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Decision 98-11-027 November 5, 1998

ORIGINAL

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

OPINION ON PETITION FOR MODIFICATION OF DECISION 97-12-088 ON THE DISCLAIMER REQUIREMENT

1. Summary

This decision addresses San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company's (SoCalGas) (jointly "Petitioners") June 30, 1998, petition for modification of the disclaimer requirement contained in Rule V.F.1 of the Commission's Affiliate Transaction Rules, attached to Decision (D.) 97-12-088 as Attachment A.[1]

We grant the petition in part, and deny it in part, as more fully set forth in this decision.[2] We deny petitioners' requested modifications to Rule V.F.1 of our

[1] In D.98-08-035, we modified the affiliate transaction rules, and the current rules, as modified, appear as Attachment B to that decision. However, D.98-08-035 did not address or modify Rule V.F.1.

[2] We recognize that there are also outstanding applications for rehearing, as well as various new applications, complaints, petitions for modification, and compliance filings

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Affiliate Transaction Rules (Rules) which addresses the disclaimer requirement. However, we clarify instances where the disclaimer should be used, and also clarify issues concerning the precise text of the disclaimer. We modify D. 98-04-029 with respect to the size of the disclaimer.

2. Background

2.1. Procedural Background

Petitioners filed the petition for modification of the disclaimer requirement on June 30, 1998. Due to some confusion concerning the petition's service, the Administrative Law Judge ruled that responses were due no later than August 14, 1998. Southern California Edison Company (Edison) filed a response on July 27, 1998. The Office of Ratepayer Advocates (ORA) and the Joint Petitioner Coalition[3] each filed responses on August 14, 1998.

2.2. The Petition

Rule V.F.1 states as follows:

"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

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arising from our adopted Rules. This decision does not address or prejudge these filings.

[3] For purposes of the Joint Petitioner Coalition's response, members of the coalition include Enron Corp.; New Energy Ventures, Inc.; The School Project for Utility Rate Reduction and the Regional Energy Management Coalition; The Utility Reform Network; Utility Consumers' Action Network; Alliance For Fair Energy Competition and Trading (whose members include the Institute of Heating and Air Conditioning Industries, the Electric & Gas Industries Association, Inc., and Coral Energy Services); and the Plumbing, Heating & Cooling Contractors of California.

> 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."

Petitioners' parent companies, Enova Corporation and Pacific Enterprises, have recently merged into a new entity named Sempra Energy. Petitioners request a "minor modification" to our rules because they intend to embark on a new promotional campaign whereby a new Sempra Energy logo, developed by the parent and paid for by shareholders, would be used by the parent, both SDG&E and SoCalGas, and each of Sempra Energy's other subsidiaries. They also plan to use a tag line in the SDG&E and SoCalGas logos, as well as some of Sempra's Energy's other subsidiaries, which identifies the company as "A Sempra Energy Company."

Petitioners request that the Commission add the following language to the end of Rule V.F.1:

> "The name/logo disclaimer does not apply to: (1) a logo jointly used by a parent company and its utility and non-utility subsidiaries if the logo has not been used by any of the utility subsidiaries prior to December 16, 1997; or (2) a logo jointly used by utilities and their affiliates which identifies the company as 'A [insert name of parent] Company', if the parent company name has not been used by the utility prior to December 16, 1997."

Assuming the Commission believes the disclaimer is necessary, petitioners alternatively request that the Commission limit the instances where the disclaimer must be used and permit the use of a revised disclaimer.

Petitioners believe that use of the logo by either Sempra Energy or either SDG&E or SoCalGas does not require the disclaimer. They believe that the disclaimer should only have to be used with the Sempra Energy logo, if at all, when affiliates of SDG&E or SoCalGas which sell energy or energy-related services use the logo.

Petitioners also do not believe affiliates which sell energy or energy-related services should have to use the disclaimer if they use the Sempra Energy logo, which logo is also used by SDG&E and SoCalGas. Petitioners state that such use would not engender customer confusion because there is no historic connection between the Sempra Energy logo and either SDG&E or SoCalGas. Petitioners do not believe there is cross-subsidization, because SDG&E and SoCalGas customers did not pay to create the logo and they did not pay for its future use. Also because the new logo has not historically been associated with either utility, petitioners argue that it does not capitalize on existing utility goodwill. Finally, petitioners argue that the affiliates' use of the Sempra Energy logo without the disclaimer will not harm competition because the logo is not a product offering that could trigger the disclaimer's statement that "you do not have to buy Sempra Energy's products in order to receive quality regulated services from the utility." Petitioners claim that the logo is merely identification to accurately inform consumers about ownership of the companies with which they are dealing.

Petitioners argue that if the Commission requires disclaimers at all, they should be limited to the types of communications "normally associated with disclaimers;" i.e., printed or video advertisements, written communications to

customers or potential customers, and products. The disclaimer should not be required when a Sempra Energy affiliate covered by the Affiliate Transaction Rules uses the Sempra Energy logo in non-promotional material such as legal or regulatory filings, annual reports to shareholders, or communications between Sempra Energy companies. Petitioners also believe that it is not appropriate that affiliates covered by the Rules place the disclaimer on building signs, business cards, golf balls, company vehicles and uniforms, or other locations where companies traditionally place their corporate logo, because requiring disclaimers in such places makes "a mockery out of an otherwise serious requirement." (Petition at p. 10.)

Petitioners also request that the disclaimer be shortened for their use as follows: "[the affiliate] is an affiliate of SoCalGas and SDG&E, but is not regulated by the California Public Utilities Commission." Petitioners believe that this revised disclaimer contains two of the three messages in the disclaimer required by Rule V.F.1, and the third message is inapplicable to the Sempra Energy logo. Petitioners also request a modification of D.98-04-029's requirement so that the disclaimer may be a minimum of 6 point type, instead of ¾ the size of the Sempra Energy logo. Petitioners believe this proposed modification is consistent with industry standards. Finally, Petitioners believe that the disclaimer should not apply to the new Sempra Energy tag line, "A Sempra Energy Company" when used by either SDG&E or SoCalGas, and a Sempra affiliate covered by the Rules. Petitioners argue that the affiliates are not appropriating SDG&E's or SoCalGas' logo, but are informing consumers about their own corporate ownership status. If the Commission requires the affiliates to use the disclaimer with the tag line, petitioners request the same modifications of the disclaimer requirement as set forth above.

2.3. The Responses

Three parties filed responses to the petition for modification. Edison does not support petitioners' request that they be singularly exempted from Rule V.F.1's disclaimer requirement, but supports modifications to the Rule as to all parties.

Edison briefly reiterates its general concerns with the disclaimer requirement. If the Commission elects to retain the disclaimer requirement, Edison believes that Rule V.F.1.b should, at least for energy service providers (ESP) be changed to be more technically accurate.

Edison also agrees with petitioners that the Commission should only require the disclaimer on promotional materials used in California, and not on building signage, vehicles, employee uniforms, regulatory filings, and the like. Edison also believes that the Commission should allow a shorter disclaimer to be used, unless the affiliate actually references the utility's name or logo, and not a generic word such as "Edison" in its promotions.

The Joint Petitioners Coalition and ORA oppose the petition for modification. The Joint Petitioners Coalition argues that (1) the disclaimer rule was meant to apply to affiliates such as Sempra Energy affiliates; (2) the Commission should not grant modifications to the language and legibility requirements; and (3) the logo and tag lines are both covered by the disclaimer rules.

The Joint Petitioners Coalition argues that Sempra Energy, the utilities and Sempra Energy affiliates will embark on an extensive and expensive advertising campaign which will utilize a common logo and tag line for SDG&E, SoCalGas, and its affiliates covered by the Rules. Through this campaign, consumers will be sent a strong message that these companies are interrelated, notwithstanding the fact that the Sempra Energy name and logo were not used

prior to December 16, 1997, and that Sempra Energy now owns the utility companies. They argue that this marketing approach is the same used by Pacific Gas and Electric Company and Edison, and there is no reason to treat petitioners differently. They also argue that the Rules should apply to the use of the tag line, because the tag line not only becomes part of the logo when used by SDG&E or SoCalGas, but also becomes an implicit part of the name of the utility. These parties also argue that petitioners' proposed use of a common logo and tag line without the disclaimer will confuse customers as to the relationship among Sempra Energy entities.

The Joint Petitioners Coalition also believes that petitioners' proposed modifications to the disclaimer requirement would substantially weaken Rule V.F.1, and would eliminate provisions of the disclaimer that are critical to disclaiming the relationship and correcting the consumer confusion associated with intentionally similar names and logos. It also believes that business cards and other materials listed by petitioners fall squarely into the materials for which disclaimers are appropriate. Because there are no easy standards to adopt to differentiate promotional from non-promotional communications, the Joint Petitioners Coalition argues that the twin goals of consumer protection and competition promotion are best served by applying Rule V.F.1 as written, without creating many exceptions.

Finally, the Joint Petitioners Coalition objects to petitioners' request that the font requirement of the disclaimer be reduced. Because D.98-04-029 requires the disclaimer to be ¾ the size of the name or logo, the Coalition argues that petitioners have control over the size of the font of the disclaimer under the Rules by choosing the size of the name or logo. It also believes that if the Commission adopts this petition for modification, other utilities would seek to have the modifications apply to them as well.

ORA argues that the reasons justifying the disclaimer's use for other utilities apply to the Sempra Energy logo as well. The use of a shared logo or tag line between the utility and its affiliates covered by these Rules establishes the connection among the entities. Moreover, ORA argues that it is the utility's monopoly position that creates market power concerns that Rule V.F.1 is trying to diminish. ORA believes that petitioners have not justified their request to shorten the disclaimer language. According to ORA, the Commission adopted Rule V.F.1 in its entirety to protect consumers and promote competition, and any modification to the language would diminish these efforts. Furthermore, ORA believes that the issues of when and where the disclaimer applies, the tag line discussion, and font size requirements should all be issues more appropriately dealt with through the compliance plan process set forth in D.97-12-088.

3. Discussion

3.1. Exemption From Rule V.F.1's Disclaimer Requirement

SDG&E and SoCalGas argue that Rule V.F.1 should not apply to the Sempra Energy affiliates' use of the Sempra Energy logo or tag line where the utility uses the same logo or tag line. This is so, petitioners claim, because the Sempra Energy name and logo are newly created, after the Commission adopted the Affiliate Transaction Rules, and they are paid for by the shareholders. Petitioners also believe that there will not be any competitive harm, customer confusion, or cross-subsidization if the Commission adopts their request.

We disagree. When we enacted Rule V.F.1, we weighed various options advocated by the parties, including (1) prohibiting a utility's name, logo, trademark, or other form of corporate identification from resembling that of the affiliate; and (2) adopting no restrictions on the affiliate's ability to use the utility's name and logo. In order to address our twin goals of protecting

consumer interests and fostering competition, we adopted Rule V.F.1 requiring appropriate disclaimers.

> "Our other rules mandate separation between most of a utility's and affiliate's activities, and we prefer to address our competitive concerns on the name and logo issue at this time through appropriate disclaimers, to provide the customer with more information, not less. This is consistent with our statement in D.97-05-040, *slip op.* at p. 67, where we recognized that 'the shared use of a utility's name is but one example of the need for the utilities and their unregulated affiliates to demonstrate that the operations of the affiliate is sufficiently and genuinely separate from that of the utility to prevent the use of utility resources and its attendant market advantages.' Again, we emphasize that prohibiting the shared use of the name and logo is one means to achieve this separation, which we may have adopted if our other rules addressing separation were different." (D.97-12-088, *slip op.* at p. 45.)

Whether the name and logo currently in use by the utility predates the enactment of our Affiliate Transaction Rules is a distinction without a difference in the context of Rule V.F.1's application. The plain language of Rule V.F.1 applies to the utility's current name and logo, whether or not it existed in December 1997 when we adopted the Rules. Rules are meant to be applied prospectively, as well as to situations existing on the date of their enactment. Any other interpretation of our Rules would require us to modify the Rules each time a utility or its corporate family undergoes a corporate change. Clearly, such an interpretation of our Rules would be inefficient and unwieldy.

Petitioners propose that both SDG&E, SoCalGas, and some of Sempra Energy's other subsidiaries would use the tag line "A Sempra Energy Company." The proposed tag line would soon be strongly associated with the utility in the customer's mind, primarily through the billing process and utility advertising. By using this same tag line, an affiliate will be able to capitalize on its affiliation with the utility in the same way as it would by using the utility's

name or logo. We view the tag line, if used by SDG&E or SoCalGas, as either part of the logo, or part of the utility's name for purposes of Rule V.F.1. Therefore, Rule V.F.1 would apply to the tag line discussed by the petition, if both SDG&E or SoCalGas, and an affiliate covered by our Rules, use the tag line.

Petitioners have presented no convincing rationale for modification of Rule V.F.1 to exclude names, logos, or tag lines created after our adoption of the Affiliate Transaction Rules. When we adopted Rule V.F.1, we restated our general concerns regarding market power by virtue of a utility's name brand recognition that we stated in SoCalGas' Performance-based Ratemaking Decision, D.97-07-054, *slip op.* at 63:

> "By the very nature of SoCal's monopoly position in the energy and energy services market, its access to comprehensive customers records, its access to an established billing system and its 'name brand' recognition, it may be that SoCal enjoys significant market power with respect to any new product or service in the energy field." (D.97-12-088, *slip op.* at p. 43.)

We also noted several situations where the affiliate promotional material blurred the line of separation between the utility and the affiliate, thus creating the potential for customer confusion. (D.97-12-088, *slip op.* at pp. 43-44.) With respect to SoCalGas, we stated the following:

> "Petitioners point to several affiliate marketing campaigns as examples of why we should not permit utilities to share their name and logo with affiliates. One case involves Pacific Enterprises Energy Services, a unit of SoCalGas' parent company. In that instance, despite SoCalGas' representations to this Commission that it would no longer sell earthquake shut-off valves, the SoCalGas logo appeared prominently in advertising for the shut-off valves, and on the shut-off valves themselves, even though the valves are manufactured by an unregulated affiliate. For instance, a brochure for these valves states that the valves are 'brought to you by Pacific

> Enterprises, the people who bring you The Gas Company.' (Petitioners 7/31 Comments, Exhibit E.) As a result, Petitioners state that Pacific Enterprises Energy Services captured 83% of the shut-off valve market. In Exhibit F to Petitioners' Comments, an article notes that Pacific Enterprises Energy responded to accusations of unfair competition by noting that their competitors did not actively market their valve, while competitors argued that it was futile to go up against a manufacturer that has the imprimatur of the gas company." (D.97-12-088, *slip op.* at pp. 43-44.)

The above concerns are not lessened depending upon when the utility began using a specific name or logo. In fact, use of the same logo and tag line by the parent, utility, and its affiliates in a comprehensive media campaign may well blur the lines of separation and thus, create the potential for customer confusion.

It is beneficial for the consumer to receive as much information as possible and to understand the linkage between the companies; however, we do not want the use of the name or logo to create the impression that the utility and affiliates covered by these Rules are in fact the same company, i.e., that the affiliate is a part of the utility, with all the attendant consumer perceptions that might entail. Rule V.F.1's disclaimer requirement meets both of these requirements. We therefore reject petitioners' proposed modification to Rule V.F.1 which would effectively state that Rule V.F.1 did not apply to the new Sempra Energy name or logo, when used both by the utility and an affiliate covered by our Rules.

Petitioners recognize, and the plain language of our Rules provides that, as long as the parent company is not an affiliate under our Rules, nothing in our Rules prevents the parent and the affiliate from sharing the same name, logo, (or tag line), without a disclaimer, provided the utility is also not sharing the

same name or logo.[4] However, when the utility also uses the same name or logo as an affiliate covered by the Rules, Rule V.F.1 applies. If petitioners believe that Rule V.F.1 is burdensome, and that the advantages of the utility and affiliates using the same name or logo are outweighed by the burdensome nature of the disclaimer, they have the option of not sharing the utility's name and logo with affiliates covered by these Rules.

3.2. Modification of Rule V.F.1's Disclaimer Requirement

Alternatively, petitioners request that the Commission revise the disclaimer's language and limit the instances where the disclaimer must be provided, if the Commission finds that Rule V.F.1's disclaimer requirements are applicable to them. In making this request, petitioners fail to comply with Rule 47(b) of the Commission's Rules of Practice and Procedure, which requires that a petition "must propose specific wording to carry out all requested modifications to the decision." The petition does not do so with respect to the requested modifications. Moreover, the petition does not specifically state that it also requests a modification of D.98-04-029 regarding the size and legibility of the disclaimer, nor does it propose specific wording to carry out its requested modifications, even though the Commission would have to modify D.98-04-029 to grant the requested relief.

While we will address the merits of the issues raised by petitioners as presented by the pleadings, we point out that failure to comply with Rule 47's requirements is grounds to summarily dismiss a petition. We caution future petitioners to fully comply with our rules, in order to put all parties and the

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[4] The plain language of our Rules lead to the conclusion. We do not adopt petitioners' rationale set forth in their petition at p. 6.

Commission on notice of the precise modifications petitioners request to our decisions.

3.2.1. Application of the Disclaimer

Petitioners argue that disclaimers should be limited to the types of communications normally associated with disclaimers such as printed, radio, or video advertisements, written or oral communications to customers or potential customers, and products. They believe the disclaimer should not be required when a Sempra Energy affiliate covered by the Rules uses the Sempra Energy logo in non-promotional material such as legal or regulatory filings, annual reports to shareholders, or communications between Sempra Energy companies. Petitioners also do not believe disclaimers are appropriate on building signs, business cards, golf balls, company vehicles and uniforms, etc. because requiring disclaimers in such places makes "a mockery out of an otherwise serious requirement."

This request exemplifies why Rule 47(b) requires petitioners to provide the exact wording of their proposed modifications. Petitioners' proposed distinction between those instances in which they believe a disclaimer is necessary, and those where it is not, is blurred. Based on petitioners' pleadings, it is unclear what would constitute the types of communications "normally associated with disclaimers." Modifying the Rule to require disclaimers for promotional, as opposed to non-promotional material, is also ambiguous because many such items may have a dual purpose, including promotion. For instance, petitioners do not believe it is appropriate to use disclaimers on golf balls or business cards. Yet in both of these instances, the purpose of placing the company's name and logo on the golf ball or the business card is, at least in part, promotional (i.e., to promote the company, and indirectly, promote the products of the company.)

However, it is appropriate to give Rule V.F.1 a common sense interpretation. Therefore, we clarify that Rule V.F.1's disclaimer requirement should not apply in certain limited instances defined below where our goals of protecting consumer interests and fostering competition would not be harmed. These situations are narrowly limited to: (1) communications with governmental bodies, where the parties involved either know, or should have reason to know, the legal status and interrelationship of the utility and affiliates, and the communications are not related to product sales; (2) annual reports to shareholders; or (3) internal written communications between the holding company, the utility, and any of the affiliates covered by the Rules, provided that the internal communications are not also sent to third parties outside of the company.

The situations covered by item one, listed above, are legal or regulatory proceedings, written communications with governmental bodies regarding actual or proposed legislation, and written communications to federal, state, or municipal agencies which relate to an agency requirement or power (other than the power of the agency to buy products and services). We believe that this interpretation of Rule V.F.1 is appropriate for all utilities covered by the Affiliate Transaction Rules, not just petitioners.

3.2.2. Text of Disclaimer

Petitioners also request that the text of the disclaimer be shortened as follows: "[the affiliate] is an affiliate of SoCalGas and SDG&E, but is not regulated by the California Public Utilities Commission." Petitioners believe that this presents a more concise and readable presentation than the first and second line of the required disclaimer, "the affiliate is not the same company as [the Gas Company or SDG&E], the utility. The affiliate is not regulated by the California Public Utilities Commission." While we have no objection to

petitioners using the conjunction "and" to join the first and second sentence of the disclaimer, we reject the proposed changed wording here. When we adopted Rule V.F.1, we designed the disclaimer to be in plain English. Stating that the affiliate is "an affiliate" of the utility is not as clear as stating that the two entities are not the same company. Therefore, we deny petitioners' proposed modification on this issue.

Edison believes that, if the Commission elects to retain the disclaimer requirement, Rule V.F.1.b should, at least for electric service providers (ESPs), be more technically accurate and read "the Commission does not regulate the terms of that affiliate's service offerings," rather than "the affiliate is not regulated by the California Public Utilities Commission." In the case of ESPs, Edison argues that the Commission regulates them to the extent of being able to revoke their certification for certain causes, and that the present language is therefore misleading, and should either be modified or omitted. We clarify Rule V.F.1 so that all utilities can use the following modification of the disclaimer for its ESP affiliates so that the disclaimer is more technically accurate: "the California Public Utilities Commission does not regulate the terms of that affiliate's products and services."

Edison also argues that the disclaimer requirement is not appropriate for affiliates other than energy marketing affiliates, since for example, while certain affiliates may not be regulated by the Commission, they are regulated by other governmental entities. We disagree. If Edison, or any other utility, wishes to indicate elsewhere in their promotion that their affiliate is regulated by other governmental entities, it can. However, we do not change our disclaimer in this respect.

Petitioners request us to delete the third statement in Rule V.F.1 altogether. This statement reads "you do not have to buy [the affiliate's]

products in order to continue to receive quality regulated services from the utility." Petitioners believe this does not make sense in the context of the Sempra Energy logo, since the logo is not offering any sort of product.

However, the disclaimer is only required when the affiliate shares the same name or logo as the utility. In that context, this portion of the disclaimer makes sense, and its omission is a material deviation from our required disclaimer. Petitioners also state that it is difficult to have a lengthy disclaimer under broadcasting standards, since broadcasting standards require a disclaimer to be on the screen longer if it is longer in length. However, this is not a reason to eliminate an integral part of the disclaimer, and we therefore deny this requested modification.

3.2.3. Size of the Disclaimer

Although the petition does not specifically request us to modify D.98-04-029, petitioners in fact request a modification of D.98-04-029 when they ask us to clarify our previous requirements on the disclaimer's size. In D.98-04-029, in response to an illegible disclaimer used by PG&E Energy Services, PG&E Corp. advised the Commission that, unless directed otherwise, it intended to use what it termed an objective target of legibility for the disclaimer in future print advertising, under which the required disclaimer would be printed at a target font size of eight points, subject to remaining proportionate to the document. For instance, eight points may be too small for a full-page newspaper advertisement and too large for a business card.

In response, we clarified what we meant by "clearly legible" in D.97-12-088, *slip op.* at p. 46, as it pertains to Rule V.F.1.

> "When we initially adopted Rule V F, we could have placed more specific criteria for legibility in the rule. However, we generally do not want to appear to micromanage the utilities, but rather, prefer to set forth

> clear rules by which the utilities can comply with the letter and spirit of the decision. Here, our goal is to achieve timely compliance with our rules, not to have a multitude of proceedings such as this where we are called upon to enforce our rules piecemeal with respect to particular promotional materials. Therefore, we will more clearly explain what we mean by 'clearly legible' (see D.97-12-088, *slip op.* at p. 46) in printed material as it relates to Rule V F. We clarify the standard for 'legible' to mean that the disclaimer must be sized and displayed commensurate with the 'signature' (i.e., the logo or name identification), so that the disclaimer is no smaller than ¾ the size of the type which first displays the name and logo, and is positioned so that the reader will naturally focus on the disclaimer as easily as the 'signature.' The disclaimer shall not be displayed upside down, sideways, in a different language, or in any other way which would have the effect of minimizing its appearance." (D.98-04-029, *slip op.* at p 11.)

In this case, petitioners state that the Sempra Energy logo that is currently contemplated would be sized at the equivalent of 36 point type in standard printed materials, and that it would not make sense to have a disclaimer in 27 point type. This is so, petitioners contend, because it would take up a substantial portion of the page and the additional size would serve no benefit. Petitioners claim that advertising standards adhered to by numerous competitive markets such as the automobile and healthcare industries, dictate that disclaimers in text need to be in type that is a minimum of 6 points (as opposed to the 4.5 point type petitioners claim PG&E used in its disclaimer which engendered the motion resulting in D.98-04-029). Attachments to their pleadings show samples of the 6 point type.

Unfortunately, petitioners do not cite or attach any document to support their claim that 6 point type is the "industry standard." Other "industry standards" appear to exist. For instance, in PG&E's declarations filed

in this proceeding in response to our request in D.98-04-029 that PG&E make a supplemental filing on a penalty issue specific to PG&E, PG&E states that its own disclaimer (which we found violated Rule V.F.1) was consistent with industry practice. (See April 21, 1998 Declaration of Justin L. Hafen, paragraph 3 ["Placement of the disclaimer was consistent with standard industry practice: The disclaimer was designed and placed to be plain and legible, but small enough so as not to district from the primary message of the advertisement. There was no attempt to hide the disclaimer."]; see also April 20, 1998 Declaration of Eileen Arbues, paragraph 4 ["In my extensive experience in marketing and advertising I know that disclaimers are commonplace, and the industry practice is to print disclaimers in relatively small print size, while ensuring that they are readable. I applied that standard in approving the advertising proof for publication."] Both declarations are attached to PG&E's April 21 Response to Order of the Commission for Supplemental Filing.)

Moreover, petitioners' proposed modification does not address proportionality (i.e., that a large, as opposed to a small sized disclaimer is more appropriate in a full page newspaper advertisement where the name or logo appears in large type.) Although petitioners themselves state that "industry standard" is a minimum of 6 point type, it appears that if we adopt petitioners' argument, the disclaimer might never appear larger than 6 point type, and the industry minimum would become Rule V.F.1's maximum. For example, Petitioners' Attachments show their logo at 32 point type and the disclaimer at 6 point type, which is clearly too small in that context.

We reiterate that we do not want to micromanage the utilities, but we nevertheless want to ensure that they comply with both the letter and the spirit of Rule V.F.1, and that the disclaimer be an integral part of the message of the advertisement, positioned so that the reader will naturally focus on the

disclaimer as easily as the "signature." In fact, we set forth more specific criteria defining "clearly legible" in D.98-04-029 in order to achieve timely compliance with our Rules, not to have a multitude of proceedings where we are called upon to enforce our Rules piecemeal with respect to particular promotional materials.

Based on the petition, it appears that our requirement that the disclaimer be no smaller than ¾ the size of the type which first displays the name or logo may be modified and still provide for a legible disclaimer. However, we are uncomfortable in merely establishing a floor (i.e., 6 point type), because we anticipate that the disclaimer would never be any larger than the floor, no matter how large the name or logo. This is clearly inappropriate, because the disclaimer should be sized and displayed commensurate with the "signature". Therefore, we modify page 11, as well as Finding of Fact 3 of D.98-04-029, to clarify that the disclaimer be no smaller than the larger of: (a) ½ the size of the type which first displays the name or logo, or (b) 6 point type. In all other aspects, D.98-04-029's clarification of "clearly legible" remains the same.

Findings of Fact

1. Whether the name or logo currently in use by the utility predates the enactment of our Affiliate Transaction Rules is a distinction without a difference. The plain language of Rule V.F.1 applies to the utility's current name and logo, whether or not it existed in December 1997 when the Commission adopted the Rules.

2. Rules are meant to be applied prospectively, as well to situations existing on the date of their enactment.

3. We view the tag line, if used by SDG&E or SoCalGas, as either part of the logo, or part of the utility's name for purposes of Rule V.F.1

4. The portion of the petition requesting a modification of Rule V.F.1's disclaimer requirement does not comply with Rule 47(b) of the Commission's

Rules of Practice and Procedure because it does not propose specific wording to carry out all requested modifications to the decision.

5. Modifying Rule V.F.1 to require disclaimers for promotional, as opposed to non-promotional material, is ambiguous because many such items may have a dual purpose, including promotion.

6. It is appropriate to give Rule V.F.1 a common sense interpretation as provided in Section 3.2.1 of this decision.

7. Stating that a utility's affiliate is "an affiliate" is not as clear as stating that the utility and affiliate are not the same company.

8. For an ESP affiliate, it is more technically accurate to allow the disclaimer in Rule V.F.1.b to read "the California Public Utilities Commission does not regulate the terms of that affiliate's products and services," rather than "the affiliate is not regulated by the California Public Utilities Commission."

9. Based on the record in this proceeding, it is unclear what size type is the "industry standard" for disclaimers.

10. Although petitioners state that "industry standard" is a minimum of 6 point type, if we adopt petitioners' argument, the disclaimer might never appear larger than 6 point type, and the industry minimum would become Rule V.F.1's maximum.

11. We do not want to micromanage the utilities, but nevertheless want to ensure that they comply with both the letter and the spirit of Rule V.F.1.

12. We set forth more specific criteria defining "clearly legible" in D.98-04-029 in order to achieve timely compliance with our Rules, and not to have a multitude of proceedings where we are called upon to enforce our Rules piecemeal with respect to particular promotional material.

13. Based on the petition, it appears that our requirement that the disclaimer be no smaller than ¾ the size of the type which first displays the name or logo can be modified and still provide for a legible disclaimer.

Conclusions of Law

1. Petitioners' petition for modification of the disclaimer requirement is granted in part, and denied in part, as set forth in the discussion, findings, and conclusions.

2. A petitioner's failure to comply with Rule 47(b)'s requirements constitutes grounds to summarily dismiss the petition for modification.

3. Rule V.F.1's disclaimer requirement should be clarified so that it would not apply in certain limited instances defined below. These situations are narrowly limited to: (1) communications with governmental bodies, where the parties involved either know, or should have reason to know, the legal status and interrelationship of the utility and affiliates, and the communications are not related to product sales; (2) annual reports to shareholders; or (3) internal written communications between the holding company, the utility, and any of the affiliates covered by the Rules, provided that the internal communications are not also sent to third parties outside of the company. The situations covered by item one, listed above, are legal or regulatory proceedings, written communications with governmental bodies regarding actual or proposed legislation, and written communications to federal, state, or municipal agencies which relate to an agency requirement or power (other than the power of the agency to buy products and services). This interpretation of Rule V.F.1 is appropriate for all utilities covered by the Affiliate Transaction Rules, not just petitioners.

4. We clarify Rule V.F.1.b so that, in the case of ESP affiliates, the second line of the disclaimer may read as follows: "The California Public Utilities Commission does not regulate the terms of that affiliate's products and services."

5. The second to the last sentence of the first full paragraph of page 11 of D.98-04-029 is modified to read as follows: "We clarify the standard for 'legible' to mean that the disclaimer must be sized and displayed commensurate with the 'signature' (i.e., the logo or name identification), so that the disclaimer is no smaller than the larger of: (a) ½ the size of the type which first displays the name or logo, or (b) 6 point type, and is positioned so that the reader will naturally focus on the disclaimer as easily as the 'signature.'"

6. Finding of Fact 3 of D.98-04-029 is modified to read as follows:

> "In addition to the direction set forth in D.97-12-088, legible, in the context of printed materials as it related to Rule V F, means that the disclaimer must be sized and displayed commensurate with the 'signature' (i.e.,., the logo or name identification), so that the disclaimer is no smaller than the larger of: (a) ½ the size of the type which first displays the name or logo, or (b) 6 point type, and is positioned so that the reader will naturally focus on the disclaimer as easily as the 'signature.' The disclaimer shall not be displayed upside down, sideways, in a different language, or in any other way which would have the effect of minimizing its appearance."

7. Because we want timely compliance with our Affiliate Transaction Rules, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The June 30, 1998 "Petition of San Diego Gas & Electric Company and Southern California Gas Company for Modification - Disclaimer Requirement," is granted in part, and denied in part, as set forth in the discussion, findings, and conclusions.

2. Rule V.F.1's disclaimer requirement is clarified so that it shall not apply in certain limited instances defined below. These situations are narrowly limited to: (1) communications with governmental bodies, where the parties involved either

know, or should have reason to know, the legal status and interrelationship of the utility and affiliates, and the communications are not related to product sales; (2) annual reports to shareholders; or (3) internal written communications between the holding company, the utility, and any of the affiliates covered by the Rules, provided that the internal communications are not also sent to third parties outside of the company. The situations covered by item one, listed above, are legal or regulatory proceedings, written communications with governmental bodies regarding actual or proposed legislation, and written communications to federal, state, or municipal agencies which relate to an agency requirement or power (other than the power of the agency to buy products and services). This interpretation of Rule V.F.1 is appropriate for all utilities covered by the Affiliate Transaction Rules, not just petitioners.

3. Rule V.F.1.b is clarified so that, in the case of electric service provider (ESP) affiliates, the second line of the disclaimer may read as follows: "The California Public Utilities Commission does not regulate the terms of that affiliate's products and services."

4. The second to the last sentence of the first full paragraph of page 11 of Decision (D.) 98-04-029 is modified to read as follows: "We clarify the standard for 'legible' to mean that the disclaimer must be sized and displayed commensurate with the 'signature' (i.e., the logo or name identification), so that the disclaimer is no smaller than the larger of: (a) ½ the size of the type which first displays the name or logo, or (b) 6 point type, and is positioned so that the reader will naturally focus on the disclaimer as easily as the 'signature.'"

5. Finding of Fact 3 of D.98-04-029 is modified to read as follows:

> "In addition to the direction set forth in D.97-12-088, legible, in the context of printed materials as it related to Rule V. F., means that the disclaimer must be sized and displayed commensurate with the 'signature' (i.e., the logo or name identification), so that the

disclaimer is no smaller than the larger of: (a) ½ the size of the type which first displays the name or logo, or (b) 6 point type, and is positioned so that the reader will naturally focus on the disclaimer as easily as the 'signature.' The disclaimer shall not be displayed upside down, sideways, in a different language, or in any other way which would have the effect of minimizing its appearance."

This order is effective today.

Dated November 5, 1998, at San Francisco, California.

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