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Decision 99-09-033 September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ORDER GRANTING LIMITED REHEARING TO CORRECT AN ERROR REGARDING THE DETERMINATION IN DECISION (D.)98-11-027 RELATED TO THE REQUEST FOR A REVISED DISCLAIMER, AND DENYING REHEARING OF THE DECISION IN ALL OTHER RESPECTS

I. INTRODUCTION

In Decision (D.) 97-12-088, we adopted our Affiliate Transaction Rules for energy utilities. One of these rules places a restriction on the ability of a utility to trade upon, promote or advertise its affiliate's affiliation with the utility, and precludes a utility from allowing an affiliate to use the utility name or logo unless there is a disclaimer. The disclaimer must disclose the following: (1) the affiliate is not the same company as the utility; (2) the affiliate is not regulated by the California Public Utilities Commission; and (3) "you do not have to buy the affiliate's products in order to continue to receive quality regulated services from the utility." The application of the name and logo disclaimer requirement is limited to the use of the name or logo in California. (See Rule V.F.1. in Opinion Adopting Standards of Conduct Governing Relationships Between Utilities and Their Affiliates in Order Instituting Rulemaking to Establish Standards of Conduct

Governing Relationships Between Energy Utilities and Their Affiliates, Etc. ("Affiliate Transaction Rules Decision") [D.97-12-088, Appendix A, pp. 11-12 (slip op.)] (1997) ___ Cal.P.U.C.2d ___.)[1]

In June 1998, the parent companies of San Diego Gas and Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas"), Enova Corporation and Pacific Enterprises, merged into a new entity named Sempra Energy. On June 30, 1998, SDG&E and SoCalGas jointly filed a petition for modification of the disclaimer requirement adopted in D.97-12-088, as it related to the use of the name and logo of Sempra Energy. The petition indicated that Sempra Energy and its utilities and non-utility affiliates had plans to embark on a corporate identification strategy that would include: (1) the development of a new Sempra Energy logo that would be used by the parent, SDG&E, SoCalGas and by each of Sempra Energy's other subsidiaries, and (2) the use of a "tag line" in the logos of SDG&E, SoCalGas and some of Sempra Energy's other subsidiaries which would identify the company as "A Sempra Energy Company." The Sempra Energy new logo and the tag line would appear on a variety of materials and in a variety of locations, including signs, web sites, and business cards. (Petition for Modification, filed June 30, 1998, pp. 1-2; see also, D.98-11-027, p. 3.)

In their petition, SDG&E and SoCalGas requested that the disclaimer requirements in Rule V.F.1. should not apply to the use of the new Sempra Energy logo by either of these utilities or the Sempra Energy affiliates, because allegedly the use of the new name and logo would not result in customer confusion, cross-subsidization and competitive harm. (Petition for Modification, filed June 30, 1998, pp. 7-8; see also, D.98-11-027, p. 8.) In addition, they argued that the disclaimer should not be required

[1] Several applications for rehearing of D.97-12-088 were filed, and disposed of in two Commission orders, D.98-11-021 and D.98-12-089. (See Order Granting Limited Rehearing and Denying Rehearing of Decision (D.) 97-12-088 in All Other Respect, Etc. [D.98-11-021] (1998) Cal.P.U.C.2d ; Order Denying Rehearing of Decision (D.) 97-12-088, Etc. [D.98-12-089] (1998) Cal.P.U.C.2d .) In D.98-12-089, pp. 9-19 (slip op.), we rejected several First Amendment challenges to the Affiliate Transaction Rules adopted in D.97-12-088, including one relating to name and logo and the disclaimer requirements.

when a Sempra Energy affiliate uses the Sempra Energy logo in non-promotional communications, such as filings in legal or regulatory proceedings, written communications with governmental bodies regarding actual or proposed legislation, written communications to federal, state, or municipal agencies, annual reports to shareholders, or internal written communications between any of the Sempra Energy companies. SDG&E and SoCalGas also argued that if the disclaimer were to apply, we should limit the instances where the disclaimer needs to be used. For example, they argue that the disclaimer should not be required on building signs, business cards, golf balls, company vehicles, company uniforms, or other locations where companies traditionally place their corporate logo. Moreover, SDG&E and SoCalGas request that we permit them to use a revised disclaimer when using the parent company's logo. They proposed the following shortened disclaimer: "[the affiliate] is an affiliate of SoCalGas and SDG&E, but is not regulated by the California Public Utilities Commission." (Petition for Modification, filed June 30, 1998, pp. 5-13; see also, D.98-11-027, pp. 3-5.)

SDG&E and SoCalGas also asserted that the disclaimer should not apply to the use of the Sempra Energy tag line by either the utilities or the affiliates. However, if we apply the disclaimer requirements, they assert that the shortened disclaimer should be used. (Petition for Modification, filed June 30, 1998, pp. 13-16; see also, D.98-11-027, pp. 3-5.)

In D.98-11-027, we agreed the disclaimer requirements in Rule V.F.1. should not apply to situations involving "(1) communications with governmental bodies, where the parties involved either know, or should have reason to know, the legal status and interrelationship of the utility and affiliates, and the communications are not related to product sales; (2) annual reports to shareholders, or (3) internal written communications between the holding company, the utility, and any of the affiliates covered by the Rules, provided that the internal communications are not also sent to third parties outside the company." (D.98-11-027, p. 21 [Conclusion of Law No. 3] and pp. 22-23 [Ordering Paragraph No. 2], emphasis in original.) Except for these situations, we determined that

the disclaimer requirements applied to the use of the Sempra Energy logo and the tag line,[2] and declined to adopt the revised disclaimer proposed by the petitioners.

SDG&E and SoCalGas jointly filed an application for rehearing of D.98-11-027. In this application, they argue that we erred in determining that the disclaimer requirements in Rule V.F.1. should apply to their "proposed use of a tag line ("A Sempra Energy Company"), either alone or in conjunction with the Sempra Energy logo," and in denying their request for a revised disclaimer, if such a disclaimer was required. Their allegations of error are based on an argument that we have violated their First Amendment rights, and a claim that our determinations regarding the Sempra Energy logo and the tag line are not supported by evidence. (Application for Rehearing, pp. 1-2.)[3]

A response to the rehearing application was filed jointly by the Office of Ratepayer Advocates ("ORA") and The Utility Reform Network ("TURN"). They opposed this application for rehearing.

We have reviewed each and every allegation raised in the application for rehearing. We have reconsidered our disposition of the proposal for a revised disclaimer submitted by SDG&E and SoCalGas for the Sempra Energy tagline and logo, and believed that we have erred in our determination about the request for a revised

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[2] In D.98-11-027, we modified the requirement in Rule V.F.1.(b), in the case of energy service provider affiliates, to read as follows: "The California Public Utilities Commission does not regulate the terms of that affiliate's products and services." (See D.98-11-027, pp. 15 & 23 [Ordering Paragraph No. 3.].) This modification, which was a clarification to the rules, was made based on a suggestion proposed by Southern California Edison Company ("Edison") during the instant proceeding.

[3] In D.99-04-069, we granted a petition for modification, filed by Edison, for narrow exemptions to the disclaimer requirements in four limited situations involving: (a) building signage; (b) company vehicles; (c) employee uniforms; and (d) installed equipment on customer premises, for purposes of identification and customer safety, and not for the marketing or the promotion of a product or services. (See generally, Opinion on Southern California Edison Company's Petition for Modification of the Affiliate Transaction Rules Regarding a Limited Exemption to the Disclaimer Requirement of Rule V.F.1 [D.99-04-069, pp. 1, 5-11 (slip op.)] (1999) ___ Cal.P.U.C.2d ___.) Except for these limited situations, the narrow exemptions granted in D.99-04-069 do not resolve the underlying issues raised in the instant application for rehearing of D.98-11-027.

disclaimer for the reason discussed below. Thus, we will grant a limited rehearing of D.98-11-027 to correct this error in the manner described below, and deny rehearing in all other respects.

II. DISCUSSION

In their rehearing application, SDG&E and SoCalGas argue that our interpretation of Rule V.F.1. in D.98-11-027 has restricted their freedom to communicate truthful information to consumers about their corporate affiliates, including disclosure of common ownership of the utilities and unregulated affiliates. (Application for Rehearing, pp. 6-9.) Thus, they claim that their First Amendment rights have been violated. We address this argument as follows.

The speech that SDG&E and SoCalGas are claiming as protected by the First Amendment relates to the economic relationship between the utility and its affiliates, and the commercial information that the utility is conveying to the customers by the shared use of the Sempra Energy logo and the tag line by these entities. Further, the disclaimer requirements set forth in Rule V.F.1. specifically involve our economic regulation of the business relationships between utility and its affiliates in order to prevent cross-subsidization, customer confusion and discrimination as it affects the development of a competitive energy market.

Clearly, the utility's involvement with the affiliates of a parent company and what information it conveys to the customers about its affiliates is "strictly business" (see Friedman v. Rogers (1979) 440 U.S. 1, 11), and thus, constitutes commercial speech which enjoys a limited measure of protection as compared to other constitutionally guaranteed expression. (Florida Bar v. Went for It, Inc., et al. (1995) 515 U.S. 618.)[4]

[4] The U.S. Supreme Court has explained the reasoning for affording commercial speech more limited protection than noncommercial speech. It stated: "To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, ... Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression." (Ohralik v. Ohio State

The law is clear that commercial speech is subject to the "intermediate scrutiny" test adopted by the U.S. Supreme Court in Central Hudson Gas & Elec. v. Public Serv. Comm'n (1980) 447 U.S. 557, which provides for the following four-part analysis.

> "At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is more extensive than is necessary to serve that interest." (Id. at p. 566.)

The rehearing applicants do not dispute that this is the applicable standard. (Application for Rehearing, p. 5.)

First, we note that the commercial speech that SDG&E and SoCalGas claim as being affected by the disclaimer requirements is the type that is protected by the First Amendment. These utilities are asserting their right to tell the "truth" through the use of the name and logo. However, it is noted that in D.98-11-027, the Commission was not preventing the utilities from telling the truth; rather it was affirming the disclaimer requirements it had specified in the Affiliate Transaction Rules Decision [D.97-12-088], supra. These disclaimer requirements had been adopted to assure that any information related to the affiliates would not be potentially misleading or cause customer confusion.[5]

Bar Assn. (1978) 436 U.S. 447, 456.)

[5] In their rehearing application, SDG&E and SoCalGas also allege that we are regulating the commercial speech of the unregulated affiliates. (Application for Rehearing, p. 13.) However, they are wrong. In D.98-11-027, pp. 11-12, we stated: "[T]he plain language of our Rules provides that, as long as the parent company is not an affiliate under our Rules, nothing in our rules prevents the parent and the affiliate from sharing the same name, logo (or tag line), without a disclaimer, provided the utility is also not sharing the same name or logo. [Footnote omitted.] However, when the utility also uses the same name or logo of an affiliate covered by the Rules, Rule V.F.1. applies." Thus, it is obvious that the Commission is concerned with the utilities' actions, and the rules do not apply unless the utilities are involved.

Accordingly, our determinations about the shared use of logo and tag line in D.98-11-027 are about our regulation of commercial speech that is potentially misleading and could cause customer confusion. Contrary to the rehearing applicants' contention, the issue is not about whether the Commission may prohibit SDG&E and SoCalGas from stating the truth about their affiliations with Sempra Energy, since the utilities are not banned from expressing this commercial message. Rather, the key issue is whether we have restricted in a permissible way how this truth must be conveyed to consumers, namely, in a manner that is not anticompetitive. Therefore, the issue is about commercial speech, and the first part of the Central Hudson test is met.

It is noted that commercial speech that is not false or [actually] deceptive and does not concern unlawful activities, but is potentially misleading, may be restricted, so long as it is "in the service of a substantial governmental interest, and only through means that directly advance that interest." (Zauderer v. Office of Disciplinary Counsel (1985) 471 U.S. 626, 638; see also, In re R.M.J. (1981) 455 U.S. 191, 203.)[6]

Second, we have a substantial interest in regulating the relationship between a utility and its affiliates, and how the utility communicates with its customers about its affiliates, including information conveyed through the use of the logo and tag line. As discussed above, in D.98-11-027, we were not concerned with the "truthfulness" of the logo and the tag line; rather, we were concerned with the impact that this information would have on competition. This substantial interest was set forth in Order Denying

[6] In their rehearing application, SDG&E and SoCalGas appear to argue that actual consumer confusion must be shown before we can regulate the shared use of a parent company's tag line or logo by the utilities and the affiliates. (Application for Rehearing, pp. 10-11.) This argument is without merit. We need not show actual consumer confusion from the use of the tag line and logo, but can regulate commercial speech if there is a potential for customers to be misled or deceived. (See Peel v. Attorney Disciplinary Comm'n of Ill. (1989) 496 U.S. 91, 110, citing Bates v. State Bar of Arizona (1976) 433 U.S. 350, 375.) Further, the Commission can, and did, draw reasonable evidentiary inferences from record that linking the utilities and the affiliates as "Sempra Energy Companies" could be potentially misleading, and that an exemption from the prophylactic measures in the disclaimer requirements, which have the objectives of preventing harm before it occurs, was not warranted. (See Ohralik v. Ohio State Bar Assn. (1978) 436 U.S. 447, 464.) See infra for a discussion of the record evidence.

Rehearing of Decision (D.) 97-12-088, Etc. [D.98-12-089], supra, at pp. 12-14 (slip op.)].

In this decision, we stated:

> "As a constitutionally created agency, and pursuant to the jurisdiction given to us by the Legislature, we have broad powers to regulate public utilities, including the relationship of utilities to their customers and the utilities relationship with their affiliates. (See generally, Cal. Const., art. XII.) We are responsible for assuring that utility rates and services are just and reasonable. (See e.g., Pub. Util. Code, §§451, 454, & 761; see also, General Telephone Company Co. v. Public Utilities Com. (1983) 34 Cal.3d 817, 827.) We are also charged with "plac[ing] the important public policy in favor of free competition in the scale along with the other rights and interests of the general public' in our regulation of public utilities. (Northern California Power Agency v. Public Util. Com. (1971) 5 Cal.3d 370, 379.) The Legislature has set forth instructions for promoting competition in the energy markets. For example, Public Utilities Code Section 330 provides directives for accomplishing competition in the electric marketplace and for promoting customer choice. (See generally, Pub. Util. Code, §330.) We have moved toward competition in the gas marketplace in the past through our capacity brokering program (see Re Natural Gas Procurement and Reliability Issues [D.91-11-025] (1991) 41 Cal.P.U.C.2d 668, 673), and more recently, in our Gas Strategy OIR, R.98-01-011.
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> In promoting competition, we have expressed serious concern with how the utilities interact with their affiliates. We have noted that '[t]he presence of a utility's affiliate in the same service area as the regulated utility raises market power concerns because of their common ownership ties and the preexisting market dominance of the monopoly utility.' (See generally, Order Instituting Rulemaking on Commission's Proposed Policies Governing Restructuring California's Electric Services Industry, Etc. ("Direct Access Decision") [D.97-05-040, pp. 64-65] (1997) ___ Cal.P.U.C.2d ___.) We have also observed that by the nature of a utility's 'monopoly position in the energy and energy services market, its access to comprehensive customer records, its access to an established billing system, and its "name

> brand" recognition, [it may enjoy] significant market power with respect to any new product or service in the energy field.' (Order Instituting Rulemaking to Review the Time Schedules for the Rate Case Plan and Fuel Offset Proceedings & In the Matter of Southern California Gas Company to Adopt Performance Base Regulation, Etc. ("SoCalGas' PBR Decision") [D97-07-054, p. 61 & 63 (slip op.)] (1997) ___ Cal.P.U.C.2d ___.) As a part of promoting competition, we have stated our serious concerns about cross-subsidization, customer confusion and discrimination. (See id.; see also, Direct Access Decision [D.97-05-040], supra, at pp. 64-65 (slip op.).)" (Id.)

In D.98-11-027, we expressed this same substantial interest for maintaining the disclaimer requirements for the Sempra Energy logo and tag line, i.e. to promote competition. In the decision, the Commission reiterated its "general concerns regarding market power by virtue of a utility's name brand recognition," and the potential for customer confusion. (D.98-11-027, pp. 10.) We further explained our concerns that the use of the a parent company's logo and tag line by a utility and an affiliate could result in leaving consumers with the misimpression that the utility and the affiliate are "in fact the same company, i.e., that the affiliate is a part of the utility, with all the attendant consumer perceptions that might entail." (See D.98-11-027, p. 11.)

Contrary to SDG&E's and SoCalGas' allegations, our concerns in D.98-11-027 were not based on mere speculation or conjecture. (Application for Rehearing, pp.10-11). There is a record basis for our concerns that exempting the Sempra Energy logo and tag line from the disclaimer requirements could potentially result in customer confusion, and in misleading customers about their competitive choices. In fact, in D.98-11-027, we cited to the following record evidence to support our determinations:

a. The information in Exhibit E, Joint Petitioners Coalition's ("JPC's") Comments, dated July 31, 1997, shows how the customer confusion, and discrimination can occur, and how

the utility's name can be used to assist an affiliate's business.[7] Exhibit E discusses the case involving Pacific Enterprises Energy Services, a unit of SoCalGas' parent company. "In that instance, despite SoCalGas' representations to the Commission that it would no longer sell earthquake shut-off valves, the SoCalGas logo appeared prominently in advertising for the shut-off valves, and on the shut-off valves themselves, even though the valves are manufactured by an unregulated affiliate. For instance, a brochure for these valves states that the valves are 'brought to you by Pacific Enterprises, the people who bring you The Gas Company.' [Citation omitted.]" It appears that as a result of this behavior, Pacific Enterprises Energy Services captured 83% of the shut-off valve market. (See D.97-12-088, p. 43.)

b. In Exhibit F of the JPC's Comments, dated July 31, 1997, a Wall Street Journal article, dated March 12, 1997, noted that competitors did not actively market their valve, because they "believed that it would be futile to go up against a manufacturer that has the imprimatur of the gas company." (D.97-12-088, pp. 43-44.)

We drew reasonable evidentiary inferences from this record that customers could be potentially misled to think that the utilities and the affiliates were the same companies, or to believe "the affiliate [was] part of the utility, with all the attendant consumer perceptions that might entail" (D.98-11-027, p. 11.) Because an obvious link between the utilities and the affiliates could be created through the shared use of the parent company's tag line and logo, customers might not have looked to entities other than the affiliates to provide them with some of their energy-related needs. Therefore, like in the sales of the earthquake safety valves situation, there existed a real potential for the

[7] The Joint Petitioners Coalition included Enron Capital and Trade Resources; New Energy Ventures, Inc.; the School Project for Utilities Rate Reduction and the Regional Energy Management Coalition; The Utility Reform Network; Utility Consumers' Action Network; XENERGY, Inc.; Amoco Energy Trading Corporation; the Southern California Utility Power Pool; the Imperial Irrigation District; the Alliance for Fair Energy Competition and Tradition; the City of San Diego; Pan-Alberta Gas Ltd.; and the City of Vernon.

affiliates to capture a large share of the market, and discourage competitors from entering the market.[8] Accordingly, the link could have had adverse effects on customer choice. Thus, based on the record, it was reasonable for us to conclude that the disclaimer was necessary to prevent any potential for customer confusion about the relationship between the utilities and the affiliates, and to assure customer choices.

Moreover, our concerns were supported by evidence in the record about an expressed "intent" to help the affiliates. In its Reply Comments, dated August 15, 1997, p. 4, the JPC provided an internal memo, dated April 8, 1996, from SDG&E which identifies the central message of its affiliate policy to be "Let's help the Affiliate succeed!" and then proceeds to "highlight the guidelines we'll follow as we help our affiliates," after our approval of the parent company structure. (See Exhibit A, JPC's Reply Comments, dated August 15, 1997.) This evidence further justifies our concerns about how the utilities could potentially leave customers with a misimpression about the relationships between the utilities and the affiliates through the shared use of the tag line and logo of the parent company, as well as our determination to not exempt SDG&E and SoCalGas from the disclaimer requirements.

Third, the disclaimer requirements directly advance the governmental interest asserted. The disclaimer requirements were necessary to prevent the potential for customer confusion, which would result in adverse competitive effects, including barriers to entry by competitors and lessening customer choices. As we discuss above, the record demonstrated this necessity. Unless SDG&E and SoCalGas were required to comply with the disclaimer requirements in Rule V.F.1 of the Affiliates Transaction Rules when both they and the affiliates used the tag line or logo, our substantial interest in promoting competition could have been undermined.

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[8] In addition, there was other record evidence in this proceeding that validated the Commission's concerns about how consumers could be mislead to believe that an affiliate's service is also a utility's service. (See Order Denying Rehearing of Decision (D.) 97-12-088, Etc. [D.98-12-089], supra, at pp. 14-15 (slip op.).)

Lastly, with regard to whether the disclaimer set forth in Rule V.F.1 is no more extensive than necessary to serve our governmental interests, we note that the law requires that there is "a 'fit' between the [government's] ends and the means chosen to accomplish those ends." (Id. at p. 480.) The "fit" need not be " 'necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is 'in proportion to the interest served,' [citation omitted], that employs not necessarily the least restrictive means but, . . . a means narrowly tailored to achieve the desired objective. Within those bounds [the Court will] leave it to governmental decisionmakers to judge what manner of regulation may best be employed." (Board of Trustees, State Univ. of N.Y. v. Fox (1989) 492 U.S. 469, 477 & 479; see also Edenfield v. Fane (1993) 507 U.S. 761, 767.)

We have reconsidered our rejection of the request for a revised disclaimer. After careful reconsideration and further reflection, we now believe that the disclaimer set forth in Rule V.F.1 is not narrowly tailored to achieve an appropriate balance between the rehearing applicants' commercial speech rights and our substantial interest in promoting competition. We find the practical aspects raised by the rehearing applicants in their petition for modification and application for rehearing persuasive in determining that we have erred. Thus, we conclude that this disclaimer needs to be and should be changed to meet the standards established by the courts for the last prong of the Central Hudson test.

Accordingly, we will grant rehearing in order to correct this error. We believe that additional hearings, either through notice and comments or evidentiary hearings, are not necessary to make the correction. The record for the instant rulemaking/investigation ("R.97-04-011/I.97-04-012), which includes the record evidence for the petition for modification, is sufficient. Thus, relying on the record for this proceeding, we adopt the following revised disclaimer, which is narrowly tailored to achieve our stated objectives for promoting competition:

> "[The affiliate] is not the same company as the utility, SDG&E or SoCalGas, and [the affiliate] is not regulated by the California Public Utilities Commission."

In the case of energy service provider affiliates, the revised disclaimer will be:

> "[The affiliate] is not same company as the utility, SDG&E or SoCalGas, and the California Public Utilities Commission does not regulate the terms of [the affiliate's] products and services."

In their petition, SDG&E and SoCalGas had requested that the disclaimer read as follows: "[the affiliate] is an affiliate of SoCalGas and SDG&E, but is not regulated by the California Public Utilities Commission." In today's decision, we choose not to use the exact wording proposed by these utilities because we believe that the language that we are adopting will provide customers with the essential information about the separation between the affiliates and the utility. At the same time, the revised disclaimer, which is narrowly tailored, will permit these utilities to effectively use the tagline and logo in various forms. Further, we believe that the adoption of the proposed revised disclaimer, with some modification, will not be inconsistent with our objectives for promoting competition, including eliminating the potential for customer confusion. Therefore, based on the record evidence before us, we will grant rehearing of D.98-11-027 to correct our error in rejecting the request for a revised disclaimer for the shared use of the Sempra Energy tagline and logo by the affiliates and the utilities.

We note that while we have chosen not to incorporate the third disclaimer requirement in Rule V.F.1 of the Affiliate Transaction Rules in the revised disclaimer, SDG&E and SoCalGas may still use it. These utilities may choose to continue using the disclaimer in Rule V.F.1 because its usage would provide customers with additional information about their choices in energy services.

In today's decision, we address only SDG&E's and SoCalGas' petition for modification, which specifically request an exemption or revised disclaimer as it applies to their parent company's tagline and logo. While we anticipate today's decision may generate similar petitions for modification, we do not and will not address how this revised disclaimer is applicable to other utilities, since this issue was not presented to us in the petition for modification. When and if the issue is formally brought before us, we will address it then.

III. CONCLUSION

Based on the above, a limited rehearing is granted to correct the erroneous determination in D.98-11-027 that rejected the request by SDG&E and SoCalGas for a revised disclaimer, and to adopt the proposed revised disclaimer, with some modification. Further, rehearing is denied in all other respects.

THEREFORE, IT IS ORDERED

1. A limited rehearing is granted to correct the Commission's erroneous rejection of the request for a revised disclaimer in D.98-11-027.

2. The following revised disclaimer is adopted:

> "[The affiliate] is not the same company as the utility, SDG&E or SoCalGas, and [the affiliate] is not regulated by the California Public Utilities Commission."

3. In the case of energy service provider affiliates, the revised disclaimer will be:

> "[The affiliate] is not same company as the utility, SDG&E or SoCalGas, and the California Public Utilities Commission does not regulate the terms of [the affiliate's] products and services."

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4. Except as provided herein, rehearing is denied in all other respects.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners