ALJ/JSW/avs

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Decision 99-05-034 May 13, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation. | Rulemaking 94-04-031 (Filed April 20, 1994) |
| Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation. | Investigation 94-04-032 (Filed April 20, 1994) |

ORIGINAL

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# DECISION REGARDING PERMANENT STANDARDS FOR FINANCIAL, TECHNICAL AND OPERATIONAL VIABILITY, MODIFICATION OF DECISION (D.) 98-03-072 AND D.97-05-040, YEAR 2000 COMPLIANCE BY ALL ELECTRIC SERVICE PROVIDERS, AND OTHER DIRECT ACCESS RELATED ISSUES

## I. Summary

In Decision (D.) 98-03-072, the Commission addressed various consumer protection issues associated with direct access. As part of the consumer protection safeguards, Senate Bill (SB) 477 (Stats. 1997, ch. 275) requires that all electric service providers (ESPs) offering electrical services to residential or small commercial customers provide "proof of financial viability" and "proof of technical and operational ability" as a precondition to registration under Pub. Util. Code Section 394.[1] SB 477 directed the Commission to develop uniform standards for determining financial viability, and technical and operational ability, and to publish such standards for public comment. D.98-03-072 proposed permanent standards, and adopted interim standards pending the adoption of permanent standards for financial viability and technical and operational ability.

Today's decision addresses the comments regarding the proposed permanent standards for proof of financial viability and technical and operational ability. We adopt, without change, the permanent financial, technical and operational standards which we proposed at pages 32 to 34 of D.98-03-072. However, the requirement that the ESP provide the fingerprints of all of the Board of Directors of a corporation seeking to become a registered ESP is eliminated. As a result of this change, some slight modifications have been made

[1] All code section references are to the Public Utilities Code unless otherwise stated.

to D.98-03-072 and to the revised ESP Registration Application Form, which was attached to D.98-03-072 as Appendix A. The permanent financial standards will become effective in 90 days, and the permanent technical and operational standards are effective immediately.

D.97-05-040 and the revised ESP Registration Application Form are modified to reflect that any change in the telephone number or address of a registered ESP is to be reported to the Commission within five days of such a change.

D.98-03-072 solicited comment on the Commission's proposal to have each utility distribution company (UDC) maintain a tracking system to compile the number of complaint calls to each UDC's customer service about ESPs. Today's decision directs the Energy Division and the Consumer Services Division (CSD) to meet with the Regulatory Complaint Resolution (RCR) forum to develop the parameters of what kind of ESP complaint calls should be tracked. A report with the proposed parameters shall then be filed with the Commission, with an opportunity for parties to file responses. An assigned Commissioner's ruling will then issue setting forth what the monitoring parameters shall be, and when the tracking system should be implemented.

D.98-03-072 also proposed that the Office of Ratepayer Advocates (ORA) be responsible for evaluating and summarizing the competing service offerings of the ESPs, and invited comments on this proposal. The Commission authorizes ORA to proceed with the activities that it outlined to the Commission in its October 16, 1998 "Report Of The Office Of Ratepayer Advocates On Methods To Accomplish The Consumer Education Mandates In Public Utilities Code § 392.1(c) And Decision 98-03-072." Among the activities that ORA is authorized to pursue is a comparison matrix of the service offerings of registered ESPs.

The decision also modifies the Section 394.5 notice discussion in D.98-03-072, as well as the sample notice which appears in Appendix C of that decision. Instead of requiring the ESPs to set forth on the notice each recurring and non-recurring charge of the UDCs, the ESPs should be allowed to list the type of UDC charge that the customer is obligated to pay, together with a statement that the total price does not include the UDC charges, and that the customer should look at the UDC's bill or contact the UDC to determine the exact amount of the UDC's charges. The Energy Division shall also decide whether a workshop should be held to address whether the Section 394.5 notice should use certain assumptions as part of the pricing disclosure.

Today's decision also exempts those ESPs who are registered with the Commission, but who only serve medium to large commercial customers or industrial customers, from having to provide a Section 394.5 notice to the larger customer when a small commercial account is served as part of the negotiated contract to supply electricity to the larger customer.

Several of the parties commented that the discussion in D.98-03-072 of a customer's right to cancel was inconsistent with the direct access tariff provision that was adopted in D.97-10-087 which governs when a direct access service request (DASR) can be submitted. We have modified portions of D.98-03-072 to clarify the time period in which a customer has a right to cancel and when a DASR can be submitted. Appropriate tariff changes to Sections E.(6) and G of Appendix A of D.97-10-087 will have to be made to conform the tariff provisions to our modifications.

The decision also addresses the Year 2000 (Y2K) computer date issue, and the efforts by all ESPs in California to address those problems. In Resolution M-4792, which was adopted on November 19, 1998, the Commission ordered all regulated utilities to provide information about their efforts to address the Y2K

problem, to provide a certification that they are Y2K compliant or ready, and to develop contingency plans to address any resulting Y2K problems. Since the ESPs are providing electric service, a service which the Legislature has proclaimed "is of utmost importance to the safety, health, and welfare of the state's citizenry and economy," the Commission orders all ESPs operating in California to complete the "Year 2000 Program Assessment Checklist & Survey For Electric Service Providers," a copy of which is attached as Appendix A, and to certify no later than November 1, 1999 that all of their essential service delivery systems are Y2K compliant or ready.

This decision also modifies the monthly reporting of DASR activity which appears at page 30 of D.97-05-040. That reporting requirement shall be extended through December 31, 2000. In addition, the UDCs will be required to submit to the Commission monthly reports on metering and billing activities.

## II. Procedural Background

Edison Source filed a petition to intervene on April 15, 1998. Attached to Edison Source's petition to intervene was the "Comments of Edison Source on D.98-03-072 Opinion Regarding Consumer Protection."

New West Energy Corporation (NWE) filed a motion on April 16, 1998 requesting permission to file its comments one day out of time. Attached to the motion was a copy of its proposed comments. NWE's proposed comments state that it previously filed a petition to intervene on March 18, 1998, but the petition was not addressed in D.98-03-072. NWE renews its request that it be allowed to intervene as an interested party.

No one has objected to the filing of Edison Source's petition to intervene or to NWE's motion and its petition to intervene. We will grant the petition to intervene of Edison Source, the petition to intervene of NWE, and the motion of NWE to file its comments one day late. The Docket Office is directed to file the

"Comments of Edison Source on D.98-03-072 Opinion Regarding Consumer Protection" as of April 15, 1998, and to file "New West Energy Corporation's Comments On Proposed Standards" as of April 16, 1998.

On May 4, 1998, The Greenlining Institute and the Latino Issues Forum (Greenlining/LIF) filed a motion for leave to file reply comments. The motion states that they believe their reply comments have been timely submitted for filing because D.98-03-072 provides that "persons may file opening comments on the proposed standards within 20 days from today, and reply comments within 35 days." Greenlining/LIF have calculated the 35 days from the date D.98-03-072 was mailed (March 30, 1998), instead of the date the opinion was issued (March 26, 1998). In the event their calculation of the filing date for reply comments was incorrect, Greenlining/LIF request that they be allowed to late-file their reply comments. No one opposed the motion of Greenlining/LIF.

Greenlining/LIF incorrectly calculated the filing date for reply comments. Ordering paragraph 15 of D.98-03-072 states that the reply to the opening comments are due "within 35 days from today." The reference to "today" referred to March 26, 1998, the date the Commission adopted the decision. However, since no one objected to the motion, and because no one would be prejudiced by the late-filing of their reply comments, the motion of Greenlining/LIF for leave to late-file their reply comments should be granted. The Docket Office is directed to file the "Reply Comments By The Greenlining Institute And Latino Issues Forum On The Opinion Regarding Consumer Protection" as of May 4, 1998.

The draft decision of Administrative Law Judge (ALJ) John S. Wong was mailed to the parties in accordance with Section 311(g). Comments were timely filed by the Enron Corporation (Enron), ORA, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California

Edison Company (SCE). Utility.com filed a petition to intervene on April 28, 1999, and attached its comments to the petition to intervene. The ALJ granted the oral request of Green Mountain Energy Resources, L.L.C. (Green Mountain) to late file its comments on April 30, 1999. On May 4, 1999, the California Energy Commission (CEC) filed a motion to accept its comments for late filing. Reply comments were timely filed by Green Mountain, ORA, PG&E, SDG&E and SCE.

The petition to intervene of Utility.com states that it is a registered ESP, and that it was not incorporated until November 2, 1988, after D.98-03-072 had been issued. Utility.com states that it has a material interest in the outcome of this proceeding because its business will be affected by the terms and conditions set forth in the draft decision. We will grant the petition to intervene of Utility.com, and direct the Docket Office to file the "Comments In The Above Captioned Proceeding Regarding The Draft Decision Of ALJ Wong Mailed 4/8/99 by Utility.com" as of April 28, 1999.

The CEC's motion states that due to the unavailability of the only CEC attorney assigned to matters involving the Commission, it was unable to timely file its comments. The CEC states that given the nature of this proceeding and the minimal delay in filing, the CEC believes that no party will suffer harm or adversity as a result of its late submission. Since the CEC has limited its comments to two narrow issues, and because its comments were submitted before the ALJ considered the comments, we will grant the CEC's motion. The Docket Office is directed to file the "Comments Of The California Energy Commission On Draft Decision Regarding Permanent Standards, And Other Direct Access Related Issues" as of May 4, 1999.

We have considered the comments and reply comments to the draft decision, and have made appropriate changes. To the extent the comments

reargue positions set forth by the parties in earlier pleadings, we have ignored them.

## III. Issues Raised By The Parties

### A. Introduction

In D.98-03-072, the Commission provided an opportunity for interested parties to file opening and reply comments in four discrete areas. The first area was on the proposed final standards for proof of financial viability and proof of technical and operational ability. Second, comments were invited on the proposal to have ORA establish and maintain a matrix of competing service offerings. Third, comments were solicited on the proposal to have the UDCs collect data on the number of calls to their customer service centers regarding complaints against ESPs. And fourth, comments were invited on how prices can be expressed in the Section 394.5 notice while providing consumers with sufficient information to compare alternatives. (D.98-03-072, pp. 79, 136-137.)

Some of the parties who filed comments have taken our invitation to submit comments as an opportunity to revisit other issues that have previously been decided in D.98-03-072 and in D.97-10-087. These issues include the costs associated with ESP registration, suspension of the ESP's registration, the issuance of public alerts, and electronic data interchange standards. Since the Commission has already considered and addressed the issues, the Commission will not revisit them.

There are certain other issues which merit further discussion because they help clarify prior Commission decisions. These issues are discussed towards the end of this decision.

## B. Financial, Technical And Operational Standards

### 1. Introduction

In accordance with SB 477, the Commission issued for comment its proposal for permanent financial viability standards, and technical and operational standards. Pursuant to Sections 394(a)(9) and 394(a)(1), the public was provided with an opportunity to comment on the proposed standards, as reflected in the position of the parties below.

### 2. Financial Viability Standards

#### a. Position Of The Parties

The California Competition Network (CCN)[2] supports the concept that every registered ESP must post a minimum security deposit, and that the security deposit should be capped at some reasonable level. CCN believes that the financial viability of the ESP should be proportional to the amount of electric power and any deposits the ESP must cover. CCN also believes that the Commission should mandate the use of liability insurance instead of requiring a cash deposit or a financial guarantee bond.

NWE states that it is an ESP that is active in marketing electric services in California. Although NWE endorses the need for basic consumer protection and the imposition of tools to prevent and weed out unscrupulous ESPs, NWE feels that the Commission needs to "be cognitive of the need to strike a balance between measures that are designed to protect

[2] The following members of CCN joined in the comments: CellNet Data Systems, Christian Energy, Eastern Pacific Energy, Keystone Energy, School Project for Utility Rate Reduction, PowerCom, and Utilisis.

consumers and the imposition of too much regulation." (NWE Comments, p. 2.) NWE believes that many of the standards adopted in D.98-03-072 are unnecessary, and inhibit choice and innovation. Instead of establishing a competitive marketplace for electricity, NWE feels that unnecessary barriers to competition are being created.

NWE contends that the only monetary risk to residential and small consumers is the potential loss of any deposit or up-front payment held by the ESP. NWE believes that such a risk can be eliminated by requiring customer deposits and upfront payments to be held in customer trust accounts.

In a letter dated April 28, 1998 to Commissioner Richard Bilas, Energy Suppliers of America (ESA) expressed concern about the deposit requirement. ESA states that the proposed requirement of $25,000 for 250 customers is a financial burden for many of the small ESPs. ESA contends that it is "next to impossible" for a small business to come up with the $25,000 bond requirement, and that such a requirement will force the small ESPs out of the marketplace.

ESA also contends "that it is impossible for an ESP to cheat any consumer because market forces specify that no consumer will give any ESP a cash deposit." In addition, ESA asserts that since the utility is the entity that will do the metering and billing for the ESPs, the ESP will not receive any money until after the customer has paid the utility.

Although SDG&E did not comment on the specific level of the security deposit, it recognizes that there needs to be a balance between the need to maximize competition by reducing barriers to competition, and the need to protect small consumers. SDG&E believes that alternatives to the security deposit should be explored in greater detail, such as the customer trust account. SDG&E cautions that if such an approach is used, the:

> "trust account must be developed using generally accepted banking and accounting procedures; that it be easily administered and uniform among ESPs; that the operating costs of the account are borne by the ESP desiring this method of securing performance; and that a customer can readily access those funds to which it is lawfully entitled."

SDG&E agrees with D.98-03-072 that the terms and conditions of the trust account need to be approved by the Commission's General Counsel. (See D.98-03-072, p. 31, O.P. 9(c)(1).)

Commonwealth Energy Corporation (Commonwealth) agrees that ESPs should be permitted to place customer deposits in a deposit trust account. Commonwealth contends that such an account would allow the ESP to access funds to pay any amount owed by the customer to the ESP.

Commonwealth also recommends that once an ESP has operated for one year with at least 10,000 customers and without evidence of any material difficulties in billing in the second half of the year, or any late payment of material obligations, that the security requirement for the ESP should be lifted because the ESP has demonstrated its financial viability.

Commonwealth also recommends that the Commission take steps to determine under what circumstances the financial security deposit or bond can be used. Commonwealth believes that the Commission should foreclose the security only in those situations where there are adjudicated, unsatisfied claims by customers of an ESP, and there is a substantial risk that the claims will not be satisfied due to: (1) the ESP declaring bankruptcy or being put into involuntary bankruptcy; or (2) the ESP ceasing to do business without transferring its customers to the UDC or another ESP. The Commission also needs to determine how it will distribute the proceeds of the security to injured customers of the ESP.

Commonwealth and Enron recommend that the Commission accept other forms of security which are the functional equivalents of a performance bond, cash security deposit, or trust account. Such instruments as a standby letter of credit, segregated accounts, pledged accounts, payment bond certificates, or other devices which allow adequate recourse, should be accepted.

Although Enron does not necessarily believe that a deposit of $25,000 up to $100,000 will provide significant consumer protection, Enron does not object to this requirement. Enron suggests that because end-use customers only need assurances that their service deposits and prepayments are safe, that the Commission could require that all precollected customer money be held in customer trust accounts. Such accounts should limit the use of the money for specified purposes, while ensuring that the funds are safely held on behalf of the customer.

Green Mountain and Edison Source request that the Commission clarify the term "performance guarantee bond" or "financial guarantee bond," as those terms are used at pages 31 and 35 of D.98-03-072. They request that the Commission make clear that ESP's be allowed to meet the deposit requirement with any of the following: (1) cashiers check; (2) performance or payment bonds; (3) corporate guarantee; or (4) a bank letter of credit or stand-by letter of credit. Green Mountain also requests that the Commission identify the staff members who will be responsible for coordinating compliance with the financial viability requirements.

Edison Source describes a payment bond as a guarantee from a bonding company to a second party to pay an obligation incurred by a third party up to the amount required by the security deposit.

Edison Source describes a corporate guarantee as "an instrument containing a promise by a corporation to pay an obligation owed to a second party in the event a third party does not pay." Edison Source suggests that the Commission adopt a minimum credit rating for the corporation that is guaranteeing the security deposit, such as a credit rating that is the equivalent of what is contained in Section S.(2)(a) of Appendix A of D.97-10-087.

The standby letter of credit is described by Edison Source as a letter from a commercial bank which allows a second party to draw against funds provided by the bank in the event the third party does not pay an obligation. Edison Source points out that the creditworthiness of the bank needs to be considered if a letter of credit is used.

Commonwealth also raised the issue of what happens when a customer of a UDC wants to switch service to an ESP which requires a deposit. If the UDC is still holding the customer's deposit, the customer who is switching will have to put up a second deposit with the ESP until the UDC returns the customer's deposit. Commonwealth recommends that when a customer changes service to an ESP which offers consolidated billing and requires a deposit, that the Commission order the UDC to transfer the customer's deposit to the ESP's deposit trust account.

ORA supports the recommendation of Commonwealth to require the UDC to transfer any customer deposit to a deposit trust account held by an ESP which offers full consolidated billing. However, if the customer owes money to the UDC for a past due amount, and the amount is not the subject of a complaint with the Commission, ORA states that the UDC should be allowed to draw from the customer's deposit in the amount of the past due bill, thus transferring only the net deposit to the ESP.

PG&E contends that Commonwealth's recommendation regarding customer deposits is contrary to the direct access tariff provision governing deposits. PG&E states that upon the establishment of a customer's creditworthiness, it will refund the customer's security deposit upon request. PG&E points out that there are other problems with Commonwealth's recommendation, such as ensuring that the deposit is used to pay outstanding electricity bills, and calculating the interest earned on the deposit. PG&E also states that if Commonwealth's proposal is adopted, mechanisms would have to be developed to ensure that individual customers are made aware of, and agree to, the transfer of their deposits to a third party.

SDG&E contends that Commonwealth's recommendation to transfer customer deposits will result in customer confusion, and is contrary to existing tariff provisions regarding the return of security deposits. Such a requirement would also force the UDCs to be aware of what kind of security deposits each UDC requires.

In the proposed decision which led up to the issuance of D.98-03-072, it was proposed that the security deposit be based on the number of customers served by an ESP and the number of kilowatt hours (kWh) sold by the ESP. Edison Source and Green Mountain state that to ascertain how large of a deposit would be needed for any given ESP, the ESPs were asked to supply information on the number of customers and number of kWh sold in the standard service plan form filing. Since D.98-03-072 changed the method of determining the size of the security deposit, Edison Source, Enron, and Green Mountain contend that the information on the number of kWh sold is no longer needed. Therefore, they recommend that question 8 in the standard service plan form, attached to D.98-03-072 as Appendix B, be deleted. They also contend that this information is confidential and proprietary, and that they do not want any

retail competitors or wholesale suppliers to know how many kWh they have sold. The ESPs point out that although the decision recognizes the commercial sensitivity of disclosing the number of customers reported in the standard service plan filing, the decision failed to explicitly recognize the sensitivity of the number of kWh sold.

Greenlining/LIF state that the Commission has achieved an appropriate balance between the Commission's mandate to protect customers and the need to refrain from imposing burdensome regulations. Greenlining/LIF contend that the Commission should disregard the comments of those parties who seek to weaken the registration requirements.[3] Greenlining/LIF contend that a $25,000 bond can be obtained for no more than $500 for an adequately funded ESP.

Greenlining/LIF agree with the UDCs' comments that the requirement of a standard service agreement does not ensure that an ESP is financially viable. Therefore, Greenlining/LIF believe that requiring an adequate bond requirement becomes even more important. They favor a deposit cap of at least $500,000 instead of the proposed maximum requirement of $100,000.

ORA recommends that the financial standards for ESPs that collect deposits from end-use customers should be higher than for those ESPs which do not collect deposits. ORA points out that if the number of customers exceed 1000, the security deposit requirement would remain unchanged even though additional customer deposits would be collected. ORA

[3] Greenlining/LIF request that the Commission take official notice of the news article attached to its reply comments, in particular, the statement that Enron expended $5 million in marketing in California and that Enron's withdrawal from the market is temporary. We decline to take official notice of that article because our resolution of the permanent financial viability standards does not rely on the contents of that article.

recommends that the security deposit amount for ESPs should be equal to the amount of customer deposits that the ESP collects from its customers.

ORA also recommends that the Commission consider the establishment of a victim's trust fund for residential and small commercial customers, and that it be funded from the interest earned on the security deposits. In the event of non-performance or fraud, the victim's trust fund could be used to mitigate the harm to the customer.

The Utility Reform Network (TURN) supports the proposed financial viability standards set forth in D.98-03-072. TURN contends that the financial viability standards are needed because there is a potential for customers to be charged for more than what they agreed to when offered the service, or charged for services they never received.

TURN is concerned, however, that the maximum security deposit of $100,000 will become too small as the market expands. For example, a customer with 1000 customers would have to post the same amount of security as an ESP with 20,000 customers. TURN recommends that the Commission monitor the market, and increase the security amount as the number of customers switching to new providers increases.

### b. Discussion

In D.98-03-072, the Commission proposed the following permanent standard as proof of financial viability:

> "Prior to signing up and initiating a DASR request on behalf of any residential or small commercial customer, an ESP will be required to post a minimum cash security deposit (cashier's check) or financial guarantee bond in the amount of $25,000 with the Commission. In the alternative, the registered ESP may open a customer trust account in that amount which is in a format approved by the Commission's General Counsel, and which ensures that residential and small commercial

customers have adequate recourse in the event of the ESP's fraud or non-performance. The deposit, bond or trust account shall be established when the Section 394.5 notice is first tendered to the Energy Division.

As the ESP's number of customers increase, the ESP shall be required to increase its security deposit in accordance with the following schedule:

| # of Customers | Security Deposit Amount |
|---|---|
| 1 - 250 | $25,000 |
| 251-500 | $50,000 |
| 501-1000 | $75,000 |
| 1001 + | $100,000 |

The ESP will be required to increase the amount of the deposit, bond or trust account in accordance with the schedule above if the number of customers reported in the standard service plan filing raises the ESP to a different security deposit amount level.

If a cash security deposit is posted with the Commission, any interest earned on the deposit would be returned to the ESP on an annual basis." (D.98-03-072, pp. 32-33, footnote omitted.)

We first address the comments which assert that requiring a security deposit from the ESPs will result in a financial burden, especially for the smaller ESPs. Although we sympathize with those entrepreneurs who want to minimize their up-front costs, Section 394(a)(9) is clear that "uniform standards for determining financial viability" are to be developed "to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance." In addition, Section 391(g)(3) states:

"The commission shall balance the need to maximize competition by reducing barriers to entry into the small retail

> electricity procurement market with the need to protect small consumers against deceptive, unfair, or abusive business practices, or insolvency of the entity offering retail electric service."

We have considered how the requirement of a security deposit may result in a barrier to entry for ESPs who plan to serve the residential and small commercial markets. The Commission noted in D.98-03-072 that the posting of the security deposit would provide adequate recourse if the ESP failed to perform or engaged in fraud. In footnote 13 at page 32 of D.98-03-072, the Commission noted that $25,000 was a reasonable starting point as a minimum requirement. The starting deposit of $25,000 is not a burden when one considers how much residential and small commercial customers could lose if an unscrupulous ESP tries to take advantage of these customers or if it fails to perform. Requiring the ESPs to post the deposit will help to ensure that the ESP has the financial resources to operate as an ESP, and that the ESP's deposit will be at risk if the ESP fails to perform or if it defrauds its customers. Even if market forces prevent an ESP from collecting a deposit, as some of the commenting parties have suggested, the security deposit provides proof of the ESP's financial viability, and that adequate recourse will be available.

As for the different security deposit amounts, this will help ensure that as the number of customers grow, that the customers will have adequate recourse in the event of fraud or nonperformance on the part of the ESP. Such a mechanism is consistent with Section 394(a)(9) because it takes into consideration the number of customers the ESP is serving, and the corresponding increase in the amount of electricity that the ESP provides.

We do not agree with those parties who suggest that the deposit amount should be increased beyond the $100,000 level. With this level of deposit, and with a customer base of more than 1000, the odds that an ESP will

defraud its customers or fail to perform are likely to be reduced. In order to sign up more than 1000 customers, the ESP would probably have to spend a fair amount of money to market itself and provide reliable service to those customers on an ongoing basis. Raising the security deposit amount beyond $100,000 is likely to act as a barrier to competition by increasing the cost of doing business for ESPs, rather than to protect small consumers from deceptive, unfair, or insolvent ESPs. Thus, the security deposit schedule should remain the same. Should problems occur with ESPs who serve more than 1000 customers, we may revisit the $100,000 deposit ceiling as suggested by some of the parties.

We take this opportunity to remind all registered ESPs that under our interim financial standards adopted in D.98-03-072, and in the permanent financial standards which we adopt today, all registered ESPs are required to post the deposit or bond with the Commission "prior to signing up and initiating a DASR on behalf of any residential or small commercial customer." (D.98-03-072, pp. 32-33, 35-36, Ordering Par. 5 and 16.) That means if an ESP is actively marketing its services to any residential or small commercial customer, the ESP is required to post the deposit or bond with the Commission before its first customer agrees to take service from the ESP or before any money is transferred to the ESP from the consumer. Should the Energy Division or the CSD determine that a registered ESP is not in compliance with our financial standards, we would expect the staff to initiate an appropriate process to suspend or revoke the ESP's registration.

The comments have suggested that other mechanisms and financial instruments be permitted to establish proof of an ESP's financial viability. One suggestion is to require the ESP to have liability insurance instead of a cash deposit. It is our belief that the liability insurance approach does not provide customers with adequate recourse. Many insurance policies have

provisions which specifically exempt the insured from any liability if it engages in fraud. Since the financial viability requirement was established to provide consumers with adequate recourse in case of an ESP's fraudulent activities, the liability insurance approach should not be used. Another disadvantage with this approach is if the ESP simply goes out of business or fails to perform. The liability insurance is unlikely to cover the return of the customer deposits under such circumstances.

Suggestions have also been made to use corporate guarantees or letters of credit as substitutes for a cash deposit. The use of either of these mechanisms would require the Commission staff to conduct some background investigation into evaluating the financial strength of the corporation guaranteeing payment for the ESP, or the financial strength of the bank issuing the letter of credit. Also, such mechanisms do not provide the Commission and the ESPs' customers with a ready source of funds, i.e., adequate recourse, if the ESP fails to perform.

At this time, it is our belief that the cash deposit or bond approach provides the best assurance that customers will have adequate recourse. Both of these approaches put the ESP at some financial risk for any consequences resulting from the ESP's wrongdoing or failure to perform. By requiring a deposit or bond, the ESPs are putting up a liquid asset of substantial worth, or purchasing a bond to guarantee the ESP's performance. The deposit or bond provides customers with adequate recourse from losing any customer deposits or advance payments that they have made to an ESP. The deposit or bond approach will help to screen out potential entrants that may contemplate some wrongdoing, and should cause an ESP to seriously evaluate whether it is financially capable of performing its obligations to both its customers and the UDC.

Some of the comments suggest that in lieu of having to post the cash deposit or bond, that all precollected monies an ESP obtains from its customers be deposited into a customer trust account. The Commission stated in D.98-03-072 that such an alternative could be used so long as the customer trust account is in the amount of the required security deposit amount, and in a format approved by the Commission's General Counsel which ensures that residential and small commercial customers have adequate recourse in the event of the ESP's fraud or non-performance. (D.98-03-072, pp. 32-33, 35.) Thus, there is nothing to prevent the use of a customer trust account so long as it meets the requirements mentioned above.

We also remain open to the use of a corporate guarantee or a letter of credit as proof of financial viability. However, no one has proposed all of the "pertinent details" for using these kinds of mechanisms, even though we requested commenting parties to do so. (See D.98-03-072, p. 34.)[4] In the absence of such details, the Commission should refrain from using these kind of mechanisms as a substitute for the security deposit. Parties are free to raise this issue again by supplying the necessary details of using such mechanisms in a petition to modify the relevant decisions.

Others have suggested that the UDCs be ordered to transfer any customer deposits for electricity to the ESP when the customer elects to take service from the ESP. We believe that such a requirement should not be

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[4] We are particularly interested in the following: (1) under what circumstances the Commission, customer, or ESP can gain access to the monies; (2) how the ESP registration unit can be assured that the corporate guarantee or letter of credit is genuine; (3) what the staff should do to verify that the guarantee or letter of credit is backed by a reputable and credit-worthy entity; and (4) whether there will be any delays in getting the corporation or bank to supply the necessary funds if the ESP fails to perform or defraud its customers.

adopted for several reasons. First, it would result in a burden on the UDC to track and account for the customer's deposit when the customer selects electric service from an ESP. For example, if the customer deposited money with PG&E or SDG&E, a portion of the deposit might be for gas service and the remainder for electric service. When the customer switches to an ESP, the UDC would have to separate the electric service portion from the total deposit. Another example of the accounting problem is if the customer owes money to the UDC. Under current tariff provisions, the electric utility can use the deposit to offset the unpaid bill. If such a situation arose, there might not be any deposit left to transfer to the ESP.

A second reason for not adopting the transfer of deposit is that the UDCs would have to become familiar with each ESP's deposit requirement, and set up the procedures for the transfer and acknowledgment of the deposit. And finally, the third reason is that existing UDC customers have not consented to the automatic transfer of the deposit.

D.98-03-072 stated that a "financial guarantee bond" could be used to meet the security deposit requirement. (See D.98-03-072, pp. 31, 35, 132.) Several of the commenting parties have asked the Commission to clarify what kind of bond can be used as a security deposit, and suggest that the financial guarantee bond include the use of performance bonds and payment bonds.

In D.98-03-072 at page 31, the Commission stated that some of the parties had suggested the use of "a performance or financial guarantee bond" as a substitute for the cash security deposit. However, most of the references in the decision refer to the bond as a financial guarantee bond. (See D.98-03-072, pp. 31, 35, 132.) But in Ordering Paragraph 10(c)(i), the Commission also stated that pending approval of a customer trust account, that a "cash

deposit or performance bond is required." The use of the term "financial guarantee bond" was intended to cover both performance bonds and payment bonds. The use of either bond shall be permitted so long as the bond affords protection to residential and small commercial customers in case of the ESP's fraudulent practices or failure to perform. In addition, the form of the bond must be acceptable to the ESP Registration Unit.[5]

Commonwealth requests that the Commission specify the kind of circumstances for which the cash security deposit or bond can be foreclosed. We do not disagree with the kind of circumstances that Commonwealth has suggested should trigger action on the security deposit. However, the Commission should not restrict itself at this point in time to the kind of events that would trigger Commission action with respect to the security deposit. Instead, the Commission should address each situation as it arises. This will give the Commission the flexibility to determine when an ESP is engaging in fraud or is failing to perform, and whether action on the security deposit is needed.

Some of the parties suggest that since D.98-03-072 did not adopt the proposal to base the security deposit on the number of kWh sold, that question 8 on the standard service plan form be deleted.[6] That question asks the ESP to state the average number of kWh served per month during the past six months for residential customers and small commercial customers. We do not believe that this question should be deleted. This kind of information will assist

[5] A sample bond can be found on the Commission's web site on the page that lists the requirements for ESPs.

[6] The standard service plan from was attached to D.98-03-072 as Appendix B.

the Commission in drawing conclusions about the impact of direct access on residential and small commercial customers.

As for the concerns that this kind of information should remain confidential, we agree. In D.98-03-072 at page 57, the Commission stated that the number of customers served by each ESP should not be disclosed to the public because the disclosure of such information could give its competitors an advantage by using those numbers to ascertain the ESP's market share. (See Pub. Util. Code Section 394.4(a).) Similarly, if the ESP's number of kWh served per month was disclosed, this would allow a competitor to ascertain the ESP's market share.

ORA suggests that the Commission establish a victim's trust fund. We decline to adopt ORA's recommendation at this time.

### 3. Technical And Operational Ability Standards

#### a. Position Of The Parties

##### (1) In General

SDG&E and SCE contend that D.98-03-072 incorrectly concludes that an ESP's execution of the UDC-ESP service agreement provides a basis for inferring that an ESP is technically and operationally viable. Since no test of an ESP's technical and operational abilities are performed before an ESP signs the ESP-UDC service agreement, and because no credit evaluation of the ESP is performed by the UDC, SDG&E and SCE contend that the signed service agreement does not provide any information about the financial viability or the technical and operational abilities of the ESP.

Green Mountain agrees with SCE and SDG&E that signing a UDC-ESP service agreement does not by itself show that the ESP is technically and operationally viable. However, if an ESP is not capable of

successfully completing customer data transactions with the UDC, the customer will never be switched to the ESP. Green Mountain believes that the market itself provides incentives to ensure adequate data exchange and customer service by unregulated, competitive entities, and the Commission should avoid duplicating these market mechanisms.

SDG&E and SCE believe that the Commission should establish a screening process that uses specific criteria to assess the operational and technical capabilities of the would-be ESP. SDG&E proposes that the ESPs be required to take three steps to mitigate the effects of unaccounted for energy (UFE). The first step would require the ESPs to have their scheduling coordinators (SCs) confirm with the UDC that all meters used for direct access are meters for which the SC has meter-reporting responsibility. SDG&E asserts that such a requirement would allow the UDC to verify that it is receiving the same usage data that the ESP's SC receives, and would curtail UFE.

The second step would be to require the ESPs to demonstrate that the customers' meter data reported to the ISO by the ESPs' SCs correctly incorporates the appropriate UDC-specific distribution loss factors (DLFs) and class-specific load profiles. SDG&E contends that these adjustments would reflect the ESP's effort at avoiding under- or over- reporting of usage. SDG&E asserts that by having the Commission require ESPs to direct their SCs to report their loads to the UDCs on an account or meter-level basis, will demonstrate an ESP's technical and operational ability.

SDG&E's recommended third step calls for the ESPs to abide by the Commission's standards regarding meter accuracy. SDG&E asserts that this will further assist in the accurate accounting of usage data.

SDG&E states that the above three steps can be easily accommodated by an ESP who is technically and operationally capable. As for concerns that these

steps may disclose confidential business information, SDG&E contends that sufficient restrictions are in place that prevent a UDC from disclosing this information to anyone.

SCE recommends that the screening process address an ESP's capabilities in the following areas: (1) electronic submission of direct access service requests to the UDCs; (2) retrieval of meter usage data; (3) reporting of aggregated usage data; (4) application of load profiles and DLFs; (5) bill calculation and payment processing; (6) communications with customers; and (7) customer complaint handling.

SCE also recommends that the direct access tariffs be modified to require an ESP to satisfy the creditworthiness, electronic data exchange, and compliance testing for metering and billing requirements that are in Section D of the direct access tariff before the ESP is allowed to sign the service agreement.[7] SCE also recommends that the ESP be required to have the ability to communicate the ESP's aggregated usage to the UDC for verification purposes at the same time it communicates that data to the SC.

SCE agrees with SDG&E's recommendation that ESPs should be required to provide a plan to mitigate UFE as a means to demonstrate technical and operational ability. SCE contends that without a reconciliation process for data reported by the ESPs to their SCs and the ISO, against data reported to the UDCs, the potential for UFE increases. SCE asserts that this will cause UFE to be spread across to all consumers, and will reduce the

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[7] SCE contends that the creditworthiness and the metering and billing compliance testing requirements are of limited value. The creditworthiness requirement only addresses the protection of the UDC's revenue and is not a determination of an ESP's financial viability. The metering and billing compliance testing is only required if an ESP offers consolidated ESP billing.

integrity of the market as a whole. SCE therefore recommends that the following additional language be added:

> "the ESP must demonstrate the ability to communicate to the UDC, at the same time it communicates to its Scheduling Coordinator, the ESP's aggregate usage and warrant to the UDC it will provide such information for verification purposes."

In its reply comments, Commonwealth takes issue with SDG&E's efforts to include schedule coordination as proof of an ESP's technical and operational abilities. Commonwealth contends that SDG&E's proposal to require ESPs to mitigate the effects of UFE is an issue that is not related to the protection of consumers from unfair marketing practices, or an issue about technical or operational capabilities. Instead, UFE is an issue that the ISO needs to address, and that both the Rule 22 working group and the Data Quality and Integrity Working Group (DQIWG) are addressing the UFE issue. Commonwealth also contends that given the minuscule amount of energy that ESPs are currently scheduling, that UFE will not be a material issue until the ESPs schedule a significant portion of the energy. Commonwealth therefore recommends that the issue of UFE be addressed by the working groups that are studying the issue. Commonwealth also recommends that the Commission issue guidelines to the effect that UFE costs should not fall disproportionately on the ESPs who serve residential and small commercial customers.

Green Mountain and ORA also point out that the DQIWG is specifically addressing the issue of UFE. Green Mountain and ORA recommend that the Commission refrain from deciding what specific UFE mitigation measures should be required until the Commission can address the proposals of the DQIWG.

NWE argues that requiring extensive information on the background and experience of an ESP's key operational personnel is unnecessary because protections are already in place through the licensing of SCs by the ISO, and through the MSP and MDMA certification procedures.

Enron seeks to clarify what is meant by the terms "key" technical and operational personnel, and "primary responsibility." Enron proposes that only the single lead employee be identified, i.e., the Chief of Operations for each ESP, along with a description of that employee's qualifications and experience. Enron asserts that the Chief of Operations is the key employee who undertakes the daily responsibilities for technical and operational competency. By identifying this single key employee, Enron contends there will be a clear point of contact and assurance that this senior employee possesses the necessary qualifications. Enron states that the other employees at levels and ranks below the Chief of Operations, are far more likely to be routinely added and subtracted over time. By reducing the number of personnel that have to be listed, the administrative burden will be lessened.

### (2) Fingerprint Requirement

Commonwealth, Enron, and Green Mountain contend that the fingerprint requirement is a major burden and should be eliminated. Commonwealth asserts that if a person with a criminal record wanted to enter the market as an ESP, that person could easily avoid detection by setting up a holding company, and hire persons with clean criminal records as officers and directors of the ESP. Under the current requirement, only those officers and directors would have to submit fingerprints.

Green Mountain states that the requirement to provide the fingerprints of all officers and directors is extremely inconvenient. Since senior company officials also have to disclose any felony convictions, the

fingerprint requirement seems onerous. In addition, Green Mountain asserts that the fingerprint requirement is not required for other industries, and the process is open to fraud because the fingerprinting will be done in private. Green Mountain recommends that if the fingerprint requirement is retained, that the Commission only require fingerprints of the company officers. Green Mountain asserts that it is often more difficult to contact and coordinate with the directors of the company, and the directors tend to be less involved in the day-to-day operations of the company.

Enron contends that D.98-03-072 indicated that the fingerprints will be used to determine if any of the company's officers or directors have felony convictions. Enron points out that because this kind of question is already a part of the ESP registration form, the fingerprint requirement is unnecessary, duplicative, and should be dropped. Enron states that if anyone fails to disclose such a conviction, the Commission has the ability to impose severe penalties.

### (3) Other Registration-Related Issues

ORA recommends that because some ESPs may limit their activities to a certain area, that the ESP registration application form be changed to allow an ESP to specify its target market in more detail. ORA proposes that this change be accommodated by adding lines 14.c and 14.d on the form. Line 14.c could be a check box for "other customers," followed by an area for the ESP to specify what is meant by "other customers." For line 14.d, a check box could be added for an "other" geographic area, followed by an area for the ESP to specify what other areas it plans to serve, e.g., a city or county.

ORA agrees with the Commission's conclusion in D.98-03-072 that Section 394(a) requires ESPs serving residential and small commercial customers operating anywhere in California, including in the service

territories of municipally owned utilities, to register with the Commission. ORA believes, however, that the decision needs to be clarified to make clear that all sections of SB 477 apply to these ESPs.

The first clarification that ORA seeks is that the Commission should informally resolve all complaints involving ESPs regardless of the service territory of the customer. In addition, ORA contends that the Commission should handle any formal complaints against an ESP from customers inside the municipal utility's service territory. However, in order to conserve resources, a customer should not be able to file a formal complaint with the Commission and another with the municipal utility.

The second clarification is that the ESPs who are operating in the service territory of a municipally owned utility should be permitted to peg its price to the local municipal utility's energy or commodity price. ORA also suggests that other aspects of the Section 394.5 notice should be eliminated as well, such as a description of the legislatively mandated charges.

The third clarification that ORA seeks is whether an ESP that operates entirely within the municipal utility's service territory should be required to have a UDC agreement with the municipal utility or with the nearest utility distribution company.

The Energy Division has recommended that any registered ESP which changes its telephone number or address notify the Commission immediately of such a change, instead of allowing the ESP to report the change within 60 days.

### b. Discussion

In D.98-03-072, the Commission proposed the following permanent standards for proof of technical and operational ability:

"(1) Before an ESP may apply for an ESP registration number, and for those ESPs who have already received an ESP registration number, the ESPs are required to provide the Energy Division with a signed copy of their UDC-ESP service agreements for each UDC in whose service territory the ESP plans to do business.

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"(3) The ESP registration application form shall contain a section which requests the applicant to name the key technical and operational personnel, their titles, and a description, including the time period, each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed as well. If the applicant has been authorized by the California ISO to act as an SC, this requirement is waived. The ESP who has been authorized as an SC shall submit a copy of such authorization as part of the ESP registration application form.

"(4) Each registered ESP is required to submit a copy of its Section 394.5 notice to the Energy Division when the ESP signs up its first customer or when the first standard service plan filing of the ESP is due, whichever is earliest.

"(5) Each ESP is required to submit a copy of all of its SC agreements or a signed declaration from each SC with which it has an agreement and which states that the ESP has entered into a SC agreement with the ESP. The copy or declaration shall be submitted to the Energy Division on or before the date when the ESP signs up its first customer. If the ESP is an SC authorized by the California ISO, this requirement is waived." (D.98-03-072, pp. 32-34.)

The Commission adopted interim standards for proof of technical and operational ability that were substantially similar to the proposed permanent standards.

We first address the comments which contend that the requirement of a signed UDC-ESP service agreement does not provide proof of the ESP's technical and operational abilities. The UDC-ESP service agreement cannot be viewed in isolation. Instead, the service agreement must be examined in light of the requirements imposed by the agreement, as well as the other kinds of information a prospective ESP must supply to the Commission.

D.98-03-072 recognizes that the execution of the UDC-ESP service agreement is not the sole criterion for determining viability. At page 27 of the decision, the Commission notes that a prospective ESP, in order to meet its obligations under the UDC-ESP service agreement, would need certain skills. The UDC-ESP service agreement, a copy of which was attached to D.97-10-087 as Appendix B, states in pertinent part in Section 1:

> "This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which ESP shall offer electrical energy services, including, but not limited to, account maintenance and billing services, electrical meter installation, meter reading services and/or any other services that may be approved by the California Public Utilities Commission ('CPUC') in Direct Access transactions with customers in UDC's service territory ('Direct Access Services')."

The service agreement also provides that each party "represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements." (D.97-10-087, App. B, Section 2.) The applicable laws and tariffs include all of the direct access-related decisions and tariffs that the Commission has approved. These decisions and tariffs cover many different technical and operational criteria that the ESP must abide by, including such things as: (1) registering with the Commission;

(2) satisfying the UDC credit-worthiness requirements; (3) satisfying the applicable electronic data exchange requirements for communicating with the UDC; (4) if the ESP provides, installs, reads, or services meters, complying with all the various meter-related requirements; (5) complying with the DASR process, including independent verification of the customer's election to switch, and furnishing the Section 394.5 notice to the prospective customer; and (6) complying with all billing-related requirements. As stated in the UDC-ESP service agreement, the ESP represents that it is and shall remain in compliance with all applicable Commission requirements.

In order for the Commission's ESP Registration Unit to detect whether an ESP can fulfill its responsibilities under the UDC-ESP service agreement, the ESP registration application form requires the prospective ESP to:

> "name the key technical and operational personnel, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed as well."

Thus, the summary of an ESP's key technical and operational personnel, together with the signed UDC-ESP service agreement, are designed to provide the Commission with a level of assurance that the ESP possesses the necessary technical and operational abilities to operate as an ESP. Furthermore, the requirement that the ESPs supply a copy of all of its SC agreements or a signed declaration from each SC which states the ESP has entered into an agreement with it, provides further assurance of the technical and operational abilities of the ESP because of the obligations and requirements imposed on the ESP by the SC.

The UDC is not obligated to ask a prospective ESP before signing an ESP/UDC service agreement for proof that the ESP has the necessary technical and operational abilities. That task is to be determined by the Commission staff based on an evaluation of the materials submitted by the prospective ESP. We do expect, however, that if an ESP is in default of the ESP/UDC service agreement, that the UDC will take the necessary steps in accordance with the agreement, and to make any needed service changes as required by the direct access tariff.

We next turn to Enron's comments that the Commission clarify what is meant by the terms "key" technical and operational personnel, and "primary responsibility." Those terms are mentioned in D.98-03-072 at pages 28 and 33 and at page 4 of Appendix A.

Our reference to those two terms was explained in footnote 12 of D.98-03-072 as follows:

> "The reference to 'key personnel' means those individuals who have the primary responsibility for the day-to-day responsibility for the technical and operational aspects of the business. It is not our intent to have an ESP list every single employee that is involved in these aspects of the business."

Thus, those persons who are in charge of the overall technical and operational aspects, and those responsible for overseeing the day-to-day activities related to the technical and operational aspects of the business, are to be listed on item 16 of the ESP registration application form. We disagree with Enron's proposal that only the single lead employee be identified. Instead, the management and key supervisory personnel who are responsible for the overall and day-to-day activities are to be disclosed. By providing this kind of information, the ESP Registration Unit can develop an understanding about the

scope of the ESP's operations, and whether the ESP's key employees possess the necessary technical and operational abilities.

The next issue to address are the various technical and operational standards that SDG&E and SCE propose be adopted for registered ESPs. SDG&E recommends that the Commission require the ESPs to have their SCs confirm with the UDCs that all meters used for direct access are meters for which the SC has meter-reporting responsibility. In addition, SDG&E recommends that the ESPs demonstrate that their customer meter data reflect the appropriate UDC-specific DLFs and class-specific load profiles by requiring the ESPs to direct the SCs to report their loads to the UDCs. We do not believe that such a proposal is necessary. In Section 18.1 of the UDC-ESP service agreement, the following is provided for:

> "The ESP represents and warrants that for each of its Customers, and at all times during which it provides Direct Access services as an Energy Service Provider, the ESP shall completely, accurately, and in a timely manner account for each of its Customer's loads with a duly authorized Scheduling Coordinator. Load data not accounted for in this manner may provide grounds for termination of this Agreement. For verification purposes only, the UDC shall have complete access to the identity of the Scheduling Coordinator and the load data provided to it by the ESP. Such information is to remain confidential, and shall not be disclosed to any unauthorized person."

The provision above accomplishes some of what SDG&E is trying to achieve. Since the UDC has the right to verify the customer load data that the ESP reports to the SC, the UDC can determine the usage data that the ESP is reporting to the SC. Although the UDC is not in a position to verify what the SC is reporting to the ISO, the UDC-ESP service agreement requires the ESP to retain its records supporting the accuracy of the meter data that it reports to the SC.

The Commission noted in D.97-12-090 that much of the customer usage information will occur between the SCs and the ISO, and that regulatory jurisdiction over these entities resides with the Federal Energy Regulatory Commission (FERC). The Commission went on to state:

> "To ensure the data quality and integrity of the information that the SCs communicate to the ISO, the parties will have to rely on the provisions contained in the ISO and SC agreement." (D.97-12-090, pp. 17-18.)

If there are data quality and integrity problems of the sort that SDG&E has raised, the Commission recognized that other ESPs and the UDCs, and ultimately the end-use customers will have to pay for these kinds of problems. In order for the ESP and UDC service offerings to remain competitive, market pressures will force the ISO to address the data reconciliation issues that SDG&E has raised. Since it is the FERC and the ISO that have responsibility over the SCs, the Commission should defer to the ISO to develop solutions to any account reconciliation problems that may exist.

As the comments of some of the parties note, the Commission authorized the DQIWG to evaluate the gaps or problems areas concerning direct access information exchanges, including UFE, and to develop recommendations for the Commission's use as well as the ISO. (D.97-12-090, p. 25.) The UDCs have also reported on this issue as required by Ordering Paragraph 9 of D.97-10-086. Any action on UFE issues should be deferred until we have an opportunity to address the reports on UFE. Therefore, we decline to adopt SDG&E's recommendation that the Commission require the ESP's to have their SCs confirm with the UDCs which meters the SCs are responsible for, and to report their loads.

SDG&E's other proposal is to have the ESPs abide by the Commission's standards regarding meter accuracy. As discussed earlier, the

UDC-ESP service agreement obligates the ESP to comply "with all applicable laws and tariffs, including applicable CPUC requirements." (D.97-10-087, App. B, Section 2.1.) In the various decisions which addressed the meter standards, the Commission made clear that these standards apply to all ESPs. (See D.97-10-087, App. A, p. 1; D.97-12-048, pp. 54-55; D.98-12-080, p. 103.) Since the Commission has already imposed the meter standards on the ESPs, no additional steps need to be taken by the Commission. If the UDC suspects that an ESP is not adhering to the meter standards, it can take action according to the terms of its tariff and the UDC-ESP service agreement.

We turn next to SCE's recommendations, which propose to screen an ESP's capabilities to perform various direct access-related transactions before an ESP would be allowed to register with the Commission. SCE's recommendations would essentially test the prospective ESP in various facets of the day-to-day activities that an ESP would normally engage in. Although these kinds of daily activities would require an ESP to have the necessary technical and operational skills to perform them, we do not believe that the Legislature intended that a prospective ESP would have to demonstrate that level of detail before being allowed to register as an ESP. Instead, the signed UDC-ESP service agreement, information about the key personnel responsible for the technical and operational aspects of the business, the Section 394.5 notice, and the ESP's agreement with its SCs, will provide the proof necessary to determine whether the prospective ESP has the technical and operational abilities to operate as a registered ESP. Therefore, SCE's recommendations should not be adopted.

Some of the parties who commented believe that the fingerprint requirement is too burdensome, and that if someone really wanted to avoid the requirement, that the person could devise ways to do so.

We believe the fingerprint requirement serves a useful purpose by screening out those persons who are planning to defraud consumers. The requirement is a mechanism which is designed to protect residential and small commercial customers as intended by the Legislature. (See Pub. Util. Code Section 391.) When one balances the need to maximize competition by reducing barriers to entry, with the need to protect small consumers against deceptive, unfair, or abusive business practices, the fingerprint requirement is not an undue barrier to entry given the Legislature's expressed intent to protect small consumers.

We have considered Green Mountain's comment that if the fingerprint requirement is retained, that only the fingerprints of company officers should be required. That comment makes practical sense. Since the directors of corporations tend to be less involved in the day-to-day operations of the company than the company's employees, the fingerprint requirement can be quite burdensome in terms of coordinating the requirement with multiple directors of the company. In addition, we are not persuaded that requiring fingerprints of all the Board of Directors of a corporation will yield much in the way of results. Therefore, we will eliminate the fingerprint requirement for all directors of a corporation who wants to register as an ESP.[8] However, Item 20 of the ESP registration application form will continue to apply to all of the directors of a corporate entity.[9] D.98-03-072 needs to be modified accordingly.

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[8] Ordering Paragraph 10.f) of D.98-03-072 does not need to be modified because that provision applied to all ESPs who received an ESP registration number on or before March 26, 1998.

[9] Item 20 of the form asks the applicant to answer the following two questions: (1) "Has the registrant or any of the general partners or corporate officers or director of the company or limited liability company managers or officers ever been convicted of any felony?" (2) "Within the last ten years, have any of these persons had any civil, criminal, or regulatory

*Footnote continued on next page*

We also clarify that the fingerprint requirement is to be performed by a law enforcement agency, or other person which is qualified to provide fingerprint services. A person shall be deemed qualified if he or she has completed a course of instruction in the taking of fingerprints from a law enforcement agency or a college or university. The ESP registrant shall provide the name and address of the entity or person which provided the fingerprint services, and the date of which that service was performed.

Since the issuance of D.98-03-072, we have noticed several ways in which Item 20 and 21 of the ESP Registration Application Form (D.98-03-072, App. A) can be clarified. Item 20 should be rephrased to make clear that the item applies to all corporate directors, as well as to all members of the limited liability company. Item 21 should be rephrased to make clear that the fingerprint requirement also applies to all members, managers and officers of a limited liability company. Therefore, the first question in Item 20 of the ESP Registration Application Form should be modified to the following:

> "Has the registrant, or any of the general partners, or corporate officers or directors, or limited liability company members, managers, and officers, ever been convicted of any felony?"

Item 21 of the ESP Registration Application Form should be modified to the following:

> "Provide a full set of fingerprints of: (1) if a sole proprietorship, the registrant; (2) if a partnership, all general partners; (3) if a corporation, all corporate officers; and (4) if a limited liability company, all of the members, managers and

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sanctions imposed against them pursuant to any state or federal consumer protection law or regulation?" (D.98-02-072, App. A, p. 5.)

> officers. Use the fingerprint cards included with this application. Additional fingerprint cards may be obtained from the Commission. The fingerprints shall be performed by a law enforcement agency, or other person which is qualified to provide fingerprint services. The ESP registrant shall also provide the name and address of the entity or person which provided the fingerprint services, and the date on which the service was provided."

D.98-03-072 should also be modified by deleting the first full sentence which appears at the top of page 18 of that decision and replacing it with the following:

> "In order to enable the background checks contemplated by the legislation and to verify the accuracy of information supplied by registrants, we will require all ESPs to provide to the Commission a full set of fingerprints of: (1) if a sole proprietorship, the registrant; (2) if a partnership, all general partners; (3) if a corporation, all corporate officers; or (4) if a limited liability company, all members, managers and officers. The fingerprints shall be performed by a law enforcement agency, or other person which is qualified to provide fingerprint services. A person shall be deemed qualified if he or she has completed a course of instruction in the taking of fingerprints from a law enforcement agency or a college or university. The ESP registrant shall also provide the name and address of the entity or person which provided the fingerprint services, and the date on which the service was provided."

We will direct the Energy Division to make the above changes to the ESP Registration Application Form, and to make these changes on the Commission's web site.

We now turn to ORA's recommendation that the ESP registration application form be changed to allow an ESP to specify its target market in more detail. We do not believe that Item 14 of the form needs to be changed. Item 14.c. allows the prospective ESP to check whether it plans to serve

residential customers, small commercial customers, or other customer classes. Item 14.d. asks the prospective ESP to check the box or boxes which best describe the geographic area in which the ESP plans to offer service. The four geographic areas that the ESP can choose are: statewide; central California counties; northern California counties; or southern California counties. In addition, Item 14.a. provides space for the prospective ESP to describe the electrical services the ESP plans to offer. These three items provide a prospective ESP with sufficient flexibility to describe its target market in more detail if it chooses to do so.

We now address ORA's request that the Commission make clear that all sections promulgated by SB 477 apply to the ESPs operating in the service territories of municipally owned utilities.

It is clear from a reading of SB 477 that some of the statutory provisions of that legislation apply to ESP's who serve customers in the service territories of the municipally-owned utilities. However, SB 477 has delegated many of the details of direct access to the governing boards of the municipal utilities. Section 394.4 provides that "the governing body of a public agency offering electrical services to residential and small commercial customers within its jurisdiction" shall adopt the necessary rules which pertain to: confidentiality; physical disconnects and reconnects; change in providers; written notices; billing; meter integrity; customer deposits; and additional protections.

ORA suggests that the Commission clarify that an ESP who is operating in the service territory of a municipally owned utility be allowed to use a Section 394.5 notice which pegs the price of electricity to the municipal utility's energy or commodity price, and that the reference to the legislatively mandated charges be eliminated. ORA also seeks to clarify that an ESP operating entirely within a municipal utility's service territory be required to have an agreement with the municipal utility to distribute the electricity. We believe that these types

of clarifications should be undertaken by the governing boards of the appropriate municipal utilities, rather than by the Commission.

With respect to ORA's suggestion that the Commission informally resolve all complaints involving ESPs, regardless of the service territory of the customer, and that the Commission formally resolve complaints against an ESP from customers inside the municipal utility's service territory, we believe such procedures would be contrary to Section 394.2(a). That subdivision provides in pertinent part:

> "Within the service territory of a local publicly owned utility, consumer complaints arising from the violation of direct access rules adopted by the governing body of the local publicly owned utility shall be resolved through the local publicly owned utility's consumer complaint procedures."

The Legislature has made clear that any consumer complaints against an ESP operating in the service territory of the municipal utility are to be resolved through the municipal utility's consumer complaint procedures. Thus, the Commission staff should refer those types of complaints to the appropriate municipal utility. The Commission should, however, be aware of any ESP activities that affect consumers in the service territories of both the municipal utilities and the investor-owned electrical corporations. If an ESP is engaging in similar suspect activities in both kinds of service territories, the Commission should work with, and cooperate with, the municipal entities that are handling the consumer complaint procedures.

The Energy Division's suggestion to require a registered ESP to notify the Commission immediately of any change in telephone number or address should be adopted. Such a requirement will help "ensure sufficient protection for residential and small commercial consumers" by keeping the Commission informed of an ESP's current telephone number and address. (Pub.

Util. Code Section 391(f).) Although Section 394.1(d) states that the registration information is to be updated within 60 days of any material change, there is nothing in that section which prevents us from requiring a registered ESP to immediately report any change in the telephone number or address. Such a requirement will aid the Commission in its role of protecting consumers from unfair marketing practices. Thus, we will require all registered ESPs to notify the Commission of any change in the telephone number or address within five days of such a change.

The above requirement will result in the modification of D.97-05-040 at page 59 and in ordering paragraph 5.i.(1) at page 95. The Commission previously modified both of these references in ordering paragraph 1.a. and d. of D.98-03-072. D.97-05-040, as modified by D.98-03-072, should be further modified by adding the following sentence at the end of paragraph 2 which appears at page 59:

> "However, if the registrant changes its telephone number or address, the ESP shall notify the Commission in writing within five days of such a change."

In addition, ordering paragraph 5.i.(1) of D.97-05-040, as modified by D.98-03-072, should be further modified by adding the following sentence to the end of that ordering paragraph:

> "However, if the registrant changes its telephone number or address, the ESP shall notify the Commission in writing within five days of such a change."

The revised ESP registration application form also needs to be changed to reflect the above changes. The Energy Division is directed to revise the second to the last sentence which appears at the bottom of page 6 of Appendix A to D.98-03-072 to the following:

> "Any material change in the information required by this form shall be provided to the CPUC within 60 days, except for any change in the ESP's telephone number or address, which shall be reported within five days of such a change. (P.U. Code Section 394.1(d).)"

This change also needs to be made to the ESP registration application form which appears on the Commission's web site.

### 4. Conclusion

With the clarifications and exception noted earlier in the above discussion, the proposed permanent standards for proof of financial viability and technical and operational ability which appeared at pages 32 to 34 of D.98-03-072 are adopted.

The Energy Division and the Information and Management Services Division shall be directed to develop and implement the procedures necessary to ensure that any cash deposits posted with the Commission as part of the ESP registration process earn interest, and that such interest be returned to the ESP on an annual basis. (See D.98-03-072, p. 33.) Since this provision was not adopted as part of the interim standards, this provision should be operative on a going forward basis on the date the permanent financial standards become effective.

In Ordering Paragraph 5 of D.98-03-072, the Commission said that the interim financial viability and technical and operational ability standards would remain in effect until the Commission adopts permanent standards. In order to allow sufficient time for the Commission to develop the procedures necessary to allow ESPs to earn interest on their cash deposits, and to allow the ESPs to match the deposit with the appropriate deposit schedule, the permanent financial standards shall take effect 90 days from today. The permanent technical and operational standards shall take effect immediately.

D.97-05-040 and D.98-03-072 shall be modified as described earlier.

The Energy Division is directed to make the necessary changes to the ESP Registration Application Form, and to the appropriate pages on the Commission's web site.

### C. Proposed Monitoring By The UDCs Of ESP Complaint Calls

#### 1. Position Of The Parties

In D.98-03-072, the Commission proposed that each UDC maintain a database or a tracking system to compile the number of calls to the UDC's customer service center regarding complaints about any registered ESP or other entity offering electrical services to residential and small commercial customers. The proposal envisions that the information would be used to monitor the ESPs' compliance with all applicable laws and orders, assist in any investigation or enforcement action, and to detect possible problem areas. Interested parties were provided with the opportunity to comment on this proposal.

Commonwealth believes that the proposal to have the UDCs track and provide reports of complaints from the public about ESPs will result in a situation where the number of complaints against independent ESPs will be overstated, and the number of complaints against the UDC or its affiliated ESP will be understated. If the Commission decides to go ahead with this proposal, Commonwealth recommends that the information be compiled by an independent third party that is acceptable to the ESPs, and that any complaints be referred to the Commission staff.

Greenlining/LIF state that the proposal should be instituted because such a mechanism can be used to uncover any ESP who may be taking advantage of consumers. Greenlining/LIF contend that customers will report problems to the UDCs because of longstanding customer relationships. In addition, consumers will tend to call the UDCs because they know how to reach the UDCs,

and because the UDCs have multi-language capabilities. Greenlining/LIF point out that the CSD does not have sufficient staffing capabilities and resources to provide sufficient multi-lingual personnel or enough hours of operation to properly monitor small customer complaints.

Green Mountain and Enron assert that the proposal to track the complaint calls is not needed because the Commission is already tracking the customer complaints that it receives. Enron asserts that the UDCs are under an obligation to direct all consumer complaints to the Commission. Green Mountain contends that requiring the UDCs to maintain such a database would be expensive and burdensome.

Green Mountain, Enron, and ORA contend that another drawback to the complaint database is that the UDCs will be placed in the role of an ESP regulator. Enron contends that asking the UDCs to track complaint calls raises the potential for a conflict of interest because the UDC may favor its affiliate ESP by recording more complaints against other ESPs. ORA suggests that the Commission rely on the phone calls and letters that the CSD receives about ESPs to obtain a more comprehensive picture of complaints about ESPs. ORA also recommends that all calls received by a UDC about an affiliate should be reported to the Commission for monitoring purposes.

Enron asserts that the proposal is vague as to what constitutes a complaint. Enron states that in many instances, a consumer may call the UDC with a concern that could be construed as a complaint. However, the call may simply be a request for additional information or for a referral to an ESP. Enron contends that such calls are not complaints, but could potentially be tracked as such by the UDC. Enron states that it is very difficult and a troubling, subjective task to fairly summarize and record customer telephone conversations. Enron

recommends that only telephone conversations with Commission staff be viewed as an actual complaint from consumers about an ESP.

TURN supports the Commission's plan to closely monitor the progress of direct access, and to have the UDCs track the number of complaints against ESPs. TURN agrees that the UDC is likely to be the point of contact for a customer who may be having a problem with its ESP, and that the UDC customer call center can probably provide some very useful information for enforcement purposes. TURN recognizes that the parameters as to what kind of complaints are to be reported should be narrowly proscribed. TURN believes that the UDCs, the ESPs, the Commission, and other interested stakeholders can work together to design these parameters.

TURN also suggests that the UDCs be required to automatically refer customers with complaints about an ESP to the CSD. This could be accomplished by creating phone links between the UDC call centers and the Commission.

Subject to the comments below, PG&E supports the proposal that the UDCs be required to establish a database or record of calls to their customer service centers regarding complaints against ESPs.

1. PG&E agrees that the Commission's proposal should cover all entities offering electrical services to residential and small commercial customers, including those entities which have not registered with the Commission.

2. PG&E believes that it would be too burdensome if the UDC had to categorize each call as a dispute about whether the ESP failed to follow a rule, procedure, or other requirement, or whether the call seeks redress or a change of behavior on the part of the ESP. PG&E asserts that this type of detailed categorization would require additional personnel, training, and the

establishment of new database systems. PG&E proposes that instead of categorizing each call, that each call be simply described in a few sentences.

Although the cost burden to implement the proposal will depend on the level of detail and categorization that is required, PG&E does not expect it to involve annual costs of more than a few hundred thousand dollars. PG&E proposes that the CSD be directed to work with the RCR forum to finalize the type of information that is to be reported, and to make sure that the cost and implementation impacts of such requirements are minimized.[10]

With respect to recording the name, address, and telephone number of the complainants, PG&E states that some customers may be reluctant to provide this information. Thus, PG&E requests the Commission to specify whether anonymous calls should be disregarded or kept as part of the record.

3. PG&E acknowledges that the Commission and its staff have the power to inspect utility records. PG&E states that it will cooperate with all Commission staff efforts to review the records of customer complaints against ESPs, and that it is willing to work with the CSD to facilitate access to those records.

4. PG&E agrees with the proposal that the complaint database "shall be used only to monitor the ESP's compliance with applicable laws, rules and orders, to assist in any investigations or enforcement actions against alleged violators, and to detect possible problem areas." PG&E requests that the Commission clarify that (1) the UDC's role is to simply compile and record this information, and that the utility has no obligation to arbitrate, resolve, or remedy complaints against ESPs; and (2) that the utility is not precluded from using this information that it

[10] The RCR forum is made up of a group of UDC and Commission staff representatives.

obtains to resolve any issues with ESPs or customers which affect PG&E's business systems and interests.

PG&E agrees with the comments of some of the ESPs which expressed a concern that the UDCs should not be placed in the role of policing the marketing practices of ESPs. Both PG&E and SDG&E state that the role of an arbiter of ESP/customer disputes, or a regulator of ESP dealings with customers, should be left to the Commission. PG&E contends that customers need to be educated to start approaching the Commission, and not the UDCs, with complaints about ESPs. The Commission also needs to develop the processes and obtain the necessary resources to receive and investigate such complaint calls. SDG&E states that consumers should not expect that UDCs will address or resolve complaints against ESPs because the UDCs do not have the power or authority to do so. SDG&E feels that consumers calling about an ESP may be misled into thinking this if the UDCs are required to track ESP complaints.

SCE and SDG&E agree with the other comments which state that the proposed UDC reporting requirements lack a clear definition of what constitutes a "complaint" for reporting purposes. SCE states that the Commission must clearly define the circumstances when a call must be reported to the Commission. SCE also states that the UDC should not be placed in the position of policing ESP behavior, and that general inquiries from customers about ESPs should not be treated as complaints. SCE also recommends that the RCR forum be used to develop a tracking and reporting procedure that includes a clear definition of a reportable ESP complaint. SCE states that the RCR forum was established to improve the processing and resolution of consumer inquiries and disputes.

The UDCs are also concerned about the cost recovery of the expenses associated with the complaint database. PG&E requests that the Commission clarify that the costs of establishing, compiling, handling, and

maintaining the proposed database be fully recoverable as a cost of electric restructuring. SCE states that it has included the costs incurred in 1997 for the increased volume of direct access related calls, as part of its May 1, 1998 filing concerning Section 376 costs. SCE also plans to include any additional manual processing, system programming, or other reasonably incurred costs of tracking and reporting such calls in subsequent applications relating to Section 376 costs.

ORA is concerned with PG&E's statement regarding the use of the customer complaint information. PG&E seeks to clarify that it can use the information that it obtains to resolve issues with ESPs and customers which affect PG&E's business systems and interests. ORA recommends that the Commission prohibit a UDC from using this ESP complaint information unless the UDC can make a showing for its use.

ORA disagrees with TURN's proposal to have the UDCs automatically forward calls to the CSD. ORA recommends that the UDCs be required to first determine whether the customer has contacted the offending ESP. If the customer has not contacted the ESP, the UDC should either connect the customer to the ESP or provide the phone number of the ESP for the customer to call. ORA believes that the ESP should be given the opportunity to promptly and expeditiously rectify customer problems before the Commission becomes involved. ORA notes that there should be one exception to this procedure. If a customer is complaining about being improperly switched by an ESP, the UDC should be required to transfer the customer directly to the Commission.

PG&E is also opposed to TURN's proposal to automatically transfer calls. PG&E contends that such a requirement would be costly and raise numerous practical problems. PG&E points out that the Call Center Representatives (CSRs) would have to exercise a high degree of judgment as to

which calls were purely informational, which involved complaints impacting PG&E's business processes and require action by PG&E, and which calls were complaints about ESPs that should be referred to the Commission. PG&E asserts that such a requirement would slow call center activity and require further CSR training. PG&E contends that the solution to this problem is to have customers call the Commission directly with ESP complaints.

PG&E also states that its CSRs cannot refer calls directly to the Commission because it does not have telephones which are capable of forwarding the calls. Instead, the call would have to be transferred to a supervisor with a telephone that can interface with the Commission. PG&E contends that it would be costly to upgrade all of the CSR equipment to provide this capability. In addition, the forwarding of all complaint-type calls would reduce the call center's ability to handle other incoming calls. PG&E would also have to pay for both the inbound and outbound call, which could significantly add to PG&E's call center costs.

SDG&E also opposes TURN's proposal to have the UDCs transfer a customer complaint call about an ESP directly to the Commission. SDG&E cites the same kind of reasons that PG&E has raised.

PG&E disagrees with Enron's statement that "the UDCs are already under an obligation to direct all customer complaints to the Commission. Both PG&E and SCE contend that there is no such requirement, nor is there a mechanism for reporting such complaints. However, PG&E does refer customers who complain about an ESP to the Commission's complaint line if the customer is not satisfied with PG&E's suggestion to call the ESP.

### 2. Discussion

None of the comments that we received directly challenge the reason for tracking this kind of information. Instead, some of the comments expressed

the belief that the UDCs should not perform this kind of activity because of possible bias on the part of the UDCs, or because the staff of the Commission are already tracking these types of calls.

During the transition to a competitive market, we believe that it is important to obtain complaint information about ESPs from the source where consumers are most likely to call. As Greenlining/LIF and TURN point out, the UDCs are one of the primary sources of contact for consumers who experience problems with ESPs. Contact with the Commission staff may occur, but that is not likely to happen until the consumer learns from the ESP or the UDC that the Commission should be contacted. As for the comments that the Commission staff are already tracking customer complaints, this tracking only monitors:

> "the number of Section 394.2 customer complaints against both registered ESPs and non-registered ESPs, the number of investigations involving both registered ESPs and non-registered ESPs, and the status of those proceedings." (D.98-03-072, p. 55, footnote omitted.)

The proposed tracking system will allow the Commission to monitor ESP-related problems that do not result in formal or informal complaints to the Commission. It will also provide the Commission with a picture of potential ESP problem areas, and provide the Commission with background information should an investigation or other enforcement action take place. As for the contention of some of the parties that the tracking system is biased against ESPs, the Legislature specifically stated that the Commission "may adopt additional residential and small commercial consumer protection standards which are in the public interest." (Pub. Util. Code §394.4(h).) The tracking of complaints against ESPs, especially when the direct access market is still evolving, is in the public interest. Thus, the Commission should require that this type of tracking be performed by the UDCs.

The next issue that parties have raised is what type of call should be considered a "complaint" under this monitoring proposal. The type of call that should be tracked must be narrowly construed to avoid labeling general questions about an ESP from being marked down as a complaint.[11]

We envision complaint-type calls to generally involve: (1) a particular entity or if the caller does not know, an unknown entity; and (2) a statement that the entity's marketing is misleading; inaccurate, or coercive; or that the customer is experiencing a billing-related problem with the entity; or that the customer is experiencing a service-related problem with the entity. Other kinds of circumstances could arise as well.

In order to develop a common understanding of the type of calls that need to be reported as part of this tracking process, we will adopt the UDCs' suggestion that the RCR forum be used to develop the parameters on what type of calls should be tracked by the UDCs, and what kind of information should be gathered from the customer. The RCR forum should use our vision of what should be considered a complaint-type call, as contained in D.98-03-072 and in this decision, as the starting point.

PG&E believes that instead of tracking calls into detailed categories,[12] the RCR forum should develop cost-effective descriptions of tracked calls. This

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[11] For example, calls which involve the following kinds of questions should not be tracked unless the call is coupled with complaint-type allegations as described in the next paragraph: what do you know about the ESP; how long has the ESP been in business; and what is the ESP's reputation.

[12] In D.98-03-072 at page 110, the Commission suggested that: "This recordkeeping shall track the number of calls from consumers alleging that an ESP has failed to follow a rule, procedure, or other requirement, or a call seeking redress or a change of behavior on the part of an ESP. ... The recordkeeping shall also categorize the complaints into the types of conduct complained about...."

could, as PG&E suggests, take the form of a brief description of the call. Although we see merit in PG&E's suggestion, we can envision a situation where a variety of different descriptions may be reported. This variety of differing descriptions will not lend itself to a consistent reporting format. We continue to believe that the reporting of ESP complaint calls should be categorized into certain general categories. As described below, the Energy Division and CSD should be directed to work with the RCR forum to develop these general reporting categories and other parameters. A workshop may be convened to solicit input from others.

PG&E requests that the Commission clarify whether anonymous complaint-type calls should be reported. Those types of calls should be tracked because they provide insight into the operations of the ESPs. Similarly, calls from consumers about non-registered ESPs should be tracked as well.

Several of the commenting parties also expressed concern that the UDCs might underreport or fail to report complaint-type calls against an ESP affiliate of the UDC. ORA suggests that one method of checking on this is to have the UDCs report all calls about an affiliate.

We do not believe that the UDCs will underreport the number of complaint-type calls against an ESP affiliate of the UDC. We expect that if the call falls into the category of calls that we described above, that the UDCs will report this call as part of the tracking process. This expectation is rooted in the nondiscrimination provision of the affiliate transaction rules that were adopted in D.97-12-088. If the UDC underreports customer complaint calls about an ESP affiliate, such an act may be viewed as granting a preference over a non-affiliated ESP. (D.97-12-088, p. 29, App. A, III A.2.)

In the ALJ's draft decision, it included ORA's suggestion that all calls to a UDC regarding an ESP affiliate be reported on the monthly report. The UDCs objected to that proposal in their comments to the draft decision. Upon reflection, we believe that our affiliate transaction rules will guard against any UDC underreporting of complaints against ESPs affiliated with a UDC. As an additional safeguard against possible underreporting or overreporting, if complaints are received by the Commission against an ESP affiliate or a non-affiliate ESP, the staff should check the monthly tracking report to determine if such complaints were reported by the UDC. Depending upon the circumstances, such monitoring could shed light on whether underreporting or overreporting of complaints against an ESP occurred.

TURN proposes that all complaint-type calls to the UDC be forwarded to the Commission. We do not believe that this is a practical solution. As the UDCs point out, this will tie up the telephone lines that are used for each UDC's customer service center. In addition, if the UDCs are using toll-free numbers for incoming calls, the UDCs will have to pay for both the incoming call, and the forwarding of the call to the Commission. In addition, the Commission's hours of operation do not coincide with the operating hours of the UDCs.

Instead of requiring the UDCs to forward all complaint-type calls to the Commission, the UDCs should be directed to inform the caller that if the caller is having a problem with the ESP, that they should call the ESP directly or call the Commission's complaint line at 1-800-649-7570.

SCE recommends in its comments to the draft decision that the Commission state that the UDCs be permitted to give to a customer who is complaining or inquiring about a particular ESP the telephone number of that ESP. SCE states that the current affiliate transaction rules prevent the UDCs from giving out the ESP's telephone number. We will permit the UDCs to give out the

telephone number of an ESP if the caller is complaining about a particular ESP and does not have the ESP's telephone number. If, however, the caller is simply asking for information about an ESP, D.97-12-088 prevents the UDCs from providing that kind of information. (D.97-12-088, App. A, III C. and III E.)

The UDCs seek to clarify what their role is with respect to the tracking process. We agree that the UDC's role is to compile and record this information and report it to the Commission. The UDCs have no obligation to arbitrate, resolve, or remedy the complaints against ESPs. The tracking and reporting of this information, as well as informing callers of the Commission's complaint telephone line and providing a complaining caller with the ESP's telephone number as described above, will not be construed as a violation of rule IV E. of the affiliate transaction rules as adopted in D.97-12-088.

PG&E requests that it be permitted to use the information that it obtains as part of the tracking process to resolve any issues with ESPs or customers which affect PG&E's business systems and interests. ORA states that the UDCs should not be allowed to do so unless the UDC makes a showing for its use.

Although ORA's proposal offers a solution to this problem, the Commission would have to rule on this kind of issue every time it came up. We are concerned, however, that the UDC might try to use this information to gain an advantage over an ESP or a consumer. Instead of involving the Commission in these kinds of dispute, we will permit the UDCs to use the information that it obtains from this process so long as it is not contrary to any existing law or regulation.

The final issue raised by the monitoring proposal is the cost recovery associated with implementing such a proposal. The comments of PG&E and SCE

state that these costs should be recoverable as Section 376 costs. The issue of cost recovery for the tracking of ESP complaint calls is an issue that will be resolved in Application (A.) 98-05-004, A.98-05-006, and A.98-05-015.

The Energy Division and the CSD shall be directed to meet with the RCR forum within 60 days from today to develop the parameters of what kind of calls should be tracked and the general categories for reporting those calls. A workshop may be convened by the staff to solicit input from others. The RCR forum, with the cooperation of the UDCs, shall then draft the proposed parameters and general reporting categories, and their recommendation for implementing the monitoring system, and then file a report with the Commission on the RCR's proposed recommendations. This report shall be filed within 100 days from today.[11] Interested parties will then be provided with an opportunity to respond to this report. The Commissioner assigned to direct access shall be delegated the authority to determine what monitoring parameters and reporting categories should be used to track complaint-type calls, and when the monitoring system should be implemented by. This will be made known through the issuance of an assigned Commissioner's ruling. PG&E, SDG&E, and SCE shall implement the monitoring program using the adopted parameters and reporting categories as directed in the assigned Commissioner's ruling. As part of the monitoring program, the UDCs shall be directed to inform all callers complaining about an ESP that they should call the ESP directly, or call the Commission's complaint telephone number.

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[11] There is nothing to prevent the meeting and filing of the report from being completed earlier.

The Energy Division and CSD shall be responsible for developing a monthly reporting form which captures the type of information described above. This form shall be distributed to the UDCs for their use. The UDCs shall then be responsible for submitting a monthly report to the Energy Division and to CSD beginning on a date to be determined in the assigned Commissioner's ruling, and on the 15th of every month thereafter, until the reporting requirement is terminated by an order or ruling. The information reported in the monthly report shall remain confidential and shall not be released to the public. The data reported in the monthly reports shall be used by the Commission staff for analyzing ESP activities, and for use in any investigations or enforcement actions that may be taken against an ESP.

In Enron's comments to the draft decision, it proposed that the ESPs be allowed the option of tracking and reporting complaints about UDC activities as reported by consumers to the ESP customer service centers. We decline to mandate that. The monitoring program that we adopt today is a tool to determine how new market entrants are interacting with consumers in a competitive environment. Should an ESP determine that a UDC's activities is contrary to the direct access decisions, the ESP is free to file a complaint with the Commission.

## D. Proposed Comparison Matrix

### 1. Position Of The Parties

D.98-03-072 proposed that ORA develop a matrix which would allow consumers to compare the various service offerings of the ESPs.

Green Mountain believes that such a task should be performed by others because the information is likely to change quickly, and the maintenance of the matrix could become a major burden for the Commission. Green

Mountain suggests that the Commission consider ways in which the ESPs can assume the burden of providing accurate, comparative information. For example, the Commission could allow ESPs to post the major terms and conditions on the Commission's web site. In the alternative, a direct link to the various ESPs' web sites could be provided if such sites include appropriate information about the terms and conditions of service.

Edison Source contends that the comparison matrix proposal is no longer needed because other entities have already started preparing comparisons of different electric offerings. Edison Source states that it is not clear what ORA can usefully add to the information that is already out there. In order for ORA to make the comparisons, Edison Source contends that ORA will need to make subjective judgments, which could lead to biases. In addition, the comparisons will require more resources than D.98-03-072 contemplates.

Edison Source also points out that the data contained in the standard service plan filings may not be up-to-date, and that certain non-standard offers, such as sales promotions or limited time offers, will not be reflected in the standard service plan filings.

Enron does not believe that the comparison matrix proposal is an appropriate function for government. Enron believes that the development of such a matrix should be left to the market and consumer groups. Enron contends that this kind of work falls outside the core competencies of the Commission and that it is not within the Commission's mandate. Enron also points out that this clearinghouse function is already being performed by other entities, and that the ESPs and marketers have strong incentives to provide comparative information so as to distinguish their offers from competitors. Enron also states that with the other restructuring tasks, ORA's limited resources should not be diverted to work on a lower priority activity such as the matrix.

Enron further contends that in an open market, products and services will take on a variety of forms and packages, and that no simple comparison will be possible. Even if comparisons are possible, the information will be quickly out-of-date because ESPs will adjust their offers to meet newly identified consumer needs. As various competitive revenue cycle services are bundled together, this will make it difficult for ORA to make meaningful and timely comparisons.

TURN supports the proposal for a market clearinghouse. TURN believes that the proposal is consistent with Section 392.1(c) and 392(g)(1). If ORA is to responsible for the market clearinghouse, TURN states that the Commission must ensure that ORA has adequate staff and funding to perform this job well.

TURN contends that none of the comments which oppose the proposal for ORA to create the comparison matrix offer any compelling reason why ORA should not be directed to perform this task. TURN disagrees with Enron that the collection and analysis of the data is outside ORA's expertise. TURN points out that analyzing utility rates has been ORA's mission since it was first created. In addition, TURN points out that Section 392.1 specifically directs ORA to prepare informational guides or other tools to help consumers compare offers. As for the comments regarding possible bias by ORA, TURN states that the Legislature was aware of this problem, and that the Legislature prohibits ORA from making any specific recommendations, and from ranking the relative attractiveness of specific service offerings.

ORA also points out that SB 477 specifically instructs the Commission to direct ORA to collect and analyze standard service plan offerings, and to prepare informational guides or other tools to help residential and small commercial customers understand how to evaluate competing electric service

options. Even though other entities may offer similar kinds of information, this does not relieve ORA of its statutory obligation to provide this kind of information to the public. ORA states that this clearinghouse function is a logical extension of ORA's assigned duties under Section 392.1(c).

ORA contends that the proposal of Edison Source and Green Mountain to have the Commission create a web site for ESPs to post information is the equivalent of free advertising for ESPs, and could leave the impression that such advertising is government endorsed or approved. As for the comments that ORA may favor some ESPs over another in the comparison matrix, ORA asserts that such statements are speculative and unfounded, and that there is no evidence that ORA has ever favored one ESP over another.

As for the comments that other entities are already providing information to the public about the various ESP service offerings, ORA contends that it is not aware of a site which offers a complete matrix of all ESP offerings to small consumers using a standard set of criteria.

With respect to the concerns that the matrix may contain out-of-date information, ORA contends that this problem can be easily resolved with a disclaimer indicating that offers are subject to change, and that the consumer should check with the ESP for the most up-to-date offer. Depending on the frequency of changes, the matrix could also be updated to match the frequency of the changes.

### 2. Discussion

D.98-03-072 proposed that ORA develop a comparison matrix to allow consumers to easily compare the service offerings of all registered ESPs. The decision also noted that Section 392.1(c) authorized ORA:

> "to collect and analyze the standard service plan offerings, and to prepare 'informational guides or other tools to help

residential and small commercial customers understand how to evaluate competing electric service option.' "

In Ordering Paragraph 19 of D.98-03-072, the Commission directed ORA to establish the necessary procedures to carry out the requirements of Section 392.1(c), and to submit a report with its recommendations for effectuating this code section.

ORA submitted its "Report Of The Office Of Ratepayer Advocates On Methods To Accomplish The Consumer Education Mandates In Public Utilities Code §392.1(c) And Decision 98-03-072" to the Commission on October 16, 1998. That report outlines the various activities ORA is undertaking to implement Section 392.1(c). As of the date of the report, ORA has focused on three activities. First, ORA surveyed the registered ESPs to determine each ESP's prices, terms and conditions of service. ORA compiled the terms and conditions of service for all ESP respondents, and posted the results in a matrix form on the Commission's web site. This matrix is the foundation for the ESP matrix.

ORA's second activity was to create and publish the "Shopper's Guide." This guide contains tips for consumers who are considering switching to an ESP other than their current utility provider. This guide is currently available on ORA's web site, and is to be printed as a brochure in eleven different languages.

ORA's third activity is to periodically call the registered ESPs to determine if they are actively marketing to residential customers. ORA seeks to determine if (1) the ESPs can be reached by telephone at their public contact numbers; and (2) if the ESP is actively marketing to residential consumers. This list is then published on ORA's web site, and is included with any mailed copy of the Shopper's Guide.

In addition to the continuation of the Shopper's Guide and the list of active ESPs, ORA has developed an ESP matrix in response to Ordering Paragraph 19 of D.98-03-072 and Section 392.1(c). This comparison matrix can be accessed on the Internet from the Commission's home page (www.cpuc.ca.gov) by clicking on the following links: (1) Office of Ratepayer Advocates; (2) Consumer Education; and (3) Guide to Electric Service Providers. This matrix shows the name of the ESP; the ESPs' service plans, sources of electricity, and rates; estimated monthly bills of competing ESPs; and the terms and conditions of service. When customer complaint information becomes available, ORA plans to incorporate that information into the matrix as well. ORA plans to make the ESP matrix available in hard copy as well.

In order to make this comparison matrix more user-friendly, and to provide consumers with other information about electric restructuring, the Commission's web site home page should provide appropriate links to ORA's web site pages on electric restructuring. For example, the Commission's home page contains two topics entitled: "General and Consumer Information" and "Electric Restructuring Information." When either of these two topics are clicked, the next web page should display a link to ORA's web page about "Consumer Education."[11] Other appropriate links should be investigated as well. Such references will further the Legislature's intent that the Commission provide consumers with sufficient and reliable information to assist consumers in making service choices, and assist ORA in making easily understandable informational guides or other tools available to consumers. (See Pub. Util. Code Sections 391(g),

[11] ORA's "Consumer Education" page contains an overview of ORA's responsibilities and links to other ORA documents regarding electric restructuring issues and telecommunication issues.

392.1(a) and (c).) The Executive Director shall direct the staff involved in the management of the Commission's web site to provide such links.

Some of the comments argue that the comparison function should best be left to others, rather than to have ORA undertake this task. Given the wording of Section 392.1(c), we believe that the comparison matrix is one of the tools which the Legislature contemplated could be used to help residential and small commercial customers understand how to evaluate and make informed choices about competing electric service options. As TURN points out, ORA and its earlier incarnations have a long history of analyzing tariffed service offerings. There is no compelling reason why ORA cannot analyze and compare the different service offerings of ESPs in the restructured electricity market.

As for the argument that ORA will have difficulty comparing constantly changing offers, and that the matrix will not be up-to-date, that same argument also applies to other entities which may offer comparisons of competing ESP service offerings. We are confident that ORA can meet the challenge of having to frequently maintain and update the service offerings of the ESPs. Should ORA need additional resources to meet this challenge, ORA should request additional funds as part of the overall Commission budget. As ORA itself noted in its reply comments, the comparison matrix should display the caveat that the ESP service offerings are subject to change, and that consumers should check with the ESPs for the most up-to-date service offerings.

Some of the comments also state that ORA's comparison matrix will favor one service offering over another. We do not believe that will occur. Section 392.1(c) specifically provides that ORA "shall not make specific recommendations or rank the relative attractiveness of specific service offerings of registered providers of electric services." A review of the matrix does not disclose any bias on the part of ORA. In addition, ORA's matrix contains a

disclaimer which states in part that "ORA makes no recommendations with respect to any ESP...."

The recommendation was also made to have the Commission provide Internet links to the various ESPs' web sites, or to allow the ESPs to bear the burden of accuracy by posting the major terms and conditions of their service offerings onto the Commission's web site. Such a recommendation should not be adopted because such a policy might be viewed as endorsement by the Commission of each ESP's service offering. In addition, the recommendation would allow publication of ESP-edited material to appear on the Commission's web pages without an opportunity for Commission staff to edit the material.

We do not adopt any of the recommendations to change the comparison matrix proposal. Instead, we approve of the activities that ORA plans to pursue, as outlined in ORA's October 16, 1998 report, including the ESP comparison matrix. Such activities implement the requirements of Section 392.1(c) and D.98-03-072.

## E. Section 394.5 Notice And Pricing Disclosure

### 1. Position Of The Parties

In D.98-03-072, the Commission described the type of notice required by Section 394.5. Section 394.5 requires all ESPs to provide residential and small commercial customers with a notice of all price, terms, and conditions before commencement of service. Appendix C of D.98-03-072 was developed as a standard notice which could be used by the ESPs.

NWE and ORA made some general comments about the Section 394.5 notice requirements. In addition to the general comments, the Commission in D.98-03-072 invited comment on how prices could be expressed in the Section 394.5 notice.

NWE states that although consumer protection standards protect residential and small consumers, those standards affect the entire market, including that customer segment which uses sophisticated energy managers, consultants, and attorneys to help make energy choices and to enter into energy contracts. For example, a potential customer might have hundreds of accounts, the bulk of which are industrial or large commercial accounts. However, that customer might also have a few small commercial accounts. If all of those accounts were to be included in one negotiated transaction, NWE states that under the direct access rules, it would still be obligated to provide the Section 394.5 notice to the sophisticated energy customer.

ORA recommends that the Commission require the Section 394.5 notice be in a format that is clearly legible and easily readable by customers. ORA asserts that this is needed to prevent ESPs from printing the notice in a typeface that is too small or on a paper color that makes the notice difficult to read.

The following comments were submitted on the issue of how prices could be expressed in the Section 394.5 notice.

Green Mountain states that Section 394.5(a)(1)(A) identified two price formats for comparing similar service offerings. The price formats are: (1) a total price for electricity on a cents-per-kWh basis, inclusive of utility charges; and (2) a monthly estimate of total electric bills at varying consumption levels. Green Mountain asserts that the problem with both price formats is that the ESPs will need to keep track of all UDC tariffs so as to be able to provide total rates and bills for any customer. Since the UDCs' tariffs vary depending on location and the specific attributes of the customer, and because the rate schedules are constantly changing, Green Mountain contends that the ESPs should only be

required to provide precise information to customers related to the ESP's charges.

Green Mountain states that the current pricing mechanisms for the disclosure of ESP-specific information using "PX plus" and "PX minus" pricing provides customers with an easy way of comparing their rates and bills against the default service offered by the UDCs.[15] Green Mountain explains:

> "Any defined adder or subtractor from the PX rate is simply multiplied by usage to compute the change in a customer's bill from that of their UDC default service. To the extent that ESP's are offering electric energy entirely or partially based on a fixed monthly fee basis, ESPs easily can divide that amount by varying consumption levels to provide customers with a cents-per-kilowatthour rate. ESPs then can use that rate in the Section 394.5 notice to compare their products that are priced without a fixed monthly charge."

As the California Power Exchange market matures, Green Mountain states that companies can be expected to offer pricing that does not relate directly to UDC service. When that happens, the ESPs will need a way to compare offers with offers that fluctuate with the PX. Green Mountain contends that one way of doing this is to have the Commission, the UDCs, or the PX, provide the public with either a PX forecast or a PX historical average. Green Mountain states that this forecast or historical average would provide customers with a total electric energy price that they could compare with the price offered on a cents-per-kWh basis by the ESPs. Green Mountain recommends that the Commission conduct a workshop to discuss comparison of ESP charges and to collect information from

[15] In D.98-03-072, the use of the term "PX" pricing includes a price based on the California Power Exchange price or any other exchange that offers electric power at a published price. (D.98-03-072, p. 78.)

all market participants regarding the methods of comparison that are available to consumers.

If the ESPs are required to continue providing customers with an estimate of the monthly bill, Green Mountain requests that the Commission clarify which UDC rate the ESPs should use in calculating the estimate. Green Mountain recommends that the Commission adopt a statewide, standard, estimated UDC rate that ESPs can use as the basis of the total monthly bill comparison.

Green Mountain also points out that D.98-03-072 interpreted Section 394.5(a)(1)(B) to mean that an ESP must disclose each line item charge imposed by both the ESP and the UDC, including both recurring and non-recurring charges. Green Mountain asserts that such an interpretation is overly burdensome, and is likely to dampen competition and foster additional customer confusion if the UDCs' tariff rate changes. Green Mountain believes that this requirement could be met by requiring an ESP to disclose each recurring and non-recurring charge that the ESP will bill a customer, and to include a sentence that the customer is also responsible for all recurring and non-recurring charges imposed by the UDC. Green Mountain contends that the Commission should not rely on the ESPs to interpret the UDC tariffs with regard to UDC rates and charges.

NWE contends that because the retail electricity market is and will be a dynamic marketplace, any required standard service plan and pricing disclosure will always be outdated. In addition, such a requirement will suppress competition and innovation, and will be a burden on the market participants. Instead of the standard service plan and pricing disclosure, NWE recommends that the Commission adopt a "not-to-exceed" pricing disclosure. NWE asserts that such an approach will give the market participants maximum

flexibility to structure a deal that fits a customer's needs without having to make numerous modifications to the notices or service plans.

ORA believes that the Commission has correctly interpreted and implemented Section 394.5 by requiring the ESPs to estimate and disclose the total monthly bill for electric service at varying consumption levels. These price disclosure provisions enable consumers to compare competing offers for electric service on a standard basis.

ORA also agrees with the Commission's interpretation that an ESP which serves more than one UDC territory must disclose the UDC's prices for service in the particular service territory that the ESP is competing in. ORA recommends that Appendix C of D.98-03-072 be modified to clearly require that ESPs identify the service territory for which prices are quoted. Thus, if the ESP serves more than one UDC service territory, the ESP must submit either one Section 394.5 notice containing UDC-specific price disclosures for each UDC territory, or separate notices for each UDC territory in which the ESP offers service.

ORA also points out that in order to fulfill its duties under Section 392.1(c), the ESPs must strictly comply with the requirements of Section 394.5 as set forth in D.98-03-072.

PG&E's primary concern is that D.98-03-072 places the responsibility on the UDCs to "ensure that all of the UDC's charges are accurately reflected" by the ESPs in their respective Section 394.5 notices. (D.98-03-072, pp. 79-80.) PG&E contends that since the UDCs have no control over what the ESPs put in the notices, that such a requirement is unreasonable. PG&E contends that ESPs must be responsible for ensuring that the UDC charges are properly portrayed on the Section 394.5 notices. PG&E states that it is ready and willing to cooperate with any ESP who has questions about the tariffed charges, but the ultimate

responsibility for the accuracy of the notice must remain with the ESP. PG&E further states that if the Commission continues to insist on some form of UDC responsibility for the notice, the Commission must provide the UDCs with the means and resources to carry out that responsibility.

In PG&E's comments to the draft decision on consumer protection, PG&E had recommended that the Section 394.5 notice should not include the UDC distribution and transmission charges and legislatively mandated charges. PG&E reiterates its position and believes that such charges are not required by statute, that the charges will confuse consumers, and that it creates an unnecessary burden for the ESPs.

SCE endorses the goal of enabling all customers to easily compare service offerings using commonly accepted and easily understood pricing structures. SCE states that Appendix C of D.98-03-072 provides a common format which enables residential and small commercial customers to compare prices of different service offerings in an easy to understand manner.

To ensure that residential and small commercial customers can accurately compare the prices contained in the required disclosure for the total price for electricity, SCE states that the Commission needs to adopt standard assumptions regarding the proportion of energy billed at the baseline and nonbaseline rates. SCE asserts that these assumptions are necessary because the baseline allowances for residential customers vary by baseline zone. Thus, a UDC's overall charges on a cents-per-kWh basis will vary by zone for the same monthly consumption levels. SCE recommends that it be assumed that residential usage is 55% baseline and 45% nonbaseline.

SCE also recommends that a standard assumption be made about the PX price. SCE contends that this assumption is necessary in order to properly

identify the competition transition charge (CTC) portion of the total price for electricity, which is determined on a residual basis during the rate freeze period.

SCE also recommends that if an ESP offers a "plus/minus" form of pricing off of an index or exchange other than the PX, that a description of the alternative base price be included in the Section 394.5 notice.

In joint reply comments filed by Green Mountain, PG&E, SDG&E, and SCE (joint parties), they agree that the requirement that there be an expression of all UDC recurring and non-recurring charges is a burden on both the UDCs, who must ensure the accuracy of the ESP's disclosure of UDC rates, and on the ESPs, who must have current information on all tariff changes made by the UDCs. The joint parties recommend that:

> "The ESP shall list the bill components of the UDC portion of the bill, confirm that the customer continues to be responsible for these charges after electing direct access, point out that these rates are not changing as a result of direct access and refer customers to their UDC bill to determine the precise rates in force for their account at this time."

The joint parties contend that the method described above will identify the type of charges that are included in the total price of electricity for which the customer is responsible for, and that if customers have questions about the rates in force, that they can turn to the UDC bill. The joint parties believe that the above method is in the best interests of all market participants because it will provide all customers with precise and accurate information about their electricity rates and it will prevent the ESP from having to interpret the UDC's rate.

The joint parties also favor using a statewide average UDC rate to calculate the estimated monthly UDC charges. However, they are concerned that the use of such a rate may result in customer confusion. The joint parties

therefore recommend that the Commission establish a standard, statewide, estimated UDC rate for use in the Section 394.5 notice, and require the ESI's to disclose the fact that the UDC rates are estimated. A possible disclosure could be as follows:

> "The estimated monthly bills displayed above include your ESP charges described in this notice and statewide average estimated UDC charges. Your UDC charges will likely vary according to your rate schedule, appliances and location. Your last UDC bill shows the rates for your customer class. Once direct access begins, your UDC will provide a credit for the Power Exchange cost that the UDC does not have to purchase for your account."

In ORA's reply comments, it states that some standardization might be appropriate in calculating estimates of monthly bills. Such standardization could lead to easier comparisons and reduce the burden on the ESPs. However, ORA believes that the adoption of a single, standard, statewide UDC rate hinders the goal of sending accurate price signals to consumers. Also, if a UDC's rate is actually higher than the statewide estimated UDC rate, consumers might be misled into thinking that the UDC's offering remains competitive. Conversely, if a UDC's actual rate is lower than the adopted statewide estimated UDC rate, the ESP's service offering might be perceived as more competitive. Thus, ORA recommends that the Section 394.5 notices contain UDC-specific price disclosures for each UDC territory in which the ESP offers service.

ORA believes that it may be beneficial for the Commission to adopt a standard baseline usage level that is appropriate for each UDC, and a standard PX value for each UDC. ORA objects to SCE's proposed baseline assumption because it is inaccurate when it is applied to a range of monthly bills below and above the baseline amount. ORA recommends that the standard baseline quantity be a fixed number of kWh for each UDC, and that the number of kWh

should be a calculated average, weighted by the number of customers currently at each baseline usage level in the respective UDC's service territory.

On the assumption about a standard PX price, ORA agrees that such a value could be assumed so long as the following conditions are met:

> "1) there must be differentiation between the residential and small commercial customer classes (but not within these two customer classes), because there are significant (but easily defined) differences along these dimensions. Using a total of 6 benchmark UDC prices for the state (3 UDCs x 2 classes) should not be burdensome for either the UDC or ESP. Identifying but not itemizing the amount of individual UDC rate components can keep the required work at a reasonable level – updates are then needed only when revenue requirements change, which is not often; and
>
> "2) it is essential to use the UDCs' PX 'charges' for price comparisons rather than the PX 'price.' Resolution E-3510, implementing D.97-08-056, lists the components of the PX charge: 1) weighted average, day-ahead, hour-ahead PX price, 2) settlement imbalances, 3) uplift charges, including ancillary services, congestion fees, ISO/PX administration fees, and miscellaneous ISO/PX charges for bundled customers, and 4) distribution line losses adjustments. ESPs will be responsible for collecting all of these same components in their prices, and the number reported for UDCs must be stated on a comparable basis."

ORA states that by having all ESPs use a standard assumption about the value of the PX charge, although the actual value may be different, will help as a benchmark so that consumers can evaluate prices.

ORA suggests two approaches for determining the standard PX charge. The first approach is for each UDC to calculate the historical PX charge for a three month period, using the method the UDC is authorized to use for billing purposes. Once this historical charge is calculated, the UDC would make this number available for reference, on the UDC's web site or by telephone, for

those ESPs who offer electricity in the UDC's service territory. The second approach is to have the Commission make one overall PX charge calculation for statewide application. This value would then be posted on the Commission's web site for reference and use by all ESPs in their Section 394.5 notices.

ORA recognizes that adopting standard values for price disclosures will result in certain inaccuracies for most customers. However, by limiting the number of assumptions to those recommended by ORA will mitigate the inaccuracies and enable reasonable price comparisons.

### 2. Discussion

We first address the general comments of NWE and ORA regarding the Section 394.5 notice.

ORA recommends that the Commission require that the Section 394.5 notice be in a format that is clearly legible and easily readable by customers. We agree with ORA. Section 394.4 provides in pertinent part:

> "Notices describing the terms and conditions of service as described in Section 394.5 ... shall be easily understandable, and shall be provided in the language in which the entity offered the services."

The phrase "easily understandable" should be interpreted to include, among other things, that the notice must be displayed in a type size, and if used, on a paper stock, which allows the average adult reader to be able to read the notice without difficulty. If the type size is too small, or the notice is printed on paper stock that makes the notice difficult to read or decipher, then the notice would not be easily understandable.

We now turn to NWE's comment that under the direct access rules, the Section 394.5 notice must be provided to a large electric customer, who as part of one transaction with an ESP, has negotiated to have its small commercial

accounts served as part of the same transaction. There are no specific provisions in SB 477 which specifically exempt an ESP from having to provide the notice to this sophisticated electric user under such circumstances. However, in Section 391, the Legislature expressed a need "to create a market structure that will not unduly burden new entrants into the competitive electric market," and that there should be simplified "entry into the market for responsible entities serving larger, more sophisticated customers."

We believe that an exception to the Section 394.5 notice requirement should be created for those ESPs who only serve medium to large commercial customers and industrial customers. If the ESP negotiates a contract to serve this kind of customer with electricity, and as part of that contract, the parties negotiate to include one or more small commercial accounts (less than 20 kilowatts) as part of this contract to supply electricity, the ESP should not have to register with the Commission under Section 394, and should not have to provide this large customer with the Section 394.5 notice.[16] If the ESP is registered with the Commission, but does not serve small commercial accounts except in an incidental manner as described above, then the ESP should be exempt from having to provide the large customer with the Section 394.5 notice even though a small commercial account is included as part of the contract to supply electricity. This exemption should not apply if the ESP markets to or serves residential or small commercial customers as part of its normal course of business activities.

The exemption discussed above is consistent with Section 394.5(a). That subdivision requires "each entity offering electrical service to residential and small commercial customers" to provide the potential customer with the

[16] For purposes of this exemption, the small commercial account must be in the name of the large customer, or in the name of an entity controlled by the large customer.

Section 394.5 notice. The exemption would only apply to those ESPs who serve medium to large commercial customers or industrial customers. Those kinds of ESPs are not offering electrical service to small commercial customers except as incidental to the contract to supply a large customer with electricity. The exemption should be adopted.

One of the required elements of the Section 394.5 notice is that the price of the electricity is to be expressed in a format which makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. (Pub. Util. Code Section 394.5(a)(1)(A).) The Commission invited comments on how the prices could be expressed in the Section 394.5 notice in ways that provide consumers with sufficient information to compare alternatives while at the same time protecting consumers against misleading offers. We address those comments below.

Green Mountain contends that the ESP should not be required to disclose the specific charges of the UDCs on the Section 394.5 notice. The UDCs are of the general opinion that they should not be responsible for ensuring that each ESP correctly list each UDC charge on the notice. ORA contends that in order to allow consumers to make effective comparisons of electricity offerings, the UDC charges must be disclosed on the notice.

The issue of whether the Section 394.5 notice should specifically list each UDC charge for electricity affects the overall make-up of the notice. That is, if each UDC electricity charge is required to be on the notice, then the total price of electricity will reflect the inclusion of both the ESP and UDC charges for electricity. If the price of each UDC electricity charge is not included in the notice, then the price of electricity will only reflect the ESP's electricity charges. In order to resolve this issue, we must turn to Section 394.5(a)(1)(A). That

subdivision provides that the notice shall include a clear description of the price, terms, and conditions of service, including:

> "The price of electricity expressed in a format which makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. The commission shall adopt rules to implement this subdivision. The commission shall require disclosure of the total price of electricity on a cents-per-kilowatthour basis, including the costs of all electric services and charges regulated by the commission. The commission shall also require estimates of the total monthly bill for the electric service at varying consumption levels, including the costs of all electric services and charges regulated by the commission. In determining these rules, the commission may consider alternatives to the cent-per-kilowatthour disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis."

Thus, if the notice reflects a price based on a cents per kWh basis, the price is to include "the costs of all electric services and charges regulated by the commission." In D.98-03-072, the Commission interpreted that to mean:

> "The total price of electricity is to include the costs of all related electric services and charges. That means the price is to include all recurring charges of both the ESP and the UDC. In addition, the total price of electricity would include the ESP's markup including any applicable local or state fees." (D.98-03-072, p. 78.)

Section 394.5(a)(1)(B) requires that there be a "Separate disclosure of all recurring and non-recurring charges associated with the sale of electricity." On the uniform notice format in Appendix C of D.98-03-072, the Commission interpreted that requirement to mean that the Section 394.5 notice should contain a "description and the amount of each recurring and non-recurring charge that the customer may be responsible for." (D.98-03-072, p. 79.) The Commission

also went on to state in reference to the UDCs' recurring and non-recurring charges:

> "In order that these charges are accurately represented on the notice, the UDCs are directed to cooperate with the ESPs to ensure that all of the UDC's charges are accurately reflected on the notice." (D.98-03-072, pp. 79-80.)

Several of the commenting parties take issue with the interpretation of Section 394.5(a)(1)(B) that the ESP must describe the recurring and non-recurring charges of both the ESP and the UDC, as well as the amount of each of those charges. Upon reflection, we agree that it is a burden to require the ESP to list the amount of each recurring and non-recurring UDC charge, and for the UDCs to ensure that its charges are accurately reflected on the ESP's notice. Such a requirement forces the ESP to determine what the applicable UDC rate is for each recurring and non-recurring charge of the UDC. In addition, if the ESP operates in the service territory of the three largest California UDCs, the FSP would have to design separate notices for each service territory.

Under the existing interpretation of D.98-03-072, the recurring charges of the UDC would also be reflected in the disclosure of the total price of electricity on a cents per kWh basis, as well as in the estimate of the total monthly bill for electric service at varying consumption levels. If the ESP does not put down the correct charge for each of the UDC's electricity charges, the cents per kWh disclosure and the estimate of the monthly bill would be erroneous. D.98-03-072 also requires that if PX plus and minus pricing is used, that the charges for the UDC's recurring and non-recurring electricity charges be included on the notice.

We will adopt the recommendation of the joint parties and permit the ESP to list each bill component that makes up the UDC's recurring and non-recurring charges, with a statement that the customer remains responsible

for those charges, and that the customer should refer to their UDC bill or to the UDC to determine what the UDC rate is for each of those charges. ESPs should no longer be required to disclose the charge for each of the UDC's recurring and non-recurring charges. We believe that the Commission retains this flexibility because of the sentence in Section 394.5(a)(1)(A) which provides that the Commission:

> "may consider alternatives to the cent-per-kilowatthour disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis."

In addition, Section 394.5(a)(1)(A) states that it is the price of electricity that is to be expressed in a format which allows customers to compare. Since the customer is not comparing the charges of competing UDCs, the rate for each UDC charge does not have to be listed.

By allowing ESPs to disclose the price of electricity using only their charges, this still enables residential and small commercial consumers to compare and select among similar electricity offerings on a standard basis. That is, if the ESPs use the cents per kWh pricing disclosure, the total ESP price of electricity can be easily compared among different ESPs. The ESPs, however, would still have to list the UDC's recurring and non-recurring charges in accordance with Section 394.5(a)(1)(B). To ensure that consumers are not misled into thinking that the total price of electricity includes all of the ESP and UDC charges, the ESP's cents per kWh disclosure should be required to state that the price does not include the UDC's recurring charges, and that the customer still remains obligated to pay the UDC for all recurring and non-recurring electricity-related charges. The notice should also state that the UDC's recurring charges can be determined from looking at the UDC's bill or contacting the UDC. However, the

ESP will not be required to determine the amount of each recurring UDC charge in the cents per kWh disclosure.

The same reasoning above should also apply to the estimate of the total monthly bill for the electric service at varying consumption levels. ESPs should not be required to include the UDC's recurring charges as part of the calculation of the monthly bill. The ESP needs to make clear that this estimate does not include the UDC's recurring charges, that the customer still remains obligated to pay the UDC for all recurring and non-recurring electricity-related charges, and how the customer can ascertain the amount of the UDC's recurring charges. By expressing the estimate in this manner, there is no longer a need to debate whether a standard, statewide, estimated UDC rate should be used. If the estimate of the monthly electricity bill is expressed in this kind of standardized format, residential and small commercial customers can still compare the monthly estimates of the ESPs.

Utility.com suggested in its comments to the draft decision that the ESP be given the option of listing all of the UDC charges in the 394.5 notice. We decline to adopt that suggestion at this time. From the viewpoint of a consumer, all of the notices should be in a uniform format to allow them to easily compare and select among competing electricity offerings. (See Pub. Util. Code §394.5(a)(1)(A).)

D.98-03-072 also permitted price disclosure to be on a PX plus and PX minus pricing basis. That kind of pricing also referred to the electric utility's recurring charges and to the "total price of electricity." (D.98-03-072, App. C, pp. 4-5.) Consistent with the above changes, a pricing mechanism based on PX plus and PX minus pricing need not include the charge for each recurring UDC electric charge. Instead, the same sort of disclaimer as detailed above should be

used so that consumers are aware that they remain obligated to pay the UDC charges as well.

NWE suggests that the Commission adopt a "not-to-exceed" pricing disclosure. NWE believes that this kind of disclosure will give ESPs the flexibility to structure a deal to fit a customer's needs, without having to make numerous modifications to the notices or service plans. We decline to adopt this kind of pricing disclosure because the price that the consumer would have to pay is vague. Such a pricing mechanism does not provide sufficient information to allow consumers to compare and select among competing electricity offers.

As a result of the adoption of the changes noted in the preceding discussion, D.98-03-072 needs to be modified in various places. The first change should occur in the first three full paragraphs which appear at page 78 of D.98-03-072. Those three paragraphs should be deleted and replaced with the following:

> "Several of the commenting parties suggested that the price of electricity be disclosed on a cents-per-kWh, and that an estimate of the monthly bill at various consumption levels be provided. Section 394.5(a)(1)(A) now requires that the total price of electricity be expressed on a cents-per-kWh basis. The total price of electricity is to include the recurring costs of all related electric services and charges. That would include the ESP's markup and any applicable local or state fees.
>
> "The difficulty with including 'all' electric services and charges in the 'total price of electricity' is that the ESP would be responsible for having to determine the amount of each of the UDC charges. Instead of placing this burden on the ESPs, the ESPs should be permitted to disclose as their 'total price of electricity' all of the ESP's recurring charges for electricity. In addition, the ESPs should be required to state that the customer is also responsible for paying certain recurring electricity-related charges to its electric utility. A list of those charges is to be specified on the notice. The notice should also state that the customer should refer to its electric utility bill or

call the utility to determine the amount of the electric utility's charges.

"Thus, the 'total price of electricity' would reflect all of the ESP's actual electricity charges, as well as a statement that the customer remains obligated to pay the electricity-related charges of the electric utility. A list of those charges is to be specified on the notice. This type of disclosure is consistent with Section 394.5(a)(1)(A), which provides that the Commission may consider alternatives to the cents-per-kWh disclosure. By requiring the disclosure in this fashion, consumers will be provided with sufficient information to compare competing alternatives on a standard basis. Except as noted below, all of the notices required by Section 394.5 shall disclose the total price of electricity on a cents-per-kWh basis in the format described in the preceding paragraphs.

"If pricing is on a cents-per-kWh basis, the notice shall also include an estimate of the total monthly bill at various consumption levels for residential and small commercial customers. The 'total monthly bill' should be interpreted to mean that the ESP's total monthly charges will be reflected in the total monthly bill. Consistent with the above cents-per-kWh disclosure, the ESPs shall also be required to state that the total monthly bill does not include the electricity-related charges of the electric utility, that the customer should refer to its electric bill or call the electric utility to determine the amount of the charges, and the ESP shall provide a list of those UDC charges on the notice."

The following paragraph should follow the last paragraph which appears at the bottom of page 78 of D.98-03-072:

"The PX pricing structure is to reflect all of the ESP's recurring electricity charges, as well as the above-described statement that the customer remains obligated to pay the electric utility's charges, and that the customer should review its bill or contact the electric utility to determine the amount of those charges."

The last paragraph which appears beginning at the bottom of page 79 of D.98-03-072 should be deleted and modified as follows:[17]

> "Section 394.5(a)(1)(B) requires that there be a separate disclosure of all recurring and non-recurring charges associated with the sale of electricity. Appendix C contains an area where the ESP is to list each recurring and non-recurring charge that the customer may be responsible for. For those charges imposed by the ESP, the amount of each recurring and non-recurring charge shall be listed. For those recurring and non-recurring charges imposed by the electric utility, the notice shall state that the customer remains responsible for those electric utility charges, and that the customer should refer to their electric utility bill to determine the electric utility's rate for each of those charges." (Footnote 34 would follow.)

The following new Finding of Fact should be added after Finding of Fact 89 at page 119:

> "90. The difficulty of including all of the UDC's electric charges in the 'total price of electricity' is that the ESP would be responsible for having to determine the amount of each of the UDC charges."

Finding of Fact 90 at page 119 of D.98-03-072 should be deleted and replaced as follows and renumbered as Finding of Fact 91:

> "91. If cents-per-kWh pricing is used, the electricity price contained in the notice shall reflect the actual price which the ESP will charge the customer and a statement that the customer remains obligated to pay the electric-related charges of the UDC."

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[17] Footnote 34, which appears at the bottom of page 80 of D.98-03-072, would remain in the decision.

The following new Finding of Fact should be added following Finding of Fact 94 which appears at page 119 of D.98-03-072:

> "96. The PX pricing structure is to reflect all of the ESP's recurring charges and the statement that the customer remains obligated to pay the electric utility's charges."

The following new Finding of Fact should be added following Finding of Fact 95 which appears at page 119 of D.98-03-072:

> "98. The ESP shall list the amount of each recurring and non-recurring charge imposed by the ESP, and for those recurring and non-recurring charges imposed by the UDC, the ESP shall list the type of charges and include the appropriate statements that the customer remains obligated to pay those UDC charges, and that the specific amount of those charges can be determined by looking at the UDC bill or contacting the UDC."

The following new Conclusions of Law should be added following Conclusion of Law 45 which appears at page 128 of D.98-03-072:

> "46. A disclosure which reflects all of the ESP's actual recurring charges, and a statement that the customer remains obligated to pay the electricity-related charges of the electric utility is consistent with Section 394.5(a)(1)(A) because consumers will be provided with sufficient information to compare competing alternatives on a standard basis.
>
> "47. The estimate of the 'total monthly bill' should be interpreted to mean that the ESP's total monthly charges will be reflected in the estimate, together with a statement that the customer remains obligated to pay the electricity-related charges of the electric utility."

The sample "Notice Of Price, Terms, And Conditions Of Service" which appears in Appendix C of D.98-03-072 also needs to be modified. In the

section entitled "Summary," which appears at page 1 of Appendix C, the following passage should be deleted:

> "Your total price of electricity is _____ cents per kilowatt hour. [or if the ESP's price is pegged to the PX price, describe the pricing arrangement.]"

The deleted passage at page 1 of Appendix C should be replaced by the following:

> "Your total price of electricity is _____ cents per kilowatt hour. [or if the ESP's price is pegged to the PX price, describe the pricing arrangement.] As discussed later in this notice, this price does not include the charges that you are obligated to pay your existing electric utility."

In the section entitled "Your Total Price Of Electricity," the following passages should be deleted and replaced as follows. At page 3 of Appendix C, the following passages should be deleted:

> "Your total price of electricity is _____ cents per kilowatt hour (kWh). This price is based on our anticipated electricity costs and all recurring charges.
>
> "Our recurring charges are for the following kinds of charges:
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "You will also pay recurring charges for services provided by the electric utility and for legislatively mandated charges. These charges are as follows:
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "[description of each recurring charge] [amount of the recurring charge]

"You may also have to pay us for the following non-recurring charges:

"[description and source of each non-recurring charge] [amount of the non-recurring charge]

"[description and source of each non-recurring charge] [amount of the non-recurring charge]"

The passages which have been deleted at page 3 of Appendix C shall be replaced with the following passages:

"Your total price of electricity is _____ cents per kilowatt hour (kWh). This price is based on our anticipated electricity costs and all of our recurring charges. In addition to our total price of electricity, you must also pay certain monthly charges to the electric utility that serves your area. You may also have to pay us for certain non-recurring charges. The following is a description and the amount of each of our recurring and non-recurring charges:

"[description of each recurring and non-recurring charge, and the amount of each charge]

"As mentioned above, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You may also have to pay the electric utility for certain non-recurring charges as well. Below is a listing of those electric utility charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges.

"[list each recurring and non-recurring charge imposed by the UDC]"

The following sentence which appears at the bottom of page 3 of Appendix C should be deleted:

"The following tables provide you with an estimate of your monthly electricity bill based on the total price of electricity and your estimated monthly usage."

The following sentence should replace the sentence which was deleted from the bottom of page 3 of Appendix C:

> "The following tables provide you with an estimate of your monthly electricity bill based on our total price of electricity and your estimated monthly usage. In addition to our price of electricity, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges.

The following passages which appear at pages 4 to 5 of Appendix C of D.98-03-072 should be deleted:

> "Our recurring charges are for the following kinds of charges:
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "You will also pay recurring charges for services provided by the electric utility and for legislatively mandated charges. These charges are as follows:
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "[description of each recurring charge] [amount of the recurring charge]
>
> "You may also have to pay us for the following non-recurring charges:
>
> "[description and source of each non-recurring charge] [amount of the non-recurring charge]
>
> "[description and source of each non-recurring charge] [amount of the non-recurring charge]"

The above passages which have been deleted at pages 4 to 5 of Appendix C shall be replaced with the following passages:

> "This price is based on our anticipated electricity costs and all of our recurring charges. In addition to our total price of electricity, you must also pay certain monthly charges to the electric utility that serves your area. You may also have to pay us for certain non-recurring charges. The following is a description and the amount of each of our recurring and non-recurring charges:
>
> "[description of each recurring and non-recurring charge, and the amount of each charge]
>
> "As mentioned above, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You may also have to pay the electric utility for certain non-recurring charges as well. Below is a listing of those electric utility charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges.
>
> "[list each recurring and non-recurring charge imposed by the UDC]"

On page 5 of Appendix C, the following sentence should be deleted:

> "The following tables provide you with an estimate of your monthly electricity bill based on the total price of electricity and your estimated monthly usage."

The following sentence should replace the sentence which was deleted from page 5 of Appendix C:

> "The following tables provide you with an estimate of your monthly electricity bill based on our total price of electricity and your estimated monthly usage. In addition to our price of electricity, you are also obligated to pay the electric utility for

> certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges."

A workshop may be useful to discuss the use of certain assumptions in the Section 394.5 notice. Some of the parties have suggested the use of assumption for the PX price so that the CTC portion of the total price of electricity can be determined. They have also suggested the use of certain assumptions about baseline usage for the estimated monthly bill.

We will defer these possible assumption issues to the Energy Division to develop. Should the Energy Division believe that it would be useful to incorporate these kinds of assumptions into the Section 394.5 notice, the Energy Division may hold a workshop within 180 days from today to discuss the issues and to consider possible methodologies to derive the assumptions. If such a workshop is held, a workshop report shall be prepared and filed with the Docket Office, and served on the parties to this proceeding. Interested parties shall also be permitted to file a response to the workshop report within 30 days from the date the report was served on the parties.

### F. Disconnection Of Service

#### 1. Position Of The Parties

SCE recommends that D.98-03-072 be amended in two places to avoid confusion about a UDC's ability to disconnect service. First, SCE recommends that a slight change be made in the "Description of Terms and Conditions of Service" section in the "Notice of Price, Terms, and Conditions of Service" (D.98-03-072, App. C). SCE asserts that in each of the three scenarios, the section reads as if the UDC may disconnect service for ESP charges.

SCE's second recommendation is to delete language which appears at page 100 of D.98-03-072. SCE states that the following language should be deleted because the sentences imply that the UDC may disconnect service for an ESP:

> "We have adopted procedures which allow the UDCs to disconnect service to a customer if the customer fails to pay any portion of the electricity bill. These disconnection procedures are sufficient to ensure that customers pay their electricity bills in a timely manner."

### 2. Discussion

SCE's first proposed amendment has merit in light of what is contained in the "Service Disconnections And Reconnections" section in the direct access tariff that was adopted in D.97-10-087. (D.97-10-087, App. A.) As written, the "Description Of Terms And Conditions Of Service" which appears in Appendix C of D.98-03-072, could leave one with the impression that the UDC can disconnect service if the customer fails to pay the ESP charges. To conform the "Description Of Terms And Conditions Of Service" with the applicable direct access tariff provisions, the language describing the three billing scenarios should be changed to the following:[15]

> "(1) You, the customer, will receive a single bill from us for all of the electric utility's charges and for our charges. Should you owe any past due amount on your bill, we are responsible for collecting that past due amount from you. If you fail to pay any past due amount, we may transfer your electric service back to the electric utility, who may then disconnect your electric service <u>for non-payment of the electric utility's charges incurred after the transfer.</u> If your electricity is

[15] The additional language is indicated by underlining.

disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee and post a deposit with the electric utility. (2) Although you, the customer, will be purchasing electricity from us, we will arrange to have the electric utility send you a single bill for the electric utility's charges and for our charges. Should you owe any past due amount on your bill, the electric utility is responsible for collecting any past due amount from you. If you fail to pay any past due amount owed to the electric utility, the electric utility may then disconnect your service. If you fail to pay any past due amount owed to us, we may transfer your electric service back to the electric utility, who may then disconnect your electric service for any unpaid amount owed to the electric utility. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee and post a deposit with the electric utility. (3) You, the customer, will be receiving a separate bill from the electric utility for its charges, and a separate bill from us for our charges. Should you owe any past due amount on the electric utility's bill, the electric utility is responsible for collecting any past due amount from you. Should you owe any past due amount on our bill, we are responsible for collecting any past due amount from you. If you fail to pay any past due amount owed to the electric utility, the electric utility may then disconnect your service. If you fail to pay any past due amount owed to us, we may transfer your electric service back to the electric utility, who may then disconnect your electric service for any unpaid amount owed to the electric utility. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee and post a deposit with the electric utility."

We believe that the above revisions help clarify under what kind of circumstances service can be terminated to the customer. Appendix C of D.98-03-072 should be modified as described above.

SCE's second proposed amendment is to delete two sentences which appear at page 100 of D.98-03-072. We have examined the two sentences, and the context in which they were written. Although the two sentences support the Commission's reasoning for not permitting the installation of self-limiting meters, the first sentence suggests that the UDC could terminate service if the ESP charges are not paid. We will adopt the suggestion of SCE and modify D.98-03-072 by deleting the following sentences which appear in the second full paragraph at page 100 of that decision:

> "We have adopted procedures which allow the UDCs to disconnect service to a customer if the customer fails to pay any portion of the electricity bill. These disconnection procedures are sufficient to ensure that customers pay their electricity bills in a timely manner."

## G. Right To Cancel

### 1. Position Of The Parties

D.98-03-072 at page 82 states:

> "In the context of the right to cancel provision, the third party verification process, and the Section 394.5 notice, the customer should have [the] right to cancel without penalty three days after the third party verification, or three days after receipt of the Section 394.5 notice, whichever is later."

Green Mountain points out that the above provision imposes a requirement on the ESPs that differs from what the Commission adopted in D.97-10-087.

In D.97-10-087, the Commission adopted the following:

> " a DASR shall not be submitted to the UDC until three days after the verification required under Public Utilities Code Section 366.5 has been performed. It is the responsibility of the ESP to ensure that the requests of the residential and small

> commercial customers to cancel service pursuant to Public Utilities Code Section 395 are honored." (D.97-10-087, App. A, § E(6)(a).)
>
> The direct access tariff adopted in D.97-10-087 also provides:
>
> "if a customer cancels an agreement pursuant to Public Utilities Code Section 395, a DASR shall not be submitted for that customer. If a DASR has already been submitted, the submitting party shall, within 24 hours, direct the UDC to cancel the DASR." (D.97-10-087, App. B, § E(6)(B).)

Green Mountain requests that the Commission clarify D.98-03-072 by preserving the requirements that were adopted in D.97-10-087, i.e., allow ESPs to submit DASRs three days after third-party verification has been performed for a particular customer. Customers should also have an additional period of time in which to cancel service after a DASR has been submitted, and before the switch takes effect.

Green Mountain contends that the requirements in D.98-03-072 are likely to cause an unnecessary delay in the provisioning of an ESP's service to its customers because, in most instances, the third-party verification will occur before the customer receives the Section 394.5 notice. If the ESP has to wait until after the customer's receipt of the Section 394.5 notice to submit the DASR, this may delay the beginning of service to that customer by the ESP.

Conclusion of Law 52 of D.98-03-072 also requires that the Section 394.5 notice be provided to potential customers prior to the signing of any service agreement or contract and the initiation of a DASR on the customer's behalf, and before any third party verification takes place. Green Mountain contends that Conclusion of Law 52 is inconsistent with page 82 and Conclusion of Law 48 of D.98-03-072.

Green Mountain also contends that the new DASR submission requirements are phrased in such a way that makes it nearly impossible for ESPs

to ensure that they are complying. By preventing the ESPs from submitting DASRs until the latter occurrence of verification or actual receipt of the Section 394.5 notice, the decision creates a situation in which an ESP may have no way of knowing when it is permissible to submit a DASR.

Commonwealth states that the difficulty with the "after receipt" requirement is that the ESP has no firm idea when the customer receives the Section 394.5 notice. In order to implement this requirement, Commonwealth recommends that the Commission deem that a Section 394.5 notice is delivered three days after mailing. Green Mountain suggests that the Commission consider the provisions in Code of Civil Procedure (CCP) Section 1013 as to when a customer should be deemed to have received notice.

ORA supports Green Mountain's proposal that CCP Section 1013 be used. If this code section was used, it would allow a DASR to be submitted eight days after the ESP placed a Section 394.5 notice in the mail within California, and if mailed outside the state, after ten days.

Green Mountain suggests that if the protections in the direct access tariff are not adequate, it could modify Section E(6) to clarify that customers can cancel service after they receive the Section 394.5 notice and before service is switched, while still allowing DASRs to be submitted three days after the third-party verification.

PG&E agrees with Green Mountain and the others that if an ESP had to wait until after the Section 394.5 notice was received to submit the DASR, that this could unnecessarily delay the DASR submission. PG&E recommends that the Commission allow the ESPs to deem that the Section 394.5 notice is received by customers on the third day after the ESP has mailed the notice.

SDG&E points out that D.98-03-072 needs to be clarified with respect to a customer's right to cancel when there is no written agreement. SDG&E

contends that the text at page 81 of the decision and Finding of Fact 100 need to be changed to reflect the text at page 82 and in Conclusion of Law 48.

### 2. Discussion

We have reviewed the various passages in D.97-10-087 and D.98-03-072 as suggested by the parties. There is a need to clarify when a DASR can be submitted (see Section 366.5), when a customer can exercise its right to cancel pursuant to Section 395, and when the Section 394.5 notice must be made available to potential customers. The changes below are self-explanatory, and help clarify the interaction of all three code sections. The changes also incorporate the suggestion that instead of basing the right to cancel on "three days after receipt of the Section 394.5 notice, that the time period be calculated using five business days after the mailing or provisioning of the notice. We decline to adopt the suggestion that the right to cancel be calculated using the time frame in CCP Section 1013. The use of that provision to calculate when a customer has the right to cancel the contract could unnecessarily delay the submission of a DASR. The "five business days" should provide sufficient time for a customer to receive and review the Section 394.5 notice and decide whether the ESP contract should be cancelled.

Accordingly, D.98-03-072 should be modified by making the following changes. In addition, the direct access tariff provisions that were approved in D.97-10-087 need to be conformed to reflect the above modifications.

The last paragraph on page 81 of D.98-03-072 should be deleted.

The first paragraph on page 82 of D.98-03-072 should be deleted and replaced with the following:

"Section 395 provides as follows:

> "(a) In addition to any other right to revoke an offer, residential and small commercial customers of electrical service, as defined in subdivision (h) of Section 331, have the right to cancel a contract for electric service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.
>
> "(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.
>
> "(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.
>
> "(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the contract."

"The right to cancel provision is calculated using the 'day on which the buyer signs an agreement or offer to purchase.' When a customer physically signs a written agreement or offer, the calculation of the time period of when a customer can cancel the contract without a cancellation fee or penalty does not present a problem. Under those circumstances, the Section 394.5 notice will probably be provided to the customer when the written agreement is signed.

"The calculation of the right to cancel date becomes more problematic when the ESP's solicitation and the subsequent verification process occurs entirely by telephone. In such a scenario, the customer does not sign a written agreement or offer. Instead, the ESP takes down the relevant information over the telephone, and the subsequent verification process provided for in Section 366.5 acts to confirm the customer's change.

"The telephone solicitation and verification also presents a problem with respect to the Section 394.5 notice. As discussed later in this decision, this notice is to be provided to the potential customer 'prior to the commencement of service.' In practice, this probably means that the ESP will mail or transmit the notice to the potential customer after the customer has agreed to switch, or after the verification process has taken place. As discussed later, the Section 394.5 notice is designed to inform the potential customer of the price, terms, and conditions of service, including the customer's right to rescind the contract pursuant to Section 395. Thus, the Section 394.5 notice affects the date upon which the right to cancel is calculated, as well as the timing of when a DASR can be submitted.

"In the context of the right to cancel provision, the third party verification process, and the Section 394.5 notice, a residential or small commercial customers who is solicited by an ESP over the telephone should have the right to cancel a contract for electric service without penalty or fee until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later. That is, when there is no signed written agreement, we conclude that the date on which the verification process is completed or the date on which the Section 394.5 notice is mailed or furnished, whichever is later, triggers the right to cancel provision under Section 395. Such timing preserves the right of the residential or small commercial customer to cancel service, when there is no signed written agreement, without penalty in accordance with Section 395.

"Section 366.5 states that there can be no change in the aggregator or supplier of electricity for residential or small commercial customers until the verification process provided for in that section has been completed. That means a DASR cannot be submitted to the UDC by the ESP until after midnight of the third business day after the verification required under Section 366.5 has been completed. However,

since the Section 394.5 notice is designed to inform potential customers of one's right to rescind the contract pursuant to Section 395 (Section 394.5(a)(3)), a DASR should not be submitted until the Section 394.5 notice has been provided to the customer. Thus, a DASR should not be submitted to the UDC by the ESP until after midnight of the third business day after the verification required under Section 366.5 has been completed or until after midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later. The ESPs shall be required to keep accurate records of when the Section 394.5 notice was mailed or provided to the prospective customer, and such records shall be made available to the customer and to the Commission upon request.

"The above DASR requirement should apply to solicitations in person, as well as by telephone. This DASR submission policy is consistent with our interpretation of Sections 366.5, 394.5 and 395. The direct access tariff provisions in Sections E.(6) and G of Appendix A of D.97-10-087 should be conformed to reflect the above discussion."

The right to cancel language which appears at pages 1 and 8 of Appendix C of D.98-03-072 should be changed as follows. The fourth paragraph in the "Summary" portion of Appendix C should be deleted and replaced with the following paragraph:

"You have the right to cancel any contract for electric service without fee or penalty until midnight of the third business day after the day you signed the contract. If no contract is signed, you have the right to cancel any agreement for electric service without fee or penalty until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later."

The paragraph which appears in the "Notice Of Your Right To Cancel" on page 8 of Appendix C should be deleted and replaced with the following paragraph:

> "You have the right to cancel any contract for electric service until midnight of the third business day after the day you signed the contract. If no contract is signed, you have the right to cancel any agreement for electric service until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later. You must give us, at the address specified on page 1 of this notice, written notice of your desire to cancel. No fee or penalty may be imposed against you for exercising your right to cancel within this time period. (Public Utilities Code Section 395.)"

The third full paragraph which appears at page 86 of D.98-03-072 should be deleted and replaced with the following:

> "The other issue raised by Section 394.5 is when the notice should be made available to prospective customers. Section 394.5(a) states that this notice is to be made available to a potential customer 'prior to the commencement of service.' We interpret that phrase to mean that the ESP shall deliver the notice to the potential customer prior to the initiation of a DASR on the customer's behalf. Such a requirement makes sense because the notice is to inform the 'potential customer' of the price, terms, and conditions of service. This is also consistent with our interpretation of Sections 366.5 and 395, and what should occur if a customer is switched and verified entirely by telephone. Thus, this requirement will provide a potential customer with the opportunity to review the price, terms, and conditions of service before the customer is switched to a different electric provider."

Finding of Fact 100, which appears at page 119 of D.98-03-072 should be deleted and replaced with the following new Findings of Fact:

"103. Section 395 provides that residential and small commercial customers have the right to cancel a contract for electric service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.

"104. The right to cancel provision is calculated using the day on which the buyer signs an agreement or offer to purchase.

"105. Telephone solicitations by an ESP of potential customers do not result in signed written agreements or offers.

"106. The Section 394.5 notice affects the timing of when a DASR can be submitted, as well as the date upon which the right to cancel is calculated.

"107. Section 366.5 provides that there can be no change in the aggregator or supplier of electricity for residential or small commercial customers until the verification process provided for in Section 366.5 has been completed.

"108. Section 394.5(a) provides that a Section 394.5 notice is to be made available to a potential customer prior to the commencement of service."

Due to the additional findings, the Findings of Fact beginning with 101 and following, which appear beginning at page 120 of D.98-03-072 and following, should be renumbered as number 109 and following.

Conclusion of Law 48 which appears at page 128 of D.98-03-072 should be deleted and replaced with the following new Conclusions of Law:

"50. No written agreement or offer to purchase, as contemplated by Section 395, is entered into when the ESP's solicitation and subsequent verification process occurs entirely by telephone.

"51. In the absence of a signed written agreement, the date on which the verification process is completed, or the date on which the ESP complies with the Section 394.5 notice requirement, should trigger a customer's right to cancel pursuant to Section 395.

"52. In the absence of a signed written agreement, residential and small commercial customers shall have the right to cancel a contract for electric service without penalty or fee until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later.

"53. A DASR shall not be submitted to the UDC by the ESP until after midnight of the third business day after the verification required under Section 366.5 has been completed, or until after midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later."

Conclusions of Law 49, 50 and 51, which appear at page 128 of D.98-03-072, should be renumbered as Conclusions of Law 54, 55, and 56.

Conclusion of Law 52, which appears at page 128 of D.98-03-072, should be deleted and replaced with the following:

"57. The phrase 'prior to the commencement of service' should be interpreted to mean that the ESP shall deliver the Section 394.5 notice to the potential customer prior to the initiation of a DASR on the customer's behalf."

Conclusions of Law 53 and following, which appear beginning on page 128 of D.98-03-072, should be renumbered beginning with number 58 and following.

In order to make Ordering Paragraph 8.b) of D.98-03-072 consistent with the modifications discussed above, the following phrase from that ordering

paragraph should be deleted: "the signing of any service agreement or contract and the."

The UDCs shall have 30 days from the mailing date of this decision to file appropriate advice letters to conform their direct access tariff provisions to reflect the above modifications.

In their comments to the draft decision, Utility.com and Green Mountain proposed that certain changes be made to reflect the use of the Internet. We recognize that the Internet presents an opportunity for companies to streamline their costs. However, as presently written, Sections 366.5 and 395 prescribe that certain procedures must be followed in order to verify a customer's change in electric provider, and to cancel an agreement to enter into an electric service contract. The changes suggested by Utility.com and Green Mountain have the effect of altering the specific language of those two code sections, and therefore shall not be adopted at this time.[19]

## H. Year 2000 Problem

In Resolution M-4792, which was adopted by the Commission on November 19, 1998, the Commission ordered all investor-owned utilities (IOUs) subject to the Commission's jurisdiction to provide information about the IOUs' efforts regarding their readiness with respect to the Y2K problem.[20] The resolution recognizes that:

> "The Y2K problem, if not properly addressed, may affect the financial control, customer and shipper service, billing, and load

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[19] There is currently a bill (Senate Bill 1159) before the Legislature which would amend Section 366.5. Until such legislation is enacted, the Commission is bound to follow the specific provisions of Sections 366.5 and 395.

[20] This resolution is available on the Commission's web site at www.cpuc.ca.gov.

> forecasting systems, as well as the ability of the utilities to provide utility services." (Resolution M-4792, p. 2.)

With the restructuring of the electric industry, opportunities were created for new market entrants, such as ESPs, MSPs, and MDMAs. In order to maintain a level of control over meter installations and meter data, the Commission adopted the approach that the UDCs and the ESPs would remain responsible for meter installation, maintenance, and the collection, transfer, and processing of the meter data.[21] (See D.97-12-048, pp. 4-6.) Since customers are free to choose an ESP to supply them with electricity and meter-related services, it is important that the Commission ensure that all ESPs, i.e., those who serve medium and large commercial and industrial customers, and those who serve residential and small commercial customers, are prepared for the Y2K problem at all levels of interaction with the UDCs, SCs, and customers.

The Commission's jurisdiction over ESPs is limited. Since an ESP is not an IOU, as contemplated in Resolution M-4792, that resolution is not applicable to ESPs operating in California. However, in the statutory provisions addressing electric restructuring, customers "have the right to choose their supplier of electric power." The Legislature declared that: "Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy." (Pub. Util. Code Section 330(d) and (g).) Since the ESPs are supplying electricity, and because reliable electric service is of utmost importance, the Commission has an interest in ensuring that all ESPs in California are ready for the Y2K problem. In addition, an ESP's plans to deal

[21] Under the Commission's decisions, the ESPs and UDCs are free to subcontract these services to qualified MSPs and MDMAs.

with the Y2K problem is reflective of the ESP's technical and operational abilities as well.

We will therefore require all ESPs operating in California, regardless of which customer classes they serve, to advise us of their Y2K readiness by completing the "Year 2000 Program Assessment Checklist & Survey For Electric Service Providers," which is attached to this decision as Appendix A.[22] If the ESP is required by the Securities and Exchange Commission (SEC) to report to the SEC on Y2K issues, the ESP shall provide copies to the Commission of all such information it has provided to the SEC, as well as any future information that the SEC may require. Each ESP shall also be required to certify to the Commission, no later than November 1, 1999, that all of its essential service delivery systems are Y2K compliant or Y2K ready. The certification shall also provide that any new systems, software, and equipment purchased or implemented after the date of certification will be Y2K compliant as well.

In order to apprise all ESPs operating in California of these Y2K requirements, the Energy Division shall be directed to compile a list of all ESPs operating in California. Should the assistance of the UDCs be needed to create this list, the UDCs are directed to supply the necessary information so that the Energy Division can compile the list. Once that list is completed, the Energy Division shall mail each ESP on the list a letter describing their obligations to comply with this decision as it relates to the Y2K problem, along with the Y2K form. The Energy Division shall ensure that all of the ESPs on the list submit the completed checklist and survey form (Appendix A) within 60 days from the date the letter is mailed.

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[22] With a few minor changes, Appendix A is essentially identical to Exhibit 1 of Resolution M-4792.

In its comments to the draft decision, the CEC suggests that the Commission publish the list of all active ESPs. The CEC states that such a list would be helpful to the industry, the Board of Equalization, and the CEC. We will direct the Energy Division to provide the list of all ESPs operating in California, as compiled in accordance with the above discussion, to anyone who requests such information.

### I. Opt-In List

The opt-in list was the subject of discussion in D.97-10-031 and in D.98-03-072. The opt-in list was the proposal of the CEC to establish a confidential database of customers who wanted to be contacted by ESPs. Once the database was compiled, the proposal called for the database to be sold to registered ESPs in good standing, public agencies, and electrical corporations.

We approved the concept of the opt-in database in D.98-03-072. However, before incurring the costs to design and implement the opt-in database, the Commission determined that the demand for such a product should first be assessed. The Commission invited ESPs, public agencies, electrical corporations, and energy efficiency providers, to submit letters to the Energy Division if they were interested in the opt-in database. The Energy Division received one letter of interest. Since D.98-03-072 noted that the UDCs' estimated cost of developing the opt-in database was $430,000 to $3.5 million, it is evident that the opt-in database proposal should not proceed any further since the cost to implement the proposal does not justify the limited interest in the database product.

### J. Extension Of Reporting Requirements

In D.97-05-040 at page 30, the Commission directed the UDCs to submit a monthly report to the Energy Division regarding their direct access

implementation activities. This reporting requirement is scheduled to terminate with the report ending for the month of June 1999.

The Energy Division has requested that this reporting requirement be extended. The monthly reports have been invaluable for tracking the progress of the direct access market, and for compiling statistics about the market. Since the direct access market has only been operative for about one year, it is important for the Commission to continue the gathering of this information while the market is still developing. Unless further extended by the Commission, we will require the UDCs to continue submitting the monthly report on their respective direct access implementation activities through December 31, 2000.

In addition to the information described at page 30 of D.97-05-040, the Energy Division may develop additional reporting requirements for the monthly report, as well as a common reporting format for the report.[23] If the monthly report requires information about individual ESPs, it is the Commission's intent not to disclose that kind of information to the public because it may contain sensitive market share information. (See General Order 66-C.) Pursuant to the authority contained in Sections 581 and 584, the UDCs are directed to provide all of the information that the Energy Division requires.

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[23] The comments of PG&E and SCE to the draft decision suggest that the Energy Division has repeatedly changed the format of the reporting requirements. It is our understanding that the Energy Division staff have kept the UDCs informed of the changes and have worked with the UDCs to reach agreement on the format of the reports. We are confident that any reporting requirements that the staff may develop will provide the Commission with the necessary tools to analyze the emerging direct access market, and that such requirements will not result in an undue burden on the UDCs. We therefore decline to adopt the UDCs' suggestion that any subsequent changes to the reporting requirements only be made by way of a Commission decision.

D.97-05-040 should be modified accordingly to reflect the extension of this reporting requirement, and to allow the Energy Division to develop additional DASR reporting requirements.

### K. Metering And Billing Activities

The Commission took steps in D.97-05-039 to unbundle metering and billing services. In the direct access tariff that was adopted in D.97-10-087, the Commission set forth the tariff provisions governing the offering of metering and billing services by ESPs. The metering tariff provisions were further refined in D.97-12-048. In that decision, the Commission directed the Executive Director to determine which Commission division should handle the meter service provider (MSP) certification process, and to "ensure that the assigned staff develops the internal procedures necessary to effectuate the MSP certification process." (D.97-12-048, Ordering Par. 2, p. 55.) The Energy Division was assigned the task of developing the MSP certification process.

As part of the Commission's regulatory oversight of the metering and billing functions, and as a follow-up to the MSP certification process, the Energy Division should obtain metering and billing data from the UDCs which provides the Commission with information about which entities are installing direct access meters, and which entities are doing the billing of electrical services. This type of information should be obtained for all customer classes. This information will enable the Commission to determine how the unbundled markets for metering and billing are progressing. The Energy Division shall be directed to develop a monthly reporting format which captures the type of information described above.[24] The Energy Division may also request additional information if it

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[24] In its comments to the draft decision, the CEC suggests that the metering and billing data

*Footnote continued on next page*

determines the data would be helpful to gain a better understanding of the market.

The UDCs are directed to provide this metering and billing data on a monthly basis. Unless extended by the Commission, these monthly reporting requirements will terminate with the reports covering activities through December 31, 2000. It is the intent of the Commission to keep confidential any data supplied by the UDCs which contain ESP-specific, MSP-specific, or end-use customer-specific information. (See General Order 66-C.)

## Findings of Fact

1. On April 15, 1998, Edison Source filed a petition to intervene and its comments on the proposed permanent standards.

2. NWE filed a motion on April 16, 1998 requesting permission to file its comments one day out of time.

3. NWE previously filed a petition to intervene on March 18, 1998.

4. On May 4, 1998, Greenlining/LIF filed a motion for leave to late-file their reply comments.

5. Greenlining/LIF incorrectly calculated the filing date for reply comments.

6. The draft decision was mailed to the parties in accordance with Section 311(g).

7. On April 28, 1999, Utility.com filed a petition to intervene and attached its comments to the draft decision.

8. On May 4, 1999, the CEC filed a motion requesting permission to late-file its comments to the draft decision.

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be reported in a particular format. We will leave it up to the Energy Division to develop the specific reporting format.

9. D.98-03-072 provided an opportunity for interested parties to file comments in four discrete areas.

10. The Commission has already considered some of the issues raised in the comments and will not revisit those issues.

11. The Commission, in accordance with SB 477, issued for comment in D.98-03-072 its proposal for permanent financial viability standards and technical and operational standards.

12. There is no need to take official notice of the news article attached to Greenlining/LIF's reply comments because the Commission's resolution of the permanent financial viability standards does not rely on the contents of the article.

13. The Commission proposed permanent financial viability standards in D.98-03-072.

14. The starting deposit of $25,000 is not a burden when one considers how much residential and small commercial customers could lose if an unscrupulous ESP tries to take advantage of its customers or fails to perform.

15. The requirement that the ESPs post a deposit will help ensure that the ESP has the financial resources to operate as an ESP, and that adequate recourse will be available if the ESP fails to perform or if it defrauds its customers.

16. The varying security deposit amounts are consistent with Section 394(a)(9) because it considers the number of customers the ESP is serving, and the corresponding increase in the amount of electricity that the ESP provides.

17. The security deposit amount should not be increased beyond $100,000 because it is likely to act as a barrier to competition by increasing the cost of doing business for ESPs, rather than to protect small consumers from deceptive, unfair, or insolvent ESPs.

18. The liability insurance approach does not provide an ESP's customers with adequate recourse.

19. The use of corporate guarantees or letters of credit would require the Commission staff to evaluate the financial strength of the corporation guaranteeing payment for the ESP, or the financial strength of the bank issuing the letter of credit.

20. D.98-03-072 stated that the customer trust account could be used to satisfy the cash deposit or bond requirement so long as the account is in the amount of the required security deposit amount, and in a format approved by the Commission's General Counsel.

21. There are several reasons why the Commission should not order the UDCs to transfer a customer's electricity deposit to the ESP selected by the customer.

22. The use of either a performance bond or payment bond should be permitted so long as it affords protection to consumers and the form of the bond is acceptable to the ESP Registration Unit.

23. The Commission should not restrict itself at this time to specify the kind of events that would trigger Commission action with respect to the security deposit.

24. Information reported to the Commission about the number of kWh supplied each month by an ESP should remain confidential.

25. The Commission proposed permanent technical and operational ability standards in D.98-03-072.

26. D.98-03-072 recognized that the execution of a UDC-ESP service agreement is not the sole criterion for determining viability.

27. The UDC-ESP service agreement provides that each party is and shall remain in compliance with all applicable laws and tariffs.

28. The summary of an ESP's key technical and operational personnel, together with the signed UDC-ESP service agreement and the SC agreement, are

designed to provide the Commission with a level of assurance that the ESP possesses the necessary technical and operational abilities to operate as an ESP.

29. Those persons who are in charge of the overall technical and operational aspects of the business, and those responsible for overseeing the day-to-day activities related to the technical and operational aspects of the business, are to be listed on item 16 of the ESP registration application form.

30. The information responsive to item 16 of the ESP registration application form will provide Commission staff with an understanding about the scope of the ESP's operations, and whether the ESP's key employees possess the necessary technical and operational abilities.

31. Section 18.1 of the UDC-ESP service agreement provides that the ESP shall completely, accurately, and in a timely manner account for each of its customer's loads with an authorized SC, and that the UDC shall have complete access to the load data provided to the SC by the ESP.

32. D.97-12-090 recognized that much of the customer usage information will occur between the SCs and the ISO, and that regulatory jurisdiction over these entities resides with the FERC.

33. The Commission should defer action on UFE issues until it has an opportunity to address the UFE reports.

34. The Commission's decisions regarding meter standards apply to all ESPs.

35. The fingerprint requirement serves a useful purpose by screening out those persons who are planning to defraud customers.

36. The fingerprint requirement is not an undue barrier to entry given the Legislature's expressed intent to protect small consumers.

37. Section 394.2(a) provides that any consumer complaints against an ESP operating in the service territory of the municipal utility are to be resolved through the municipal utility's consumer complaint procedures.

38. Requiring a registered ESP to report a change in telephone number or address within five days of such a change will help protect consumers.

39. The proposal to allow a cash deposit to earn interest, and to return the interest to the ESP on an annual basis, was not adopted in D.98-03-072 as part of the interim standards for proof of financial viability.

40. The proposed tracking system will permit the Commission to monitor ESP-related problems, provide the Commission with information about potential ESP problem areas, and provide background information should an investigation or other enforcement action take place.

41. Section 394.4(h) provides that the Commission may adopt additional consumer protection standards for residential and small commercial customers which are in the public interest.

42. The UDCs should be permitted to give out the telephone number of an ESP if the caller is complaining about a particular ESP and does not have the ESP's telephone number.

43. D.98-03-072 proposed that ORA develop a comparison matrix to allow consumers to compare the service offerings of all registered ESPs.

44. D.98-03-072 ordered ORA to establish the procedures necessary to carry out the requirements of Section 392.1(c), and to submit a report with its recommendations for effectuating that code section.

45. On October 16, 1998, ORA submitted its report on its methods to accomplish the consumer education mandates set forth in Section 392.1(c) and D.98-03-072.

46. To make the comparison matrix more user-friendly and to provide consumers with information about electric restructuring, the Commission's web site home page should provide appropriate links to ORA's web site pages on electric restructuring.

47. The comparison matrix is a tool that can be used to help residential and small commercial customers understand how to evaluate and make informed choices about competing electric service options.

48. Section 392.1(c) provides that ORA shall not make specific recommendations or rank the relative attractiveness of specific service offerings of registered providers of electric services.

49. Section 394.4 provides that the Section 394.5 notice shall be easily understandable.

50. In Section 391, the Legislature expressed a need to simplify entry for ESPs who serve large, sophisticated customers.

51. For purposes of the exemption from the Section 394.5 notice requirement, the small commercial account must be in the name of the large customer, or in the name of an entity controlled by the large customer.

52. The exemption from the Section 394.5 notice requirement does not apply if the ESP markets to or serves residential or small commercial customers as part of its normal course of business activities.

53. D.98-03-072 invited comments on how the prices could be expressed in the Section 394.5 notice in ways that provide consumers with sufficient information to compare alternatives.

54. D.98-03-072 interpreted the "total price of electricity" to include all recurring charges of both the ESP and the UDC.

55. D.98-03-072 interpreted the phrase "Separate disclosure of all recurring and non-recurring charges associated with the sale of electricity" to mean that the notice should contain a description and amount of each recurring and non-recurring charge that the customer may be responsible for.

56. D.98-03-072 directed the UDCs to cooperate with the ESPs to ensure that all of the UDC's charges are accurately reflected on the notice.

57. The requirement that the ESP describe and list the amount of each UDC recurring and non-recurring charge would force the ESP to determine what the applicable UDC charges are in each of the UDC service territories in which it provides direct access services.

58. If the ESP does not list the correct charge for each of the UDC's electricity charges, the cents-per-kWh disclosure and the estimate of the monthly bill would be erroneous.

59. Allowing the ESPs to disclose the price of electricity using only their charges still enables residential and small commercial consumers to compare and select among similar electricity offerings on a standard basis.

60. D.98-03-072 allowed price disclosure to be on a PX plus and PX minus pricing basis.

61. As written, the "Description Of Terms And Conditions Of Service," which appears in Appendix C of D.98-03-072, could leave one with the impression that the UDC can disconnect service if the customer fails to pay the ESP charges.

62. The two sentences which appear at page 100 of D.98-03-072 should be deleted because it suggests that the UDC could terminate service if the ESP charges are not paid.

63. There is a need to clarify when a DASR can be submitted, when a customer can exercise its right to cancel pursuant to Section 395, and when the Section 394.5 notice must be made available to potential customers.

64. Resolution M-4792 ordered all IOUs to provide information about the IOUs' efforts regarding their readiness with respect to the Y2K problem.

65. Since end-use customers are free to choose an ESP to supply them with electricity and meter-related services, it is important that the Commission ensure that all ESPs are prepared for the Y2K problem at all levels of interaction with the UDCs, SCs, and customers.

66. The Legislature declared that reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy.

67. Since the ESPs are supplying electricity, and because reliable electric service is of utmost importance, the Commission has an interest in ensuring that all ESPs in California are ready for the Y2K problem.

68. The Commission approved the concept of the opt-in database in D.98-03-072.

69. The opt-in database proposal should not proceed any further since the cost to implement the proposal does not justify the limited interest in such a product.

70. The monthly report to the Energy Division regarding direct access implementation activities is scheduled to terminate with the report ending for the month of June 1999.

71. Since the monthly reports on direct access activities enable the Commission to track the progress of the direct access market and to compile statistics about the market, this reporting requirement should continue through December 31, 2000.

72. The Commission has issued several decisions which address the unbundling of metering and billing services.

73. The Energy Division should obtain metering and billing data from the UDCs for all customer classes so that the Commission has information about which entities are installing direct access meters and which entities are doing the billing.

## Conclusions of Law

1. The use of the term "financial guarantee bond" was intended to cover both performance bonds and payment bonds.

2. The requirement of a UDC-ESP service agreement cannot be viewed in isolation, but rather, it must be examined in light of the requirements imposed by

the agreement and the other kinds of information that a prospective ESP must supply to the Commission.

3. The applicable laws and tariffs include all of the direct access-related decisions and tariffs that the Commission has approved.

4. Since it is the FERC and the ISO that have responsibility over the SCs, the Commission should defer to the ISO to develop solutions to any account reconciliation problems that may exist between what is reported from the SCs to the ISO.

5. The Legislature did not intend that a prospective ESP would have to demonstrate that it can perform the day-to-day activities of an ESP before it could register with the Commission as an ESP.

6. SB 477 has delegated many of the detail of direct access to the governing boards of the municipal utilities.

7. There is nothing in Section 394.1(d) which precludes the Commission from requiring that a registered ESP notify the Commission immediately of any change in the telephone number or address.

8. The proposed permanent standards for proof of financial viability and technical and operational ability, as set forth at pages 32 to 34 of D.98-03-072, and as clarified in this decision, should be adopted.

9. D.97-05-040 and D.98-03-072 should be modified as discussed in this decision.

10. Due to the evolving direct access market, the tracking by UDCs of customer complaint calls about ESPs is in the public interest.

11. A complaint call should be narrowly construed to avoid labeling general questions about an ESP from being marked down as a complaint.

12. The Energy Division and CSD should work with the RCR forum to develop the general categories for the reporting of ESP complaint calls and the

parameters on what type of calls should be tracked by the UDCs, and what kind of information should be gathered from the customer.

13. If a UDC underreports customer complaint calls about an ESP affiliate, such action may be viewed as granting a preference over a non-affiliated ESP in violation of the affiliate transaction rules.

14. If a caller to the UDC is having a problem with an ESP, the UDC should be directed to inform the caller that they should call the ESP directly or call the Commission's complaint line.

15. The tracking and reporting of ESP complaint information by the UDCs, and providing callers with the Commission's complaint telephone line or the ESP's telephone number under the circumstances described in this decision, shall not be construed as a violation of rule IV E. of the affiliate transaction rules as adopted in D.97-12-088.

16. The issue of cost recovery for the tracking of customer complaint calls should be addressed in A.98-05-004, A.98-05-006, and A.98-05-015.

17. The activities which ORA plans to pursue, as described in its October 16, 1998 report, should be approved because such activities implement the requirements of Section 392.1(c) and D.98-03-072.

18. The phrase "easily understandable" should be interpreted to mean that the notice must be displayed in a type size, and if used, on a paper stock, which allows the average adult reader to be able to read the notice without difficulty.

19. An exception to the Section 394.5 notice requirement should be created for those ESPs who incidentally serve small commercial accounts as part of an electricity supply contract with a medium to large commercial customer or industrial customer.

20. The exemption from the notice requirement is consistent with Section 394.5 because the ESP is not offering electrical services to residential and small

commercial customers except as incidental to the electricity contract with the medium to large commercial customer or industrial customer.

21. The Commission should adopt the joint parties' recommendation to permit the ESP to list each bill component that makes up the UDC's recurring and non-recurring charges, along with a statement that the customer remains responsible for those UDC charges and that the customer should refer to their UDC bill or to the UDC to determine what the UDC rate is for each of those charges.

22. The Commission retains the flexibility to consider alternatives to the cents-per-kWh disclosure if other information will provide the customer with sufficient information to compare among alternatives on a standard basis.

23. For the cents-per-kWh disclosure and the estimate of the total monthly bill, an ESP should not be required to include the amount of the UDC's recurring charges in the disclosure or the estimate, but the ESP should be required to list the UDC's recurring charges together with a statement that the disclosure and estimate do not include the UDC's recurring charges, and that the customer remains obligated to pay the UDC for those charges, and that the customer can determine the amount of the UDC's recurring charges by reviewing the UDC's bill or contacting the UDC.

24. When the pricing mechanism is based on PX plus and PX minus pricing, the ESP need not include the charge for each recurring UDC electric charge, but should be required to include the same sort of statements as required for the cents-per-kWh disclosure.

25. D.98-03-072 should be modified in various places to reflect the interpretation that an ESP is not required to specify the amount of all of the UDC's recurring and non-recurring charges.

26. The changes which relate to electronic commerce, as suggested by Utility.com and Green Mountain, are in conflict with the statutory language set forth in Sections 366.5(b) and 395.

27. Since an ESP is not an IOU, Resolution M-4792 is not applicable to ESPs.

## O R D E R

1. The April 15, 1998 petition to intervene of Edison Source is granted.
   a. The Docket Office is directed to file the "Comments of Edison Source on D.98-03-072 Opinion Regarding Consumer Protection" as though it was filed on April 15, 1998.

2. The March 18, 1998 petition to intervene of New West Energy Corporation is granted, and the April 16, 1998 motion of New West Energy Corporation is granted.
   a. The Docket Office is directed to file "New West Energy Corporation's Comments On Proposed Standards" as though it was filed on April 16, 1998.

3. The May 4, 1998 motion of The Greenlining Institute and Latino Issues Forum is granted.
   a. The Docket Office is directed to file the "Reply Comments By The Greenlining Institute And Latino Issues Forum On The Opinion Regarding Consumer Protection" as though it was filed on May 4, 1998.

4. The petition to intervene that was filed by Utility.com on April 28, 1999 is granted.
   a. The Docket Office is directed to file the "Comments In The Above Captioned Proceeding Regarding The Draft Decision Of ALJ Wong Mailed 4/8/99 by Utility.com" as though it was filed on April 28, 1999.

5. The May 4, 1999 motion of the California Energy Commission (CEC) to accept its comments to the draft decision for late filing is granted.

   a. The Docket Office is directed to file the "Comments Of The California Energy Commission On Draft Decision Regarding Permanent Standards, And Other Direct Access Related Issues" as though it was filed on May 4, 1999.

6. Decision (D.) 98-03-072 shall be modified as follows:

   a. The first full sentence which appears at the top of page 18 of D.98-03-072 shall be deleted and replaced with the following:

      "In order to enable the background checks contemplated by the legislation and to verify the accuracy of information supplied by registrants, we will require all ESPs to provide to the Commission a full set of fingerprints of: (1) if a sole proprietorship, the registrant; (2) if a partnership, all general partners; (3) if a corporation, all corporate officers; or (4) if a limited liability company, all members, managers and officers. The fingerprints shall be performed by a law enforcement agency, or other person which is qualified to provide fingerprint services. A person shall be deemed qualified if he or she has completed a course of instruction in the taking of fingerprints from a law enforcement agency or a college or university. The ESP registrant shall also provide the name and address of the entity or person which provided the fingerprint services, and the date on which the service was provided."

   b. The first three full paragraphs which appear at page 78 of D.98-03-072 shall be deleted and replaced with the following:

      "Several of the commenting parties suggested that the price of electricity be disclosed on a cents per kWh, and that an estimate of the monthly bill at various consumption levels be provided. Section 394.5(a)(1)(A) now requires that the total price of electricity be expressed on a cents-per-kWh basis. The total price of electricity is to include the recurring costs of all related electric services and charges. That would include the ESP's markup and any applicable local or state fees.

"The difficulty with including 'all' electric services and charges in the 'total price of electricity' is that the ESP would be responsible for having to determine the amount of each of the UDC charges. Instead of placing this burden on the ESPs, the ESPs should be permitted to disclose as their 'total price of electricity' all of the ESP's recurring charges for electricity. In addition, the ESPs should be required to state that the customer is also responsible for paying certain recurring electricity-related charges to its electric utility. A list of those charges is to be specified on the notice. The notice should also state that the customer should refer to its electric utility bill or call the utility to determine the amount of the electric utility's charges.

"Thus, the 'total price of electricity' would reflect all of the ESP's actual electricity charges, as well as a statement that the customer remains obligated to pay the electricity-related charges of the electric utility. A list of those charges is to be specified on the notice. This type of disclosure is consistent with Section 394.5(a)(1)(A), which provides that the Commission may consider alternatives to the cents-per-kWh disclosure. By requiring the disclosure in this fashion, consumers will be provided with sufficient information to compare competing alternatives on a standard basis. Except as noted below, all of the notices required by Section 394.5 shall disclose the total price of electricity on a cents-per-kWh basis in the format described in the preceding paragraphs.

"If pricing is on a cents-per-kWh basis, the notice shall also include an estimate of the total monthly bill at various consumption levels for residential and small commercial customers. The 'total monthly bill' should be interpreted to mean that the ESP's total monthly charges will be reflected in the total monthly bill. Consistent with the above cents-per-kWh disclosure, the ESPs shall also be required to state that the total monthly bill does not include the electricity-related charges of the electric utility, that the customer should refer to its electric bill or call the electric utility to determine the amount of the charges, and the ESP shall provide a list of those UDC charges on the notice."

c. The following paragraph shall be inserted following the last paragraph which appears at the bottom of page 78 of D.98-03-072:

"The PX pricing structure is to reflect all of the ESP's recurring electricity charges, as well as the above-described statement that the customer remains obligated to pay the electric utility's charges, and that the customer should review its bill or contact the electric utility to determine the amount of those charges."

d. The last paragraph which appears beginning at the bottom of page 79 and continuing on page 80 of D.98-03-072 shall be deleted and replaced with the following:

"Section 394.5(a)(1)(B) requires that there be a separate disclosure of all recurring and non-recurring charges associated with the sale of electricity. Appendix C contains an area where the ESP is to list each recurring and non-recurring charge that the customer may be responsible for. For those charges imposed by the ESP, the amount of each recurring and non-recurring charge shall be listed. For those recurring and non-recurring charges imposed by the electric utility, the notice shall state that the customer remains responsible for those electric utility charges, and that the customer should refer to their electric utility bill to determine the electric utility's rate for each of those charges." (Footnote 34 remains.)

e. The last paragraph on page 81 of D.98-03-072 shall be deleted.

f. The first paragraph on page 82 of D.98-03-072 shall be deleted and replaced with the following:

"Section 395 provides as follows:

"(a) In addition to any other right to revoke an offer, residential and small commercial customers of electrical service, as defined in subdivision (h) of Section 331, have the right to cancel a contract for electric service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.

"(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

"(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

"(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the contract.

"The right to cancel provision is calculated using the 'day on which the buyer signs an agreement or offer to purchase.' When a customer physically signs a written agreement or offer, the calculation of the time period of when a customer can cancel the contract without a cancellation fee or penalty does not present a problem. Under those circumstances, the Section 394.5 notice will probably be provided to the customer when the written agreement is signed.

"The calculation of the right to cancel date becomes more problematic when the ESP's solicitation and the subsequent verification process occurs entirely by telephone. In such a scenario, the customer does not sign a written agreement or offer. Instead, the ESP takes down the relevant information over the telephone, and the subsequent verification process provided for in Section 366.5 acts to confirm the customer's change.

"The telephone solicitation and verification also presents a problem with respect to the Section 394.5 notice. As discussed later in this decision, this notice is to be provided to the potential customer 'prior to the commencement of service.' In practice, this probably means that the ESP will mail or transmit the notice to the potential customer after the customer has agreed to switch, or after the verification process has taken place. As discussed later, the Section 394.5 notice is designed to inform the potential customer of the price, terms, and conditions of service, including the customer's right to rescind the contract pursuant to Section 395. Thus, the Section 394.5 notice affects the date upon which

the right to cancel is calculated, as well as the timing of when a DASR can be submitted.

"In the context of the right to cancel provision, the third party verification process, and the Section 394.5 notice, a residential or small commercial customer who is solicited by an ESP over the telephone should have the right to cancel a contract for electric service without penalty or fee until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later. That is, when there is no signed written agreement, we conclude that the date on which the verification process is completed or the date on which the Section 394.5 notice is mailed or furnished, whichever is later, triggers the right to cancel provision under Section 395. Such timing preserves the right of the residential or small commercial customer to cancel service, when there is no signed written agreement, without penalty in accordance with Section 395.

"Section 366.5 states that there can be no change in the aggregator or supplier of electricity for residential or small commercial customers until the verification process provided for in that section has been completed. That means a DASR cannot be submitted to the UDC by the ESP until after midnight of the third business day after the verification required under Section 366.5 has been completed. However, since the Section 394.5 notice is designed to inform potential customers of one's right to rescind the contract pursuant to Section 395 (Section 394.5(a)(3)), a DASR should not be submitted until the Section 394.5 notice has been provided to the customer. Thus, a DASR should not be submitted to the UDC by the ESP until after midnight of the third business day after the verification required under Section 366.5 has been completed or until after midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later. The ESPs shall be required to keep accurate records of when the Section 394.5 notice was mailed or provided to the prospective customer, and such records shall be made available to the customer and to the Commission upon request.

"The above DASR requirement should apply to solicitations in person, as well as by telephone. This DASR submission policy is consistent with our interpretation of Sections 366.5, 394.5 and 395. The direct access tariff provisions in Sections E.(6) and G of Appendix A of D.97-10-087 should be conformed to reflect the above discussion."

g. The third full paragraph which appears at page 86 of D.98-03-072 shall be deleted and replaced with the following:

"The other issue raised by Section 394.5 is when the notice should be made available to prospective customers. Section 394.5(a) states that this notice is to be made available to a potential customer 'prior to the commencement of service.' We interpret that phrase to mean that the ESP shall deliver the notice to the potential customer prior to the initiation of a DASR on the customer's behalf. Such a requirement makes sense because the notice is to inform the 'potential customer' of the price, terms, and conditions of service. This is also consistent with our interpretation of Sections 366.5 and 395, and what should occur if a customer is switched and verified entirely by telephone. Thus, this requirement will provide a potential customer with the opportunity to review the price, terms, and conditions of service before the customer is switched to a different electric provider."

h. The following sentences which appear in the second full paragraph at page 100 of D.98-03-072 shall be deleted:

"We have adopted procedures which allow the UDCs to disconnect service to a customer if the customer fails to pay any portion of the electricity bill. These disconnection procedures are sufficient to ensure that customers pay their electricity bills in a timely manner."

i. The following new Findings of Fact shall be added after Finding of Fact 89 at page 119 of D.98-03-072:

"90. The difficulty of including all of the UDC's electric charges in the 'total price of electricity' is that the ESP would be responsible for having to determine the amount of each of the UDC charges."

j. Finding of Fact 90, which appears at page 119 of D.98-03-072 shall be deleted and replaced as follows and renumbered as Finding of Fact 91:

"91. If cents-per-kWh pricing is used, the electricity price contained in the notice shall reflect the actual price which the ESP will charge the customer and a statement that the customer remains obligated to pay the electric-related charges of the UDC."

k. The following new Finding of Fact shall be added following Finding of Fact 94 which appears at page 119:

"96. The PX pricing structure is to reflect all of the ESP's recurring charges and the statement that the customer remains obligated to pay the electric utility's charges."

l. The following new Finding of Fact shall be added following Finding of Fact 95 which appears at page 119:

"98. The ESP shall list the amount of each recurring and non-recurring charge imposed by the ESP, and for those recurring and non-recurring charges imposed by the UDC, the ESP shall list the type of charges and include the appropriate statements that the customer remains obligated to pay those UDC charges, and that the specific amount of those charges can be determined by looking at the UDC bill or contacting the UDC."

m. Finding of Fact 100, which appears at page 119 of D.98-03-072 shall be deleted and replaced with the following new Findings of Fact:

"103. Section 395 provides that residential and small commercial customers have the right to cancel a contract for electric service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.

"104. The right to cancel provision is calculated using the day on which the buyer signs an agreement or offer to purchase.

"105. Telephone solicitations by an ESP of potential customers do not result in signed written agreements or offers.

"106. The Section 394.5 notice affects the timing of when a DASR can be submitted, as well as the date upon which the right to cancel is calculated.

"107. Section 366.5 provides that there can be no change in the aggregator or supplier of electricity for residential or small commercial customers until the verification process provided for in Section 366.5 has been completed.

"108. Section 394.5(a) provides that a Section 394.5 notice is to be made available to a potential customer prior to the commencement of service."

n. Due to the additional findings, the Findings of Fact beginning with 101 and following, which appear starting at page 120 of D.98-03-072 and following, shall be renumbered as number 109 and following.

o. The following new Conclusions of Law shall be added following Conclusion of Law 45 which appears at page 128:

"46. A disclosure which reflects all of the ESP's actual recurring charges, and a statement that the customer remains obligated to pay the electricity-related charges of the electric utility is consistent with Section 394.5(a)(1)(A) because consumers will be provided with sufficient information to compare competing alternatives on a standard basis.

"47. The estimate of the 'total monthly bill' should be interpreted to mean that the ESP's total monthly charges will be reflected in the estimate, together with a statement that the customer remains obligated to pay the electricity-related charges of the electric utility."

p. Conclusion of Law 48 which appears at page 128 of D.98-03-072 should be deleted and replaced with the following new Conclusions of Law:

"50. No written agreement or offer to purchase, as contemplated by Section 395, is entered into when the ESP's solicitation and subsequent verification process occurs entirely by telephone.

"51. In the absence of a signed written agreement, the date on which the verification process is completed, or the date on which

the ESP complies with the Section 394.5 notice requirement, should trigger a customer's right to cancel pursuant to Section 395.

"52. In the absence of a signed written agreement, residential and small commercial customers shall have the right to cancel a contract for electric service without penalty or fee until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later.

"53. A DASR shall not be submitted to the UDC by the ESP until after midnight of the third business day after the verification required under Section 366.5 has been completed, or until after midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later."

q. Conclusions of Law 49, 50 and 51, which appear at page 128 of D.98-03-072, should be renumbered as Conclusions of Law 54, 55, and 56.

r. Conclusion of Law 52, which appears at page 128 of D.98-03-072, should be deleted and replaced with the following:

"57. The phrase 'prior to the commencement of service' should be interpreted to mean that the ESP shall deliver the Section 394.5 notice to the potential customer prior to the initiation of a DASR on the customer's behalf."

s. Conclusions of Law 53 and following, which appear beginning on page 128 of D.98-03-072, should be renumbered beginning with number 58 and following.

t. The following phrase shall be deleted from Ordering Paragraph 8.b) of D.98-03-072: "the signing of any service agreement or contract and the."

u. The Electric Service Provider (ESP) Registration Application Form, which is attached to D.98-03-072 as Appendix A, shall be modified as follows:

(1) The first sentence in Item 20 of the ESP Registration Application Form shall be deleted and replaced with the following:

"Has the registrant, or any of the general partners, or corporate officers or directors, or limited liability company members, managers, and officers, ever been convicted of any felony?"

(2) Item 21 of the ESP Registration Application Form shall be deleted and replaced with the following:

"Provide a full set of fingerprints of: (1) if a sole proprietorship, the registrant; (2) if a partnership, all general partners; (3) if a corporation, all corporate officers; and (4) if a limited liability company, all of the members, managers and officers. Use the fingerprint cards included with this application. Additional fingerprint cards may be obtained from the Commission. The fingerprints shall be performed by a law enforcement agency, or other person which is qualified to provide fingerprint services. The ESP registrant shall also provide the name and address of the entity or person which provided the fingerprint services, and the date on which the service was provided."

(3) The second to the last sentence which appears at the bottom of page 6 of the ESP Registration Application Form shall be deleted and replaced with the following"

"Any material change in the information required by this form shall be provided to the CPUC within 60 days, except for any change in the ESP's telephone number or address, which shall be reported within five days of such a change. (P.U. Code Section 394.1(d).)"

v. The "Notice Of Price, Terms, And Conditions Of Service," which appears in D.98-03-072 as Appendix C, shall be modified as follows:

(1) In the section entitled "Summary," which appears at page 1 of Appendix C, the following passage shall be deleted:

"Your total price of electricity is _____ cents per kilowatt hour. [or if the ESP's price is pegged to the PX price, describe the pricing arrangement.] "

(2) The deleted passage at page 1 of Appendix C shall be replaced by the following:

"Your total price of electricity is _____ cents per kilowatt hour. [or if the ESP's price is pegged to the PX price, describe the pricing arrangement.] As discussed later in this notice, this price does not include the charges that you are obligated to pay your existing electric utility."

(3) In the "Summary" section at page 1 of Appendix C, the following passage shall be deleted:

"You have the right to cancel any contract for electric service until midnight of the third business day after the day you signed the contract, or if no contract is signed, from the date that your agreement to switch was verified."

(4) The deleted passage above relating to the right to cancel shall be replaced by the following:

"You have the right to cancel any contract for electric service without fee or penalty until midnight of the third business day after the day you signed the contract. If no contract is signed, you have the right to cancel any agreement for electric service without fee or penalty until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later."

(5) In the section entitled "Your Total Price Of Electricity," the following passages at page 3 of Appendix C shall be deleted:

"Your total price of electricity is _____ cents per kilowatt hour (kWh). This price is based on our anticipated electricity costs and all recurring charges.

"Our recurring charges are for the following kinds of charges:

"[description of each recurring charge] [amount of the recurring charge]

"[description of each recurring charge] [amount of the recurring charge]

"You will also pay recurring charges for services provided by the electric utility and for legislatively mandated charges. These charges are as follows:

"[description of each recurring charge] [amount of the recurring charge]

"[description of each recurring charge] [amount of the recurring charge]

"You may also have to pay us for the following non-recurring charges:

"[description and source of each non-recurring charge] [amount of the non-recurring charge]

"[description and source of each non-recurring charge] [amount of the non-recurring charge]"

(6) The passages which have been deleted at page 3 of Appendix C shall be replaced with the following passages:

"Your total price of electricity is _____ cents per kilowatt hour (kWh). This price is based on our anticipated electricity costs and all of our recurring charges. In addition to our total price of electricity, you must also pay certain monthly charges to the electric utility that serves your area. You may also have to pay us for certain non-recurring charges. The following is a description and the amount of each of our recurring and non-recurring charges:

"[description of each recurring and non-recurring charge, and the amount of each charge]

"As mentioned above, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively

mandated charges. You may also have to pay the electric utility for certain non-recurring charges as well. Below is a listing of those electric utility charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges.

"[list each recurring and non-recurring charge imposed by the UDC]"

(7) The following sentence which appears at the bottom of page 3 of Appendix C shall be deleted:

"The following tables provide you with an estimate of your monthly electricity bill based on the total price of electricity and your estimated monthly usage."

(8) The following sentence shall replace the sentence which was deleted from the bottom of page 3 of Appendix C:

"The following tables provide you with an estimate of your monthly electricity bill based on our total price of electricity and your estimated monthly usage. In addition to our price of electricity, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges."

(9) The following passages which appear at pages 4 to 5 of Appendix C of D.98-03-072 shall be deleted:

"Our recurring charges are for the following kinds of charges:

"[description of each recurring charge] [amount of the recurring charge]

"[description of each recurring charge] [amount of the recurring charge]

"You will also pay recurring charges for services provided by the electric utility and for legislatively mandated charges. These charges are as follows:

"[description of each recurring charge] [amount of the recurring charge]

"[description of each recurring charge] [amount of the recurring charge]

"You may also have to pay us for the following non-recurring charges:

"[description and source of each non-recurring charge] [amount of the non-recurring charge]

"[description and source of each non-recurring charge] [amount of the non-recurring charge]"

(10) The above passages which have been deleted at pages 4 to 5 of Appendix C shall be replaced with the following passages:

"This price is based on our anticipated electricity costs and all of our recurring charges. In addition to our total price of electricity, you must also pay certain monthly charges to the electric utility that serves your area. You may also have to pay us for certain non-recurring charges. The following is a description and the amount of each of our recurring and non-recurring charges:

"[description of each recurring and non-recurring charge, and the amount of each charge]

"As mentioned above, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You may also have to pay the electric utility for certain non-recurring charges as well. Below is a listing of those electric utility charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges.

"[list each recurring and non-recurring charge imposed by the UDC]"

(11) On page 5 of Appendix C, the following sentence shall be deleted:

"The following tables provide you with an estimate of your monthly electricity bill based on the total price of electricity and your estimated monthly usage."

(12) The following sentences shall replace the sentence which was deleted from page 5 of Appendix C:

"The following tables provide you with an estimate of your monthly electricity bill based on our total price of electricity and your estimated monthly usage. In addition to our price of electricity, you are also obligated to pay the electric utility for certain recurring charges for services provided by the electric utility and for legislatively mandated charges. You should refer to your electric utility bill or contact the electric utility to determine the amount for each of those charges."

(13) In the "Description Of Terms And Conditions Of Service," the language describing the three billing scenarios, which starts at the bottom third of page 6 and continues to page 7, shall be deleted and replaced with the following:

"[use the provision applicable to your situation: (1) You, the customer, will receive a single bill from us for all of the electric utility's charges and for our charges. Should you owe any past due amount on your bill, we are responsible for collecting that past due amount from you. If you fail to pay any past due amount, we may transfer your electric service back to the electric utility, who may then disconnect your electric service for non-payment of the electric utility's charges incurred after the transfer. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee and post a deposit with the electric utility. (2) Although you, the customer, will be purchasing electricity from us, we will arrange to have the electric utility send you a single bill for the electric utility's charges and for our charges. Should you owe any past due amount on your bill, the electric utility is responsible for collecting any past due amount from you. If you fail to pay any past due amount owed to the electric

utility, the electric utility may then disconnect your service. If you fail to pay any past due amount owed to us, we may transfer your electric service back to the electric utility, who may then disconnect your electric service for any unpaid amount owed to the electric utility. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee and post a deposit with the electric utility. (3) You, the customer, will be receiving a separate bill from the electric utility for its charges, and a separate bill from us for our charges. Should you owe any past due amount on the electric utility's bill, the electric utility is responsible for collecting any past due amount from you. Should you owe any past due amount on our bill, we are responsible for collecting any past due amount from you. If you fail to pay any past due amount owed to the electric utility, the electric utility may then disconnect your service. If you fail to pay any past due amount owed to us, we may transfer your electric service back to the electric utility, who may then disconnect your electric service for any unpaid amount owed to the electric utility. If your electricity is disconnected, you may be obligated to pay a disconnect fee to the electric utility. In order to reestablish electric service, you may have to pay a reconnection fee and post a deposit with the electric utility."

(14) The paragraph which appears in the "Notice Of Your Right To Cancel" on page 8 of Appendix C should be deleted and replaced with the following paragraph:

"You have the right to cancel any contract for electric service until midnight of the third business day after the day you signed the contract. If no contract is signed, you have the right to cancel any agreement for electric service until midnight of the third business day after the third party verification or other procedure provided for in Section 366.5 has occurred, or until midnight of the fifth business day after the mailing or provisioning of the Section 394.5 notice, whichever is later. You must give us, at the address specified on page 1 of this notice, written notice of your desire to cancel. No fee or penalty may be

imposed against you for exercising your right to cancel within this time period. (Public Utilities Code Section 395.)"

7. The proposed permanent standards for proof of financial viability and technical and operational ability, which were set forth at pages 32 to 34 of D.98-03-072 and as clarified by this decision, shall be adopted as the permanent standards for proof of financial viability and technical and operational ability.

a. The permanent standards for proof of technical and operational ability shall be effective immediately.

b. The permanent standards for proof of financial ability shall take effect 90 days from today. Until such time, the interim financial standards adopted in D.98-03-072 remain in effect.

(1) Under both the interim and permanent standards for proof of financial ability, a registered ESP is required to post the cash deposit or bond with the Commission before there is any agreement on the part of a residential or small commercial customer to take service from the ESP or before there is any transfer of money from the customer to the ESP.

c. The Energy Division and the Information and Management Services Division shall be directed to develop and implement the procedures necessary to ensure that any cash deposits posted with the Commission as part of the ESP registration process earn interest, and that such interest be returned to the ESP on an annual basis.

(1) Since this provision was not adopted as part of the interim financial standards, this provision shall be operative on a going forward basis on the date the permanent financial standards take effect.

8. The Energy Division shall do the following:

a. The Energy Division is directed to make the changes to the ESP Registration Application Form, as specified in the ordering paragraph 4.u. above, and to make these changes on the pertinent pages of the Commission's web site.

b. The Energy Division shall determine whether a workshop should be held to discuss the use of certain assumptions in the Section 394.5 notice and the methodologies for deriving the assumptions.

(1) If a workshop is ordered by the Energy Division, it shall be held within 180 days from today, and a workshop report shall be prepared and filed with the Docket Office and served on the parties to this proceeding.

(2) If a workshop report is filed, interested parties may file a response to the workshop report within 30 days from the date the report was served on the parties.

9. The Energy Division and the Consumer Services Division shall meet with the Regulatory Complaint Resolution (RCR) forum within 60 days from today to develop the parameters of what kind of complaint calls should be tracked by the UDCs and how the calls can be categorized for reporting purposes.

a. The Commission staff may hold a workshop to solicit input from others as to what the parameters and reporting categories should be.

b. The parameters and reporting categories shall be developed based on the Commission's guidelines which were set forth in D.98-03-072 and in this decision.

(1) The UDCs are directed to inform all callers complaining about an ESP that they should call the ESP directly, or call the Commission's complaint telephone number. If the caller complaining about the ESP does not have the ESP's telephone number, the UDC shall provide the caller with the ESP's telephone number.

(2) The UDCs have no obligation to arbitrate, resolve, or remedy a customer complaint against an ESP.

c. The RCR forum, with the cooperation of the UDCs, shall draft the proposed parameters and reporting categories, and their recommendation for implementing the monitoring system, and file a report on the RCR forum's proposed recommendations with the

Docket Office and serve the report on the service list within 100 days from today.

(1) Interested parties may respond to the report by filing a response within 20 days from the date the report is served.

d. The Commissioner assigned to direct access shall be delegated the authority to determine what monitoring parameters and reporting categories shall be used to track complaint calls about ESPs, and when the monitoring system shall be implemented by.

(1) The assigned Commissioner shall make this determination in a ruling following the filing of the RCR forum report and any responses to that report.

e. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) shall implement the monitoring system using the adopted parameters and reporting categories as directed by the assigned Commissioner's ruling.

f. The Energy Division and the Consumer Services Division shall also develop and disseminate to the appropriate UDCs, a monthly reporting form which captures the type of information that is being monitored.

(1) PG&E, SDG&E and SCE shall submit a monthly report on the appropriate form to the Energy Division and to the Consumer Services Division beginning on a date to be determined in the assigned Commissioner's ruling, and on the 15th of every month thereafter until the reporting requirement is terminated by an order or ruling.

g. Once the monthly reporting system is operational, the Energy Division and the Consumer Services Division shall coordinate to ensure that the complaints reported directly to the Commission are being reflected to some degree in the monthly reports submitted by the UDCs.

10. The Executive Director shall direct the staff responsible for the management of the Commission's web site home page to provide appropriate links to the Office of Ratepayer Advocates' "Consumer Education" web page.

11. The activities that the Office of Ratepayer Advocates plans to pursue, as described in its October 16, 1998 report, and which includes the ESP comparison matrix, is approved.

12. The affected UDCs shall have 30 days from the mailing date of this decision to file the appropriate advice letters to conform their direct access tariff provisions to reflect the above modifications to D.98-03-072.

13. All ESPs operating in California, regardless of which customer classes they serve, shall advise the Commission of their Year 2000 (Y2K) readiness by: (1) completing the attached Appendix A entitled "Year 2000 Program Assessment Checklist & Survey For Electric Service Providers;" (2) if applicable, supply copies of all reports that have been or will be furnished to the Securities and Exchange Commission (SEC) in response to the SEC's Y2K inquiries; and (3) certify to the Commission no later than November 1, 1999 that all of the ESP's essential service delivery systems are Y2K compliant or ready.

a. The Energy Division is directed to compile a list of all ESPs operating in California, and mail to each ESP on that list a letter describing their obligations to comply with this decision as it relates to the Y2K problem, and a copy of Appendix A.

   (1) The Energy Division shall ensure that all of the ESPs on the list submit the completed checklist and survey form within 60 days from the date of the Energy Division's letter.
   (2) The Energy Division shall provide this list to anyone who requests such information.

b. The UDCs are directed to supply the information necessary to allow the Energy Division to compile a list of all ESPs operating in California.

14. D.97-05-040 shall be modified to reflect that the Commission may extend the monthly reporting requirement by the UDCs of their respective direct access implementation activities beyond June 30, 1999.

a. At page 30 of D.97-05-040, the sentence which reads "This reporting requirement shall terminate with the report ending for the month of June 30, 1999" shall be replaced with the following:

> "Unless otherwise extended by the Commission, this reporting requirement shall terminate with the report ending for the month of December 31, 2000."

b. The second sentence in Ordering Paragraph 5.e.(5) of D.97-05-040 which reads: "This reporting requirement shall terminate with the report ending for the month of June 30, 1999" shall be deleted and replaced with the following:

> "Unless otherwise extended by the Commission, this reporting requirement shall terminate with the report ending for the month of December 31, 2000."

c. All UDCs shall continue to submit to the Director of the Energy Division a report containing the information described in D.97-05-040 and as directed in this decision regarding the previous month's direct access implementation activities.

d. Unless further extended by the Commission, this reporting requirement shall terminate with the report ending for the month of December 31, 2000.

e. The Energy Division may develop additional reporting requirements for the monthly report, as well as a common reporting format for the report.

15. D.97-05-040, as previously modified by D.98-03-072, shall be modified as follows:

a. At page 59 of D.97-05-040, the following sentence shall be added to the end of paragraph two:

"However, if the registrant changes its telephone number or address, the ESP shall notify the Commission in writing within five days of such a change."

b. At page 95 of D.97-05-040, the following sentence shall be added to the end of ordering paragraph 5.i.(1):

"However, if the registrant changes its telephone number or address, the ESP shall notify the Commission in writing within five days of such a change."

16. All UDCs are directed to provide the Energy Division with data regarding the installation of direct access meters and the billing of electrical services in the format required by the Energy Division.

a. The Energy Division shall develop a uniform format for the monthly reporting of data, and provide the UDCs with the reporting format.

b. The UDCs shall submit the report starting on the date specified by the Energy Division, and unless further extended by the Commission, the reporting requirement shall terminate with the report ending for the month of December 31, 2000.

17. The exemption from the notice provided for in Public Utilities Code Section 394.5 is adopted for those ESPs who serve small commercial accounts as an incidental part of a contract to supply electricity to medium to large commercial customers or to industrial customers.

a. This exemption shall not apply if the ESP markets to or serves residential or small commercial customers as part of its normal course of business activities.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

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

## Background

By prior decisions, this Commission has authorized Petitioner to provide Interexchange Services throughout California on a resale basis (D.95-08-028), to provide local exchange services as a competitive local exchange carrier (CLC services) in the service territories of Pacific Bell (Pacific) and GTEC on a resale basis (D.96-02-072), to provide CLC services in Pacific's service territories as a facilities-based carrier (D.97-11-028), and to provide CLC services in the service territories of Roseville Telephone Company and Citizens Telephone Company as a facilities-based carrier (D.98-01-055). In D.97-11-028, we declined to authorize Petitioner to provide CLC services in GTEC's service territories as a facilities-based carrier, noting that concerns raised in Application (A.) 96-03-007 about Southwestern Bell Communications Services' (SBCS)[3] facilities-based local exchange entry into Pacific's territory might equally apply to Petitioner's facilities-based local exchange entry into GTEC's territory. Accordingly, the Commission remanded A.96-12-047 to the assigned Administrative Law Judge (ALJ) in order to receive comments on the effects that Petitioner's facilities-based local exchange entry into GTEC's territory would have on GTEC. In D.98-02-028, we granted Petitioner's motion to withdraw its request for facilities-based local exchange entry into GTEC's territory, and closed this proceeding.

On March 16, 1998, Petitioner asked the Commission to modify D.97-11-028 to authorize it to provide Interexchange Services as a facilities-based carrier throughout California. Petitioner noted that in D.97-11-028 and

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[3] By amendment, SBCS, a wholly owned subsidiary of SBC Communications, Inc., substituted itself as the applicant in A.96-03-007, subject to the same commitments and obligations made by and placed upon the original applicant, Pacific Bell Communications.

D.98-01-055, the Commission has already reviewed and approved its showing of managerial, financial and other qualifications to provide facilities-based CLC Services. Moreover, the decisions included an environmental assessment of Petitioner's local exchange facilities. Those assessments, which resulted in the issuance of Mitigated Negative Declarations, would cover the facilities Petitioner proposes to use to provide facilities-based Interexchange Services. Petitioner asserted that no further environmental assessment would be required to grant this modification.

On April 15 and April 27, 1998, reiterating earlier potential anticompetitive concerns, the California Cable Television Association (CCTA) and the Office of Ratepayer Advocates (ORA), respectively, objected to the granting of expanded authority to the extent that it would allow Petitioner to operate in GTEC's territory on a facilities-based basis. On April 28 and May 14, 1998, Petitioner replied to CCTA's and ORA's objections and proposed a limitation to clarify the nature of the facilities-based service that it intends to provide.[4] ORA suggested, on May 21, 1998, that Petitioner make its proposed limitation consistent with the facilities-based authority limitation contained in the proposed decision and alternate order issued in A.96-03-007.[5] On June 2, 1998, CCTA stated that it would withdraw its objection to Petitioner's request should the Commission adopt the facilities-based authority limitation suggested by ORA.

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[4] Petitioner reiterated that while it had no immediate intention of renewing its withdrawn request to enter GTEC's territory on a facilities-based basis, it wished to reserve for the future the issues involved.

[5] The revised alternate order, which retained the facilities-based authority limitation, was issued as D.99-02-013 on February 4, 1999.

## Discussion

Petitioner specifically declared that for telecommunications services originating from customers located within the geographic areas where GTEC is the incumbent local exchange carrier, it will limit facilities to the construction of tandem switches and other network elements that will permit it to offer common features for both intraLATA and interLATA long distance telecommunication services. Petitioner further stated that it would not construct intraLATA transmission or end-office switching facilities in such geographic areas. Reply To Office of Ratepayer Advocates' Response To The Petition Of GTE Communications Corporation To Modify Decision No. 97-11-028 at pp. 1-2.

However, we concur with ORA that the wording of the limitation imposed on Petitioner should be slightly modified. Thus, we shall proscribe Petitioner's construction of intraLATA transmission and end-office switching facilities within the geographic areas where GTEC is an incumbent local exchange carrier without further Commission approval. By so doing, the restriction we place on Petitioner is consistent with the limitation that the Commission placed on the similarly situated SBCS in D.99-02-003. D.97-11-028 is modified as set forth below.

## Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on May 3, 1999. No reply comments were filed. We have reviewed the parties' filed comments and taken them into account, as appropriate in finalizing the decision.

## Findings of Fact

1. Petitioner requests the Commission modify D.97-11-028 to authorize it to provide Interexchange Services as a facilities-based carrier throughout California.

2. In D.98 02-028, the Commission granted Petitioner's motion to withdraw its request for a certificate of public convenience and necessity to provide facilities-based local exchange service in the service areas of GTEC.

3. In previous decisions, the Commission has already reviewed and approved Petitioner's showing of managerial, financial and other qualifications to provide facilities-based CLC Services.

4. Petitioner declared that for telecommunications services originating from customers located within the geographic areas where GTEC is the incumbent local exchange carrier, it will limit facilities to the construction of tandem switches and other network elements that will permit it to offer common features for both intraLATA and interLATA long distance telecommunication services.

5. Petitioner also stated that it will not construct intraLATA transmission or end-office switching facilities within the geographic areas where GTEC is the incumbent local exchange carrier.

6. In D.99-02-013, the Commission proscribed SBCS's construction of intraLATA transmission and end-office switching facilities in Pacific's territory without further approval.

## Conclusions of Law

1. This petition to modify D.97-11-028 should be granted with certain restrictions consistent with that applied to the incumbent local exchange carrier affiliate in D.99-02-013.

2. Petitioner's showing of managerial, financial and other qualifications to provide facilities-based CLC Services, including the environmental assessment of its facilities, was reviewed and approved by the Commission; therefore, it is unnecessary to analyze anew Petitioner's qualifications to provide facilities-based Interexchange Services.

3. Because the modification involves the limited expansion of previously approved service, this decision should be effective today.

## ORDER

IT IS ORDERED that Decision (D.) 97-11-028 is modified as follows:

1. GTE Communications Corporation's authority to provide facilities-based telecommunications services throughout California is limited in GTE California Incorporated (GTEC) franchise territory to construction of tandem switches and other network elements that will permit GTE Communications Corporation to offer common features for both intraLATA (Local Access and Transport Area) and interLATA long distance services pursuant to the terms and conditions outlined in D.97-11-028.

2. GTE Communications Corporation is not authorized to construct intraLATA transmission and end-office-switching facilities in GTEC's franchise territory without further approval of the Commission.

3. Application 96-12-047 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

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