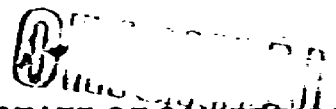


Decision 99-04-069 April 22, 1999



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 SOUTHERN CALIFORNIA EDISON COMPANY'S
PETITION FOR MODIFICATION OF THE AFFILIATE TRANSACTION
RULES REGARDING A LIMITED EXEMPTION TO THE DISCLAIMER
REQUIREMENT OF RULE V.F.1**

1. Summary

This decision grants the December 14, 1998, petition of Southern California Edison Company (Edison) for modification of the Affiliate Transaction Rules under the terms set forth in this decision. This decision grants Edison and other utilities subject to the Affiliate Transaction Rules a limited exemption from the disclaimer requirement of Rule V.F.1 of the Affiliate Transaction Rules in the four limited situations described in this decision as set forth more fully below:

- (a) building signage; (b) company vehicles; (c) employee uniforms; and
- (d) installed equipment on customer premises.

2. Background

The Commission adopted the Affiliate Transaction Rules in Decision (D.) 97-12-088, as modified by D.98-08-035, and as further clarified in D.98-11-027. Edison filed this petition for modification on December 14, 1998.

Edison requests that the Commission grant Edison a limited exemption to the disclaimer requirement of Rule V.F.1 of the Affiliate Transaction Rules in the following four situations: (a) building signage; (b) company vehicles; (c) employee uniforms; and (d) installed equipment on customer premises.

Edison requests the Commission clarify that Rule V.F.1 does not apply to the above four situations, in a similar fashion as the Commission clarified Rule V.F.1 in another context in D.98-11-027.

On January 13, 1999, The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed a joint response to Edison's petition. ORA and TURN request that Edison amend its petition to clarify its compliance plan for Rule V.F.1 and to provide a detailed and case-specific justification for any exemptions it is seeking to Rule V.F.1. Absent such amendment, ORA and TURN request that the petition be denied. On February 1, 1999, Edison filed a reply to ORA and TURN, where Edison more particularly described the specific situations for which it seeks exemption.

3. Interplay of this Petition with Related Proceedings

ORA and TURN state that two proceedings related to Edison's overall interpretation and implementation of Rule V.F.1 are outstanding. One is Edison's compliance plan process, as ordered by D.97-12-088. Edison has submitted a revised compliance plan which is awaiting a Commission resolution. ORA and TURN have also filed a complaint case (Case (C.) 98-04-029) alleging Edison's noncompliance with Rule V.F.1. Edison has presented the same argument in that case as it has in its compliance plan. The parties to the complaint case, with the concurrence of the assigned Administrative Law Judge, have stayed processing of the complaint pending the Commission's resolution of the compliance plan.

ORA and TURN state Edison's petition is not timely, because the very essence of Edison's compliance with Rule V.F.1 is in dispute in the above-referenced filings before the Commission. ORA and Edison request that Edison amend its petition to clarify its position on Rule V.F.1 before the Commission acts on this petition.

In its reply, Edison states that it believes that its petition will promote efficiency of process. Edison recognizes that if the Commission adopts Edison's interpretation¹ of Rule V.F.1, then Edison's petition is rendered substantially moot. However, Edison does not believe the petition would be entirely moot because the materials which would be exempted if the Commission granted the petition should remain exempt whether or not the corporate 'tag line' is featured in conjunction with the holding company logo and affiliated companies' names. If the Commission rejects Edison's compliance plan, Edison believes the Commission may do so while having the opportunity to recognize that there are certain limited instances in which the disclaimer requirement will not operate given the time, place, and manner in which the disclaimer is used, or as a practical matter because it cannot. Edison argues that the petition presents the Commission with the opportunity to appreciate and deal with some of the practical permutations of the disclaimer rule.

We do not address Edison's overall interpretation of Rule V.F.1, or those issues raised by its compliance plan and in C.98-04-029 in this decision. The

¹ Edison's "interpretation" of Rule V.F.1 is that "the energy burst logo is the holding company's, that no affiliate uses the utility's plug-and-color-bars logo, and that unless an affiliate's name or materials include the utility's name (Southern California Edison) or the corporate 'tag line' ("An Edison International Company") the disclaimer obligation is not triggered." (Edison Reply at p. 2.)

Commission will address Edison's overall interpretation of Rule V.F.1 in its resolution on Edison's compliance plan and in C.98-04-029, as appropriate. What we address in this decision is whether the Commission should make the following exemptions to Rule V.F.1 in cases where the Rule applies.

4. Rule V.F.1

Rule V.F.1 of the Affiliate Transaction Rules provides:

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.

In D.98-11-027, *slip op.* at p. 14, we clarified the Rule V.F.1. does not apply in certain limited situations where our goals of protecting consumer interests and fostering competition would not be harmed. These limited situations involved certain communications between the affiliate and governmental bodies, annual reports to shareholders, and certain affiliate internal communications. We also clarified Rule V.F.1 so that in the case of electric service provider 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." (*Id.* at p. 15.)

Edison requests the Commission clarify D.97-12-088 to state that the disclaimer requirement of Rule V.F.1 shall not apply to: (a) building signage; (b) company vehicles; (c) employee uniforms; and (d) installed equipment on customer premises. We address each of these requested exemptions in order below.

5. Building Signage

Edison requests that the Commission exempt it from Rule V.F.1's disclaimer requirement when the affiliate uses the utility's name or logo on a building sign. Edison states that Edison Mission Energy, Edison Capital, and the Edison Enterprises have occupied separate buildings from the utility for years. According to Edison, requiring a disclaimer the size required by Rule V.F.1 to accompany the building sign would be extremely unwieldy and in some instances impossible. Edison also believes building signs should be exempt from the Affiliate Transaction Rules because their primary purpose is identification, not marketing. According to Edison, the alternative, which would be to require the affiliate to remove its name from the building, would impair Edison's contract and First Amendment free speech rights.

ORA and TURN ask for more clarification on the extent of the exemption sought by Edison. Edison provided further clarification in its reply.

We grant Edison, and all other utilities subject to the Affiliate Transaction Rules, a narrow exemption from Rule V.F.1 with respect to the types of building signs set forth below. We do so provided that the types of signs set forth below are used as identification, and not to expressly market a product or service or the company. For example, such signs should not include telephone numbers,

promotional banners, or other product advertisements. We recognize that even if the primary purpose of a sign is for identification, it may also have a secondary marketing purpose or effect. We also recognize that the application of this rule is not limited only to instances where the affiliate is marketing a product, but is more broadly designed to help prevent customer confusion by reinforcing the separation of the affiliate and the utility in the mind of the consumer. However, we grant this narrow exception to Rule V.F.1 because it is important to identify where, for example, the affiliate's offices are located in a building, and because posting the disclaimer on the top of a building with a large sign may be unwieldy or impossible. Therefore, we determine that this exemption may apply to the following types of building signs, provided they are used as identification and not expressly to market the product or service or the company.

- a. Outdoor signs located on a building in which the affiliate is located.
- b. "Monument signs" outside buildings in which the affiliate is located. These signs are usually freestanding signs jutting up from lawns or concrete walkways.
- c. Building entrance signs in a building in which the affiliate is located, or in an adjacent or nearby parking structure serving the affiliate's offices. These signs include those placed on buildings and adjacent to entry doors as well as signs placed directly on such doors (e.g., the company's name applied by paint, decal, adhesive placard, or through etched glass.) The intent of these signs is to indicate the correct entrance to use for a particular facility.
- d. Lobby signs located in a building which is occupied by the affiliate.
- e. Reception area signs in the affiliate's business offices, which offices do not also operate as retail stores or other similar types of areas open to the general public. These types of signs include signs at suite door entrances, directional signs, reception desk name plates, etc.

6. Company Vehicles and Employee Uniforms

Edison requests that the Commission also carve out a limited exemption to Rule V.F.1 for the name or logo that appears on affiliate company vehicles and employee uniforms. Again, Edison argues that the principle purpose of using the name or logo in such instances is for identification, rather than to initiate a business transaction. Edison argues that this limited exemption will enhance customer information and might also further customer safety. Edison believes that if the Commission required a rule-compliant disclaimer on a company vehicle, the disclaimer would be of such size as to subject the disclaiming company to ridicule. Edison also believes it is important from a consumer protection perspective that employee uniforms clearly delineate who the employee works for.²

ORA and TURN state that there is tremendous value associated with the ability to place corporate identifiers on company vehicles and employee uniforms. ORA and TURN point out that the petition does not specify which company vehicles or employee uniforms should be exempt. ORA and TURN state that Edison makes no pledge not to co-advertise or co-brand with its affiliates in these two situations.

In its reply, Edison specified with more detail which company vehicles and employee uniforms should be exempt from Rule V.F.1.

² Edison states that if any other party to these proceedings is concerned that the requested exemption could be used or abused as an opportunity to turn the back of an employee's uniform into a billboard (with perhaps an "800" number), that party could request modification of the Rule back to its original form if such abuse occurs.

We grant Edison, and all other utilities subject to the Affiliate Transaction Rules, a narrow exemption from Rule V.F.1 with respect to affiliate company vehicles and employee uniforms as more fully described below. As we did for building signage, we grant this exemption because of some limited specific practical problems posed by strict application of the Rule. We continue to recognize the importance of promoting the separation of the affiliate and utility in the minds of the consumer. Further, this exemption should not be abused by the affiliate in order to market its products or services. For example, such signs should not routinely include telephone numbers, promotional banners, or other product advertisements. In the event it is necessary to include an affiliate telephone number on a company vehicle (such as a security patrol car) to indicate where the consumer can call if there are any problems, it should connect to an affiliate's "trouble shooting" desk. It is a violation of Rule III.E and V. F. 4 for utility to co-advertise or co-brand with its affiliate.

Although the primary purpose of a name or logo on a vehicle or employee uniform is for identification, it may also have a secondary marketing purpose or effect. However, we grant this narrow exception to Rule V.F.1 because it is important that consumers be able to identify which company owns and is responsible for a vehicle, and, more importantly, to identify for whom a particular employee works, especially if the employee is making field calls (i.e., if the employee is a repair person). Important public safety concerns require such identification. Also, Edison recognizes that such employees are prohibited by state law as well as Commission rules, from claiming that they represent the utility. Therefore, we grant a limited exemption to Rule V.F.1 to Edison and other utilities subject to the Affiliate Transaction Rules, as conditioned above, for the following situations:

- a. Uniforms worn by a retail affiliate's field service employees (i.e., repair persons, installers and security officers) while performing their duties within California. (For Edison, this includes employees of Edison Select and Edison Source and their respective subsidiaries.)
- b. Field service trucks, patrol cars, and similar vehicles used by a retail affiliate in the course of installation or repair of customer premises equipment or response to security alarms within California.

7. Installed Equipment on Customer Premises

Edison argues granting an exemption to Rule V.F.1 for use of the utility's name or logo on affiliate equipment installed on the customer's premises does not harm the underlying purpose of Rule V.F.1. This is so because, by definition, equipment will not be installed on a customer's premises until that business or individual becomes a customer of the affiliate. Edison explains that in order to become a customer, the business will have already been exposed to the required disclaimer at least once. According to Edison, its affiliates do not manufacture or sell equipment that can be obtained in unaffiliated stores. Therefore, Edison believes that exempting equipment installed on a customer's premises from the disclaimer rule will not create customer confusion or provide the affiliate with an unfair advantage because the commercial transaction will have already taken place before the equipment is installed.

ORA and Edison disagree with Edison, and urge Edison to present and describe the specific situations with respect to equipment installed on the customer's premises for which it seeks exemption. In its reply, Edison emphasizes its argument stated above, and also states that the primary purpose of the affiliate name or logo on installed equipment is to inform, not to motivate a commercial transaction. For example, Edison states that security service yard signs are designed as a deterrent device to prevent criminal activities. The yard

signs also provide neighbors or others with information about how and to whom to report a possible security problem. Edison also states that the use of a name or logo on a refrigeration compressor rack enables service persons (including those employed by the affiliate, the customer, and other third-party vendors) to identify clearly which pieces of equipment are owned, operated, or maintained by a particular firm. In its reply, Edison has also attached a detailed current list of those items of equipment that its affiliates may install on customer premises which it believes should be exempted from the disclaimer requirement. This list includes many security-related products and refrigeration equipment.

Although the primary purpose of using the name or logo on installed equipment may be informational, it may also have a secondary marketing purpose or effect. However, because we do not want to discourage the affiliates from informing customers how to repair the equipment they have purchased, and because consumers generally should have been exposed to the disclaimer in the marketing of the product, we grant Edison, and other utilities subject to the Affiliate Transaction Rules, a limited exemption to Rule V.F.1's disclaimer requirement for affiliate-installed equipment on a customer's premises. We do so provided that the customer has been exposed to the disclaimer in the affiliate's marketing of the product, and provided that the utility name or logo on the equipment is not accompanied by additional marketing information (i.e., that it is not accompanied by a phone number where the customer can buy similar products or receive compatible services, etc.). We do not believe this limited exemption should harm competition because our Rules also continue to prevent the utility and affiliate from jointly marketing products or services.

Furthermore, if parties can demonstrate the utility is using this limited exemption, or those granted above, to circumvent the purpose of our Affiliate

Transaction Rules, we can eliminate the narrow exemptions we adopt in this decision.

8. Comments on Draft Decision

The draft decision of Administrative Law Judge Econome in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No parties filed comments to the draft decision.

Findings of Fact

1. Although the primary purpose of the affiliate's use of the utility name or logo on building signage, company vehicles, employee uniforms, and installed equipment on the customer's premises may be for identification, this use may also have a secondary marketing purpose or effect. We also recognize that the application of Rule V. F. 1. Is not limited only to instances where the affiliate is marketing a product, but is more broadly designed to help prevent customer confusion by reinforcing the separation of the affiliate and the utility in the mind of the consumer.

2. We carve a narrow exemption to Rule V.F.1 for the types of building signs described in Section 5 and the Ordering Paragraphs of this decision because it is important to identify where, for example, the affiliate's offices are located in a building, and because posting the disclaimer on the top of a building with a large sign may be unwieldy or impossible.

3. We carve a narrow exemption to Rule V.F.1 for the types of affiliate company vehicles and employee uniforms described in Section 6 and the Ordering Paragraphs of this decision because it is important that consumers be able to identify which company owns and is responsible for a vehicle, and, more importantly, to identify for whom a particular employee works, especially if the

employee makes field calls (i.e., if the employee is a repair person). Important public safety concerns require such identification.

4. We carve a narrow exemption to Rule V.F.1 for equipment installed on a customer's premises, provided that the customer has previously been exposed to the disclaimer in the affiliate's marketing of the product, and provided that the utility name or logo on the equipment is not accompanied by additional marketing information (i.e., that it is not accompanied by a phone number where the customer can buy similar products or receive compatible services, etc.). We do so because we do not want to discourage the affiliates from informing customers how to repair the equipment they have purchased, and because customers generally should have been exposed to the disclaimer in the marketing of the product.

5. If parties can demonstrate the utility is using the limited exemptions we make to Rule V.F.1 in this decision to circumvent the purpose of our Affiliate Transaction Rules, we can eliminate the narrow exemptions we adopt in this decision.

Conclusion of Law

Edison's December 14, 1998 petition for modification of Rule V.F.1 of the Commission's Affiliate Transaction Rules should be granted so as to provide Edison, and other utilities subject to the Affiliate Transaction Rules, a limited exemption from the disclaimer requirement of Rule V.F.1 of the Affiliate Transaction Rules in the four limited situations described more fully in this decision, and particularly in the Ordering Paragraphs of this decision:

- (a) building signage; (b) company vehicles; (c) employee uniforms; and
- (d) installed equipment on customer premises.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (Edison) December 14, 1998 petition for modification of Rule V.F.1 of the Commission's Affiliate Transaction Rules shall be granted so as to provide Edison, and other utilities subject to the Affiliate Transaction Rules, a limited exemption from the disclaimer requirement of Rule V.F.1 of the Affiliate Transaction Rules in the four limited situations described more fully in this decision and in particular in the following Ordering Paragraphs: (a) building signage; (b) company vehicles; (c) employee uniforms; and (d) installed equipment on customer premises.

2. Edison and other utilities subject to the Affiliate Transaction Rules are granted a narrow exemption from Rule V.F.1 of the Affiliate Transaction Rules with respect to the types of building signs set forth below, provided that the signs set forth below are used as identification, and not to expressly market a product or service or the company.

- a. Outdoor signs located on a building in which the affiliate is located.
- b. "Monument signs" outside buildings in which the affiliate is located. These signs are usually freestanding signs jutting up from lawns or concrete walkways.
- c. Building entrance signs in a building in which the affiliate is located, or in an adjacent or nearby parking structure serving the affiliate's offices. These signs include those placed on buildings and adjacent to entry doors as well as signs placed directly on such doors (e.g., the company's name applied by paint, decal, adhesive placard, or through etched glass.) The intent of these signs is to indicate the correct entrance to use for a particular facility.
- d. Lobby signs located in a building which is occupied by the affiliate.
- e. Reception area signs in the affiliate's business offices, which offices do not also operate as retail stores or other similar types of areas open to

the general public. These types of signs include signs at suite door entrances, directional signs, reception desk name plates, etc.

3. Edison and other utilities subject to the Affiliate Transaction Rules are granted a narrow exemption from Rule V.F.1 of the Affiliate Transaction Rules with respect to the types of affiliate company vehicles and employee uniforms set forth below, provided that the name or logo is used as identification, and not to expressly market a product or service or the company. For example, such signs should not routinely include telephone numbers, promotional banners, or other product advertisements. In the event it is necessary to include an affiliate telephone number on a company vehicle (such as a security patrol car) to indicate where the consumer can call if there are any problems, the number should connect to an affiliate's "trouble shooting" desk. A utility shall not use company vehicles or uniforms to co-advertise or co-brand with its affiliate. The affiliate company vehicles and employee uniforms included within this exemption include:

- a. Uniforms worn by a retail affiliate's field service employees (i.e., repair persons, installers and security officers) while performing their duties within California. (For Edison, this includes employees of Edison Select and Edison Source and their respective subsidiaries.)
- b. Field service trucks, patrol cars, and similar vehicles used by a retail affiliate's in the course of installation or repair of customer premises equipment or response to security alarms within California.

4. Edison and other utilities subject to the Affiliate Transaction Rules are granted a narrow exemption from Rule V.F.1 of the Affiliate Transaction Rules with respect to affiliate-installed equipment provided that the customer has been exposed to the disclaimer in the affiliate's marketing of the product, and provided that the utility name or logo on the equipment is not accompanied by additional marketing information (i.e., that it is not accompanied by a phone

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number where the customer can buy similar products or receive compatible services, etc.).

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners