfers shall be subject

to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.

2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.

3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.

4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.

5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.

6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

VI. Regulatory Oversight

A. Compliance Plans: No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter served on all parties to this proceeding where there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

B. New Affiliate Compliance Plans: Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these Rules with respect to the new affiliate.

C. Affiliate Audit: No later than December 31, 1998, and every year thereafter, the utility shall have audits performed by independent auditors that cover the calendar year which ends on December 31, and that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file the independent auditor's report with the Commission's Energy Division beginning no later than May 1, 1999, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.

D. Witness Availability: Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

VII. Utility Products and Services

A. General Rule: Except as provided for in these Rules, new products and services shall be offered through affiliates.

B. Definitions: The following definitions apply for the purposes of this section (Section VII) of these Rules:

1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.

2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.

3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.

4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory

Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.

C. Utility Products and Services: Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;

2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;

3. New products and services that are offered on a tariffed basis; and

4. Products and services which are offered on a nontariffed basis and which meet the following conditions:

   a. The nontariffed product or service utilizes a portion of a utility asset or capacity;

   b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;

   c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;

   d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and

   e. The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

D. Conditions Precedent to Offering New Products and Services: This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;

2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.

3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and

4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

E. Requirement to File an Advice Letter: Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:

   a. demonstrate compliance with these rules;

   b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;

   c. demonstrate that the utility has not received competition transition charge (CTC) recovery in the Transition Cost Proceeding, A.96-08-001, or other related CTC Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and

   d. address the potential impact of the new product or service on competition in the relevant market, including but not limited to the

degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market.

e. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.

2. For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, in the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.

3. A protest of an advice letter filed in accordance with this paragraph shall include:

   a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or

   b. An explanation of the specific harm the protestant will allegedly suffer.

4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.

5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.

F. Existing Offerings: Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements

in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.

G. Section 851 Application: A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.

H. Periodic Reporting of Nontariffed Products and Services: Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:

1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;

2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);

3. The costs allocated to and revenues derived from each category; and

4. Current information on the proportion of relevant utility assets used to offer each category of product and service.

I. Offering of Nontariffed Products and Services to Affiliates: Nontariffed products and services which are allowed by this Rule may be offered to

utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

(END OF APPENDIX B)

R.97-04-011/I.97-04-012
D.98-08-035

COMMISSIONERS HENRY M. DUQUE AND JESSIE J. KNIGHT, Jr., DISSENTING IN PART:

We fully support the decision, with one exception. The alternate pages sponsored by Commissioner Duque would have adopted a narrower definition of "temporary" for purposes of temporary or intermittent assignment of utility employees to certain affiliates. Because of the nature of utility work there will necessarily be some underutilization of employees during non-peak time periods. Therefore we believe that it is appropriate to allow some temporary use of utility employees by affiliates. However, the utility should not be viewed as a source of employees by affiliates, instead the utility should be staffed to conduct utility business. We simply believe that 30% of an employee's time is an excessive amount to be considered temporary. The alternate pages allowed for 8.5% of a utility employee's time to be assigned to an affiliate, which approximates one month. This would allow the utility to smooth the peaks and valleys of utility work while discouraging excess staffing.

For these reasons, we file this partial dissent regarding the definition of "temporary".

Dated August 6, 1998 at San Francisco, California.

Henry M. Duque
Commissioner

Jessie J. Knight, Jr.
Commissioner