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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3238
November 5, 1998

RESOLUTION

RESOLUTION G-3238. SOUTHERN CALIFORNIA GAS COMPANY (SOCALGAS) REQUESTS APPROVAL OF ITS COMPLIANCE PLAN SUBMITTED IN ACCORDANCE WITH ORDERING PARAGRAPH (OP) 2 OF THE AFFILIATE TRANSACTION RULES OF DECISION NO. 97-12-088. SOCALGAS'S COMPLIANCE PLANS WERE EFFECTIVE UPON FILING. THIS RESOLUTION REJECTS PORTIONS OF SOCALGAS'S FILINGS AND APPROVES OTHER PORTIONS. SOCALGAS IS ORDERED TO FILE A NEW ADVICE LETTER TO COMPLY WITH OP 2 OF THE DECISION.

BY ADVICE LETTER 2661 FILED ON DECEMBER 31, 1997
BY ADVICE LETTER 2661-A FILED ON JANUARY 30, 1998
BY ADVICE LETTER 2661-B FILED ON JULY 2, 1998

SUMMARY

1. The Southern California Gas Company (SoCalGas) requests approval of its compliance plan filed in Advice Letters (AL) 2661, 2661-A, and 2661-B, as ordered by OP 2 of D.97-12-088 (Decision).

2. This resolution rejects SoCalGas' Advice Letters, and thus accepts in part the Protests filed by the Joint Petitioners Coalition (JPC), the Office of Ratepayer Advocates (ORA), Southern California Utility Power Pool (SCUPP), Imperial Irrigation District (IID), and Edison Source (Source). SoCalGas is out of compliance with several of the Affiliate Transaction Rules adopted by the Decision. Generally, SoCalGas fails to specify adequate mechanisms or procedures to show how it will comply with several of these Rules. Further, SoCalGas interprets several of the Rules incorrectly.

3. SoCalGas shall file a revised compliance plan to comply with OP 2 of the Decision by Advice Letter with the Commission no later than 30 days from the effective date of this Resolution. SoCalGas shall also take the immediate actions specified in the Ordering Paragraphs herein.

BACKGROUND

1. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII) 97-04-011/97-04-012 to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services.

2. In the OIR/OII, the Commission recognized that the fundamental changes underway in the California gas and electric markets create a need for these Rules.

> "We acknowledged in our Updated Roadmap decision (D.96-12-088) [in our Electric Industry Restructuring proceeding] that it may be appropriate to review our affiliate transaction Rules to determine whether they must be modified given potential self-dealing and cross-subsidization issues that may arise as a result of electric utility restructuring. We recognize that the existing rules governing utility relations with affiliates differ among the companies, and that the present rules may not address the manner in which gas and electric utilities and their affiliates may market services and interact in a marketplace now characterized by increasing competition. . . . The standard of conduct or rules should (1) protect consumer interests, and (2) foster competition." (OII/OIR, p.2).

3. The OII/OIR encouraged parties to work cooperatively to develop proposals for our consideration, and recognized that there are a number of good models from the Federal Energy Regulatory Commission (FERC) and other states for the California utility-affiliate transaction rules.

4. In Decision 97-12-088, the Commission adopted Rules for utility-affiliate transactions. These Rules address, among other things, nondiscrimination, disclosure and handling of information, and separation standards. The utilities were required to submit compliance plans in accordance with OP 2:

> "No later than December 31, 1997, Respondent utilities Kirkwood Gas and Electric Company, PacificCorp, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Sierra Pacific Company, Southern California Edison Company (Edison), Southern California Gas Company (SoCalGas), Southern California Water Company (SCWC), Southwest Gas Company, and Washington Water and Power Company shall file a compliance plan demonstrating to the commission that there are adequate procedures in place implementing the rules we adopt today. The utilities shall file these compliance plans as an advice letter with the Commission's Energy Division and serve them on the service list of this proceeding. The utilities' compliance plans will be in effect between their filing and a Commission decision on the advice letter. A utility shall file a compliance plan annually thereafter using the same advice letter

process when there is some change in the compliance plan (i.e., a new affiliate has been created, or the utility has changed the compliance plan for any other reason). Also, no later than 60 days after the creation of a new affiliate, the utility shall file an advice letter with the Energy Division of the Commission, which should also be served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these rules with respect to the new entity. Any Respondent utility which applies for an exemption under Rule 2G does not have to comply with this Ordering Paragraph unless further ordered by the Commission or required by Rule 2G."

5. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until, at most, January 30, 1998.

6. On December 31, 1997, SoCalGas filed AL 2661 containing its compliance plan.

7. On January 20, 1998, SCUPP and IID filed a joint Protest opposing SoCalGas' proposed exemption for transactions with DGN-Mexicali from the affiliate transaction rules. On the same day, ORA submitted a Protest, suggesting that SoCalGas provide more detail and use a disclaimer with its logo. Also on January 20, 1998 the JPC submitted a letter expressing concern that the December 31, 1997 filing is incomplete, and there are serious compliance issues raised by the utility filings, particularly use of the disclaimer.

8. On January 30, 1998, SoCalGas filed AL 2661-A, amending its December 31 filing.

9. On February 19, 1998 Source filed a Protest against SoCalGas' proposed restriction on its offering of space in billing envelopes. On March 4, 1998, SoCalGas filed a response to the Protest of Source.

10. On March 19, 1998, JPC and ORA each filed a Protest of SoCalGas' compliance plan, covering several of the plan's treatment of the Decision's Rules. On March 30, 1998, SoCalGas filed a Response to the Protests of JPC and ORA.

11. Pacific Enterprises, the parent company for SoCalGas, and Enova, the parent for SDG&E, were given conditional approval to execute a plan of merger by this Commission in D.98-03-073, issued in March, 1998, and final regulatory approval was obtained by the companies on June 26, 1998. On July 2, 1998, SoCalGas and SDG&E filed jointly Advice Letter 2661-B and 1068-E-B/1078-G-B, respectively, which described some of the initial organizational changes engendered by this merger, and how these changes are affected by these Rules. There was no protest received regarding this joint Advice Letter.

12. On August 6, 1998, in response to certain petitions for modification of D.97-12-088, the Commission issued D.98-08-035, which changed some of the Commission's

Affiliate Transaction Rules established by D.97-12-088. These changes are reflected in this Resolution.

13. Rule V.F.1, regarding the use of the utility name and logo, is the subject of a pending Petition for Modification of D.97-12-088 filed by SDG&E and SoCalGas. This Resolution does not address compliance with Rule V.F.1, but defers this issue to a separate resolution which will follow the issuance of a decision on the Petition for Modification. SoCalGas shall file a revised compliance plan regarding Rule V.F.1 no later than 30 days after the Commission acts on the Petition for Modification of SDG&E and SoCalGas.

14. We recognize that there are other petitions for modification and applications for rehearing regarding D.97-12-088 as well as various applications, motions, and complaints arising from our adopted affiliate Rules. This Resolution does not address or prejudge these filings.

NOTICE

Advice Letters 2661, 2661-A, and 2661-B were served on all parties on the service list of the proceeding and to those on the General Order 96-A distribution list.

PROTESTS

Protests on Advice Letters 2661 and 2661-A were filed by SCUPP/IID, ORA, JPC, and Source. No protests were received on Advice Letter 2661-B.

DISCUSSION

Demonstrating Overall Compliance

There are numerous Protests of SoCalGas' failure to demonstrate specific mechanisms and procedures in place to ensure compliance with the Rules.

On January 20,1998 ORA's Protest argued that whenever SoCalGas states in its plan that it "will be in full compliance with these provisions effective January 1, 1998 and will use the communications, training, and internal controls set forth above to enforce compliance," which is similar to sentences the company repeats several times in its compliance plan, the company should provide the specific details on how it will use these methods.

In its March 19 Protest JPC stated: "SocalGas repeatedly invokes a standard mantra that it, 'will use the communications, training and internal controls set forth above to enforce compliance.'" The JPC argues that the Commission needs greater specificity from SoCalGas with regard to what form the "communications, training and internal controls" will take. This quest for specificity recurs in response to SoCalGas' reference to training of employees, the existing PE Affiliate Transactions Policy, inclusion of the Affiliate Transaction Rules in performance evaluations, SoCalGas' system of internal controls, and control of access to SoCalGas' computer system. JPC accuses SoCalGas of submitting an incomplete and evasive compliance plan to give the appearance of compliance and of crafting loopholes in the Rules to meet their own objectives. Further, because SoCalGas is relying on its existing plan, the company needs to describe the type of training provided and who was required to attend the training.

In its Response, SoCalGas claims it has interpreted the Decision only where necessary due to ambiguity and submits that the compliance plan was as compete as possible given the short interval following the Decision and the holidays. The company says that Pacific Enterprises (PE), its parent, has already provided training to those employees of SoCalGas and its affiliates that are affected by the requirements and restrictions of the affiliate transactions Rules.

OP 2 of the Decision stated:

> No later than December 31, 1997, Respondent utilities...shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place implementing the rules we adopt today. (emphasis added)

A demonstration should include portions of SoCalGas' or PE's standard procedure, policies, training materials or forms that set forth the mechanisms and procedures that ensure compliance with these Rules. The submission provided by SoCalGas is not sufficient to demonstrate that procedures are in place which adequately implement these Rules. The company says that it is giving extensive training to its employees, yet provides little on the specifics of this training. SoCalGas should provide portions of its policies, training materials, and procedures to demonstrate adequate compliance.

It should be noted that the few examples provided by SoCalGas are not comforting. The company provides a copy of "Pacific Enterprises Company's Policy Memorandum on Affiliate Transactions and Activities" which "will be immediately communicated to employees via internal publications, in training programs and materials, and has been posted on the PE Intranet for ease of reference for all employees with access to computers." (A.L. 2661-A, Appendix A) The problem with this Policy Memorandum is that it is often incorrect in its explanation of these Rules, and its attempts at summarization often leave out crucial details of the Rule. For instance, on page three of the Policy Memorandum, the company writes about the restriction on shared plant, facilities, equipment, or cost (Rule V.C), "[t]his restriction does not preclude the use of

shared communication media such as e-mail and network communications since these systems do not relate to the traditional utility merchant function." Not only is this an incorrect interpretation of Rule V.C, as e-mail and network communications clearly cannot be shared under this Rule, it mixes up the language of this Rule with that of the next Rule V.D which addresses Joint Purchases.

On the first page of the Policy Memorandum, SoCalGas explains that these Rules cover "affiliated companies providing energy or energy-related services." This is not the definition of an affiliate covered by these Rules and found in Rule II.B. Such examples illustrate the need for Commission review of training materials and policy manuals, as it is important that SoCalGas' employees, who will be implementing these Rules on a daily basis, be informed completely and accurately on these Rules. SoCalGas should include examples of such training materials, policy manuals, memos, letters, and other materials used to spread information about these Rules in its revised compliance plan. The company should quote verbatim from these Rules in these materials. SoCalGas should make copies of these Rules available to its employees in its training manuals as well as on the company intranet and internal e-mail. Any training manual, policy manual or memo should attempt to quote from these Rules verbatim as much as possible, to avoid the distortion and mistakes apparent in the above examples. The Protest of JPC and ORA is granted on this issue.

JPC submits that SoCalGas' agreement to make compliance a significant element of each employee's work performance report is insufficient because it fails to describe exactly what would happen to an employee who does not meet this performance objective. SoCalGas explains that the company's response would vary with the circumstances and the company must exercise discretion.

The role of employee sanctions in the implementation of these rules is better addressed in the upcoming Rulemaking 98-04-009 which will consider new enforcement measures for these Rules. The Protest of the JPC is denied on this issue.

JPC Protested that throughout its AL 2661-A SoCalGas fails to provide citations to the Rules that correspond to its compliance statements and consequently is difficult to ascertain compliance. In its revised compliance plan filing SoCalGas should submit a compliance plan as a stand-alone document with citations to each relevant section of the Rules. The Protest of JPC is granted on this issue.

In Advice Letter 2661 SoCalGas stated: Following Commission approval of the merger between PE and Enova Corporation (Enova), the merged utility will submit a single revised compliance plan that will harmonize any differences between the compliance plans of SoCalGas and San Diego Gas & Electric Company (SDG&E) and that will incorporate any changes to the affiliate transaction rules adopted in the merger proceeding (A.96-10-038). JPC wants to know when that plan will be submitted. In its March 30 response SoCalGas said that it simply alerted parties that it will be necessary to file a compliance plan for the merged companies following merger approval.

This compliance plan is responsive to and should satisfy the requirements for SoCalGas set forth in D.97-12-088, as modified by D.98-08-035. Nevertheless, the Commission recently approved a plan of merger between PE and Enova (parent to SDG&E) in D.98-03-073 (A.96-10-038), which exempted transactions between the utilities themselves from several of these Rules. These companies have gotten final regulatory approval and have recently executed the merger. In accordance with the statement of the company in its AL 2661 referenced above, SoCalGas and SDG&E should submit a combined compliance plan which addresses these Rules as well as D.98-03-073. The combined compliance plan should be filed no later than 60 days from the effective date of this Resolution. The Protest of JPC is denied on this issue.

COMPLIANCE WITH SPECIFIC RULES

I. Definitions

Rule I.A states:

> Unless the context otherwise requires, the following definitions govern the construction of these Rules:
>
> > Affiliate means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, substantial control includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.
>
> > For purposes of this Rule, affiliate shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

> Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.
>
> B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
>
> C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
>
> D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
>
> E. "FERC" means the Federal Energy Regulatory Commission.
>
> F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
>
> G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

SoCalGas says it intends to utilize training and communications to ensure that employees understand these definitions and will use its internal controls for the same purpose. No Protests were filed on this issue.

As mentioned previously, it is important for the company to include accurate definitions and descriptions of these Rules in its training materials and policy manuals, and we require the company to include examples of these materials in its revised compliance plan filing, and to distribute copies of these Rules to its employees. Any training manual or policy manual or memo should attempt to quote from these Rules verbatim as much as possible, to avoid the distortion and mistakes as described above.

II. Applicability

Rule II.A states:

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

DGN Mexicali Contract

SoCalGas seeks to exempt from the rule a contract with its affiliate DGN Mexicali for transportation of gas through the SoCalGas system to Mexico since damages could be awarded to third parties unaffiliated with SoCalGas for breach of contract. That contract for tariffed service between SoCalGas and its affiliate DGN-Mexicali for transportation of gas through the SoCalGas system to Mexico is currently before the Commission in

A.97-03-015. JPC Protests that the Rules do not provide for such an exception and SoCalGas may not rewrite the rules in the guise of a compliance filing.

On January 20, 1998 Southern California Power Pool (SCUPP) and Imperial Irrigation District (IID) filed a joint Protest opposing SoCalGas' position on the following grounds:

1. Exemption of SoCalGas' relations with DGN-Mexicali from the affiliate transaction standards should be addressed in A.97-03-015.

2. SoCalGas' belief that its relations with DGN should be exempted from the affiliate transaction standards does not excuse it from complying with the Commission's order to file a compliance plan that encompasses SoCalGas' relations with all of its energy affiliates, including DGN, by December 31, 1997, and to be in full compliance with the affiliate transaction standards by January 30, 1998.

3. SoCalGas has not adequately justified exemption of its relations with DGN from the affiliate transaction standards. First, the gas transportation service that SoCalGas provides to DGN is currently governed solely by contract, not by tariff. Second, the affiliate transactions standards govern all aspects of relations between energy affiliates, not just the provision of service from one to another. Thus, a blanket exemption is not justified.

In its January 26, 1998 submittal SoCalGas explained: "... SoCalGas is only seeking to exempt from the Commission's rules the transportation contract between SoCalGas and DGN-Mexicali, not other transactions." The exemption SoCalGas referenced in its compliance plan dealt only with the terms and conditions of the transportation service provided to DGN-Mexicali, which are before the Commission in a separate application. The Commission, SoCalGas argues, therefore will be able to fashion any particular approach it finds appropriate to the SoCalGas contract with its affiliate in that proceeding.

JPC is correct when it says that this compliance filing is the improper forum in which to seek a change or exemption in these Rules. The exemption SoCalGas seeks, for its transportation contract with its affiliate DGN-Mexicali, is better addressed through the Commission's proceeding on A.97-03-015. We do not grant the exemption here, but defer consideration to that proceeding. We grant in part and deny in part the Protests of JPC and SCUPP/IID on this issue.

Rule II.B states:

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

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

SoCalGas lists seventeen subsidiaries of PE that the company argues are not affiliates subject to these Rules because they do not engage in the provision of a product that uses gas or the provision of a services that relate to the use of gas. However, SoCalGas but fails to explain what any of these companies actually do. JPC Protests that SoCalGas must explain how it determined that all the other affiliates listed are either covered or not covered. We have no opportunity to review the services or products offered by each subsidiary to determine whether the affiliate is covered by the applicability provisions. SoCalGas should show for each affiliate the products or services it offers and demonstrate clearly whether it is engaged in the provision of a product that uses gas or the provision of services that relate to the use of gas. Without such explanations SoCalGas is out of compliance. We grant the Protest of JPC on this issue.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E state that the merged company is creating a new affiliate, Sempra Energy Utility Ventures, which will "develop and operate regulated utility distribution operations throughout the country." (p. 9) The companies argue that this new business unit should not be classified as an affiliate for the purposes of these Rules. (p. 10) They state that the company's projects "will be small to medium-sized regulated energy utilities . . ." (their emphasis) The companies are incorrect. These Rules make no provision for exemption based on the size of the project or the regulatory status of its holdings. It is clear that the new affiliate will be "engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity" as specified in Rule II.B, and is thus covered fully by the requirements of these rules.

Further, the Advice Letter states that "Mr. Warren Mitchell, Sempra Energy Group President of regulated operations. . .will serve on the board of directors of Sempra Energy Utility Ventures." This is not allowed under these Rules, as Sempra Energy Utility Ventures is an affiliate as defined by these Rules. The companies should file the advice letter required by Rule VI.B which addresses this new affiliate within thirty days from the effective date of this Resolution, and advise the Commission in this advice letter about the duties of Mr. Mitchell.

Rule II.C states:

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

As discussed previously, D.98-03-073 approved a plan of merger between PE and Enova

and this merger has been recently executed. The decision exempts utility to utility transactions from several of these Rules. SoCalGas and SDG&E should file a combined compliance plan as specified above.

Rules II.D through II.I state:

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

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

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

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

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

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

a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a letter to the Executive Director, served on all parties to this proceeding; and

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

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

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any

person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

SocalGas promises to be in full compliance and states that it will use the communications, training and internal controls set forth above to enforce compliance. These particular Rules are generally noncontroversial and SoCalGas's compliance plan was not Protested here.

III. Nondiscrimination

Rule III.A states:

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

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

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

SoCalGas promises to be in full compliance by January 1, 1998 and will use the communications, training and internal controls to enforce compliance. There were no Protests on this issue. However, SoCalGas's statement implies that it was not in compliance before these rules and that it is taking specific steps to bring the company into compliance. SoCalGas should specify what these steps are in its revised compliance plan.

Rule III.B states:

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

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

Existing Contracts

SoCalGas lists several contracts it believes must be grandfathered and exempted from the Commission's Affiliate Transaction Rules. Examples of such contracts include: gas purchase contracts with Pacific Interstate Transmission Company (PITCO); Pacific Offshore Oil Company (POPCO); contracts to perform gas distribution facilities work for the Navy and Air Force; energy efficiency contracts with school districts and hospitals; space leases at Olympic Base; and a joint venture with EcoTrans and OEM Corp.

SoCalGas argues that compliance with this Rule will, in some cases, change pricing terms and/or conditions of the contract which may breach the contract, creating in turn substantial liability to the third parties involved. Many of the contracts are close to completion, and SoCalGas says that restructuring at this point would cause time delays and monetary increases unacceptable to the third parties involved. Government contracts are more complex because of the bid processes involved and unique terms required by the various agencies. Changes in contractors and subcontractors may be considered an automatic breach and in some cases may require the agency to re-bid whole projects. To the extent possible without breaching an existing contract, SoCalGas says that contracts are being assigned or transferred.

For example, SoCalGas purchases gas from its affiliate PITCO, a pipeline regulated by the Federal Energy Regulatory Commission (FERC). Under the FERC tariff SoCalGas reimburses PITCO for the gas commodity, its internal costs, and the costs of transporting this gas from Canada. Currently, the PITCO gas purchased by SoCalGas is priced at a market related index, but is subject to additional transportation costs when transportation constraints require the re-routing of supplies to a delivery point other than the normal contract delivery point. The contracts with PITCO and POPCO were considered by the Commission in other proceedings and expire in year 2003.

The contract with the Navy and Air Force was transferred in March 1998.

The EcoTrans lease expires in four years. The lease agreement cannot be terminated without substantial costs that would impact an independent third party. A transfer of the EcoTrans OEM joint venture, which is being marketed for sale, would negatively impact the economics of the core business and the sale.

Based on the above, it appears that two of the contracts will expire in 2003, two others were recently transferred, and one will be eliminated as soon as SoCalGas can find a buyer of EcoTrans OEM.

JPC's Protest argues that the Rules do not provide for such an exemption (grandfathering) and that a compliance filing is the inappropriate method to try to change these Rules.

We agree with JPC that the Rules do not provide for a grandfathering exception for existing contracts. If SoCalGas desires to change these Rules, there are appropriate

procedural vehicles available to the company. Unless and until D.97-12-088 is modified to allow the exemptions the company seeks, SoCalGas must comply with these Rules. Therefore, the Protest of the JPC is denied in part and granted in part on this issue.

Contract for Billing Service with Energy Pacific

SoCalGas says that it should be allowed to continue to bill for the Appliance Protection Plan and Earthquake shut-off valve offered by Energy Pacific, since the company argues that this line item billing service will be offered on a non-discriminatory basis as soon as practicable, and because agreements are in place with "tens of thousands of customers" regarding the billing for products already sold. Additionally, Energy Pacific's contract with American Bankers Insurance Group, provider of the Appliance Protection Plan, specifies that SoCalGas will provide line item billing services for this product. SoCalGas says that discontinuance of this billing would cause SoCalGas' affiliate to be in breach of contract.

JPC Protests this plan and argues that this arrangement is not permitted by the Rules. Rules III.B and III.B.1 require SoCalGas to contemporaneously offer the same services to all "similarly situated market participants," including its affiliate's competitors. If SoCalGas is not yet offering and providing this service to companies other than its own affiliate, SoCalGas is in violation of this Rule.

SoCalGas may continue its current billing service arrangement with Energy Pacific, but it must contemporaneously extend the same offer to all other competitors desiring this same service. The Protest of JPC is accepted in part and denied in part on this issue.

Line Item Billing Service

SoCalGas proposes to offer line item billing service under Rule III.B.1. JPC Protests that line item billing is not permitted under that rule since that rule only allows tariffed products. Rule III.B however, limits transactions between a utility and affiliates to tariffed products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process. As discussed in the previous section concerning the "Contract for Billing Service with Energy Pacific," as long as SoCalGas offers this service on an open, competitive basis, its proposal is in compliance with Rule III.

Further, we note that SoCalGas already provides this service to its affiliate but has not yet filed an advice letter addressing this existing service, as require by Rule VII.F. This nontariffed service is therefore not authorized by the Commission. The company should file the advice letter required by Rule VII.F within 30 days of the effective date of this Resolution, and describe in this filing how its offering will satisfy the requirements of Rule VII, and how the company will extend the offer of this service to all other

competitors in accordance with these Rules. The Protest of JPC is denied on this issue.

Rule III.B.2 states:

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

In Advice Letter 2661 SoCalGas proposed: If SoCalGas provides any such discount or waiver to an affiliate, such a discount will be provided to similarly-situated market participants contemporaneously through posting on SoCalGas' Energy Bulletin Board (EBB). JPC observes that SoCalGas does not describe who has access to the EBB or whether all similarly situated competitors have access to the EBB. In SoCalGas' March 30 response it states: "The GasSelect EBB is available to any market participant." (p. 22) However, at SoCalGas's internet web site (http://www.socalgas.com/business/services/gas-select.html), this is what the company says about access to GasSelect:

> *To use this program you'll have to subscribe. To subscribe (you must be a SoCalGas customer or contracted Marketer) just sign the GasSelect® agreement (an Acrobat file; size=26 kb) and return it to your Southern California Gas Company representative. Then, we'll provide you with software, training, and ongoing technical support.*

This suggests that access to the GasSelect EBB is not available to "any market participant."

Information about SoCalGas's transactions with its affiliates must be provided to the relevant market contemporaneously with the transactions in order to satisfy the Commission's goal of increased competition in these emerging energy markets. SoCalGas's affiliates' competitors should be given the same access to the EBB given to the affiliates.

Further, combining these requirements with those of Rule III.B.1, SoCalGas should post notice of its affiliate transactions, including but not limited to notice of available information, services, and unused capacity or supply, and discounts given to affiliates, in relevant industry publications, those targeted to the market(s) which its affiliates are

serving. SoCalGas should also post notice of its affiliate transactions on its internet web site no later than the time of transaction. For the convenience of market participants, SoCalGas should devote a particular page of this site to its transactions with its affiliates, as SDG&E, Edison, and PG&E have each done. This web site page should be developed and in place prior to the submission of SoCalGas's revised compliance plan. The Protest of JPC is granted on this issue.

Rules III.B.3 through III.B.5 state:

> 3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.
>
> 4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.
>
> 5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.

In Advice Letter 2661 SoCalGas promises to be in full compliance with this provision effective January 1, 1998 and says it will use the communications, training and internal controls established to enforce compliance. JPC observes that SoCalGas needs to provide some details on the actual procedures it will use to process requests by competitors for similar services. In its March 30 response SoCalGas said that this methodology will be set forth in the notice on the EBB that informs market participants that such a service has been offered to an affiliate.

The problem of posting information on SoCalGas's EBB was addressed above. SoCalGas should develop the internet site and page for affiliate transactions already discussed, and post all affiliate transaction information, including this particular methodology and procedure, at this public site. Further, the company should provide this methodology and procedure in its revised compliance plan. The Protest of the JPC is granted on this issue.

Rule III.C. states:

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

SoCalGas says that its training and internal controls will bring the company into compliance with this Rule, and its employees will be periodically monitored to ensure

that customers "are not being misled regarding the 'tying of services.'" JPC wants SoCalGas to define what it means by "tying," but the company refuses to comply, saying that the term appears in Commission decisions and must be defined in context.

SoCalGas is correct on this point. We do not require SoCalGas to more fully define "tying" in its compliance plan, but we will address this issue on a case by case basis in the future. The Protest of JPC is denied on this issue.

Rule III.D. states:

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

SoCalGas promises to comply with this rule and enforce it through employee performance evaluation and its internal audit program. SoCalGas says it has already communicated this requirement to its employees. There was no Protest raised on this issue. Nevertheless, in its revised compliance plan SoCalGas should elaborate on its instructions and mechanisms it uses to ensure that this Rule is observed by its employees.

Rule III.E states:

> **Business Development and Customer Relations:** Except as otherwise provided by these Rules, a utility shall not
>
> 1. provide leads to its affiliates;
> 2. solicit business on behalf of its affiliates;
> 3. acquire information on behalf of or to provide to its affiliates;
> 4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
> 5. request authorization from its customers to pass on customer information exclusively to its affiliates;
> 6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
> 7. give any appearance that the affiliate speaks on behalf of the utility.

SoCalGas promises to be in full compliance though the use of its communications, training and internal controls to enforce compliance. No Protests on this Rule were

received, but as in our discussion of the previous Rule, the company should elaborate in its revised compliance plan on the specific mechanisms and controls it uses to enforce these rules.

Rule III.F states:

> **Affiliate Discount Reports:** If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:
>
> 1. the name of the affiliate involved in the transaction;
> 2. the rate charged;
> 3. the maximum rate;
> 4. the time period for which the discount or waiver applies;
> 5. the quantities involved in the transaction;
> 6. the delivery points involved in the transaction;
> 7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
> 8. procedures by which a nonaffiliated entity may request a comparable offer.
>
> A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:
>
> 9. the name of the entity being provided services provided by the utility in the transaction;
> 10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
> 11. the duration of the discount or waiver;
> 12. the maximum rate;
> 13. the rate or fee actually charged during the billing period; and
> 14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.
>
> All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

In Advice Letter 2661 SocalGas promised to develop a form and written procedure for use by utility employees if they provide a discount. JPC notes that no form was provided and wants more details on the proposed format for these postings. SoCalGas should provide this form in its revised compliance plan, and post the form on its affiliate transaction web site page, once it is developed. The Protest of JPC is granted on this issue.

IV. Disclosure and Information

Rule IV.A. states:

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

SoCalGas argues that its existing practice regarding confidential customer information is in full compliance with this provision, since it has developed a form for obtaining, maintaining, and recording affirmative written consent provided by customers for transfers of customer information to affiliates or unaffiliated providers. In its Protest, JPC requested that SoCalGas be required to provide a copy of this form. The company should include this form in its revised compliance plan. The Protest of JPC is granted on this issue.

Rule IV.B states:

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

SoCalGas says that non-customer specific non-public information communicated by SoCalGas to an affiliate will be made available to all other service providers through SoCalGas' EBB. JPC asked about SoCalGas' commitment to providing this information on the same terms and conditions and to establish whether same terms and conditions will be met by electronically posting the information. In its March 30 response SoCalGas states that it will provide the pertinent information through posting on its EBB for the

entire marketplace to observe.

The problem of posting information only to SoCalGas's EBB has already been addressed. The entire marketplace does not have access to the EBB. This information should also be posted to the company's affiliate transaction web site, once it is developed. The Protest of JPC is granted on this issue.

Rule IV.C states:

> 1. Service Provider Information:
> Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.
>
> 2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages). The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

Customer Inquiries

SoCalGas states that if an employee is asked about Energy Pacific, they are instructed to recite the disclaimer of Rule V.F.1, and refer the customer to the Yellow Pages. SoCalGas asserts that this rule requires its employees to provide truthful information to customers. SoCalGas has filed an Application for Rehearing arguing that the Commission's rules are unlawful if they do not permit SoCalGas to provide truthful communications to customers upon request.

These Rules do not prevent truthful communications to SoCalGas's customers. However, Rule III.E.2 says that "a utility shall not solicit business on behalf of its affiliates." Rule III.E.6 says that "a utility shall not give the appearance that the utility speaks on behalf of its affiliates. . ." Rule IV.C.2 requires the utility to provide a list of all service providers

if a customer requests information about any affiliated service provider. Such a list would be both truthful and complete. The Rule requires the utility to construct lists of service providers to provide to customers who make inquiries about the utility's affiliate, and to file these lists semi-annually through advice letter with the Commission. The Rule provides that if the company finds this to be "unduly burdensome due to the number of service providers," the utility may file an advice letter demonstrating that the requirements of the Rules are in fact "unduly burdensome." Until these lists are approved by the Commission, D.98-08-035 clarified that the utility is allowed to refer customers who inquire about the utility's affiliate to a generally available listing of services providers such as the Yellow Pages. While this does not relieve SoCalGas from its requirement to file with the Commission as mandated by this Rule, the company may continue to refer customers to the Yellow Pages until a Commission-authorized list is available.

Energy Marketplace

Energy Marketplace is a web site (http://www.energymarketplace.com) developed by SoCalGas, with the apparent participation of SDG&E and PG&E, to provide core gas customers with on-line access to participating and authorized gas core aggregators. Aggregators participate through the agreement to certain terms and conditions and payment of a fee to the company. Core customers submit their requirements through this web site and these applications are directed to the participating aggregators, who then respond individually to the potential customers. Through links, the web site lists the participating aggregators, usually three to six companies, and provides a full list of the companies authorized by the utilities as core aggregators, numbering twelve in the SoCalGas area. The company states that it presently has no affiliates who are participants in the Energy Marketplace program. Energy Marketplace was listed by SoCalGas as one of its nontariffed services in its AL 2669, filed January 20, 1998, pursuant to Rule VII.F. This advice letter and compliance with this Rule will be addressed separately.

Under Rule IV.C.2, SoCalGas does not believe that it is required to supply to Energy Marketplace users with a list of all gas suppliers on the SoCalGas system, when some are not participating in Energy Marketplace. The company argues that to "do so would reduce the effectiveness of the tool for users by not distinguishing marketers willing to actively participate in the service from those choosing not to. Customers seeking a list of all authorized aggregators on SoCalGas' system may obtain such a list on the utility's web site."

Rules III.E.1 through III.E.3 says that, "[e]xcept as otherwise provided by these Rules, a utility shall not provide leads to its affiliates; solicit business on behalf of its affiliates; acquire information on behalf of or to provide to its affiliates . . ." Rule V.F.4.b states:

> Except as otherwise provided for by these rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales,

marketing, communications and correspondence with any existing or potential customer.

IV.C.2 requires a list of all service providers in the utility's service area be provided whenever a customer inquires about a utility affiliate. If such a list has not been yet approved by the Commission, the utility is authorized to refer the customer to a generally available list of service providers, such as the Yellow Pages.

SoCalGas provides a list in its web site of all authorized core aggregators, resolving this issue. Further, as long as these utility's affiliates are not actual participants in the Energy Marketplace program, the utilities are not in violation of Rules III.E.1 through III.E.3 or Rule V.F.4.b. Participation by utility affiliates in the Energy Marketplace program will violate these Rules.

Re-routing Phone Calls

SoCalGas interprets the Decision as permitting its utility call center to re-route calls to the affiliate's separate own call center when such calls are mistakenly placed to the utility call center. SoCalGas points out that the affiliates have their own call centers and they are merely permitting customers who intended to call the affiliate to achieve their objective. Such a procedure violates this Rule. In addition, Rule IV.E states:

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

The procedure proposed by SoCalGas would violate Rule IV.E. Rule IV.C.2. requires that the utility provide a list of service providers in response to a customer inquiry about an affiliate. Therefore, SoCalGas may not reroute callers to its affiliates' call centers, and shall only provide the caller with the list required in Rule IV.C.2, or refer the customer to a generally available list of service providers if allowed under this Rule.

Core Aggregation Transportation

In approving the core aggregation transportation (CAT) program which provides for the utility to identify and contract with qualified core aggregation suppliers, SoCalGas asserts that the Commission should likewise be deemed to have approved the listing of such qualified and contracted suppliers for purposes of Rule IV.C.2. SoCalGas argues that the purposes of the CAT program would be frustrated if it were now required to have the list approved by advice letter simply because an affiliate joins the program. The company does not explain how or why any of these purposes would be frustrated.

Rule IV.C.2 states in pertinent part:

> The Commission shall authorize, by semi-annual advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request.

The purpose of the rule would not be met if we allowed SoCalGas an exception to our requirement for approval. If an affiliate joins SoCalGas' program, SoCalGas is bound by Rules IV.C.1 and 2 and can only provide the customer with a list of all service providers, including its affiliates.

Lists of Service Providers

SoCalGas says that it is unclear as to who has the responsibility to "maintain on file with the Commission a copy of the most updated lists of service providers which can be disseminated to a customer upon a customer's request - - the utility, the Commission, or a Commission-authorized third party provider." SoCalGas submits that this responsibility should not just rest with the utility because of competitors' suspicions that the utility will favor its affiliates, resulting in frequent complaints. Until this responsibility is determined, SoCalGas will continue to direct customers seeking referrals to the Yellow Pages. JPC points to the controversial development of this rule and requests greater detail on SoCalGas' compliance.

D.98-08-035 does not relieve SoCalGas from its responsibility to create and submit the lists of service providers by semi-annual advice letter filing as required by Rule IV.C.2. This decision does clarify, however, that until such a list is approved by the Commission, SoCalGas may refer customers to a generally available list of service providers such as the Yellow Pages. The Protest of JPC is denied on this issue.

Rules IV.D through IV.H state:

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

SoCalGas promises to comply with this rule and enforce it through employee performance evaluation and its internal audit program. The company says it has already communicated this requirement to its employees. JPC argues that the company needs to enhance its statement and develop a form which will document the "written affirmative authorization" from the customer, as required by this Rule. In its response, SoCalGas does enhance its statement, says that it will get the required written affirmative

authorization from the customer, and says that it will not actively solicit the release of this information exclusively to its own affiliate. In its revised compliance plan, SoCalGas should include copies of any forms or training materials developed for the implementation of this Rule. The Protest of JPC is granted on this issue.

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

SoCalGas promises to be in full compliance by January 1, 1998 and to use communications, training and internal controls to enforce compliance. JPC argues that this statement is an insufficient "mantra." For completeness, the company should provide in its compliance plan copies of these communications and training materials, and examples of the internal controls it uses to enforce this Rule. The Protest of JPC is granted on this issue.

The company states that its utility web site has no links to any affiliate, but that its PE web site does link to both the utility and the affiliates. SoCalGas argues that this arrangement of its web site links does not violate these Rules, but further avers that a direct link from its utility web site to an affiliate web site would also not violate these Rules, as long as there is no affiliate advertising on the utility web site and that the potential customer be provided a "disclaimer"[1] before access to the affiliate information is attained. JPC argues that direct links from the utility to its affiliates violates this Rule.

Although direct links between the utility and its affiliates may not constitute "advice," they are clearly "assistance" as used in this Rule. Further, the objective of these Separation Rules is undermined by such direct linkages between utility and affiliate. SoCalGas may not have direct internet links with its affiliates. The Protest of JPC is granted on this issue.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E state that the utilities are sometimes asked technical questions concerning proposals made by service providers having to do with "the merits of by-passing utility pipes and wires infrastructure." (p. 23) The companies say that they are asked to assess the technical merits of these proposals because of their technical understanding of their systems, as well as "their knowledge of the CPUC tariffs that govern their use and pricing." The Sempra utilities have filed for rehearing on Rule IV.E, and state that they do not provide non-public information to customers about direct access providers and related products and services. They apparently do, however, currently provide information about technical and tariff issues.

Rule IV.E prohibits the utilities from providing "advice or assistance with regard to its affiliates or other service providers." The Rule makes no exception for "technical

1 The company does not make it clear whether this disclaimer is intended to be the same disclaimer required by Rule V.F.1.

advice" or advice requiring a particular expertise which may be held by the utility. Until their Application for Rehearing has been acted upon by the Commission, the utilities must follow the requirements of the Rule and refrain from providing advice and assistance regarding any service providers (including their affiliates), or any proposal of a service to provide services to a customer. These Rules do not prevent the utility provision of general technical advice not related to a specific service provider or to a proposal for services tendered a provider, however. The utilities are reminded that, if a customer asks about an affiliated service provider, the provisions of Rule IV.C must be satisfied. In their revised compliance plans, the utilities should reaffirm that they have modified their policies to comply with these Rules.

> F. Record-Keeping: A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.
>
> If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

SoCalGas agrees to provide, within three business days from the receipt of an appropriate request, or within a mutually agreed time period, available information regarding billings from the utility to the parent and unregulated affiliates and from the parent and unregulated affiliates to the utility. The company says that it will provide the information required by this Rule "in the same format and level of detail as is contained in Sections C and D of the Annual Affiliate Transactions Report."

JPC is uncomfortable with the imprecision of SoCalGas's interpretation of 72 hours as three business days, and the company's use of the word "appropriate." JPC also wants SoCalGas to provide a copy or example of the information provided in the Affiliate Transactions Report so that the parties and Commission can more fully assess the statement of the company.

It is reasonable to interpret the 72 hour requirement as three business days to accommodate those requests for information that might be received at the end of the week. However, the statement of SoCalGas that it needs an "appropriate request" before it will release this information is unnecessarily restrictive. The Rule says "[t]he utility shall make such records available for third party review" and does not define what is meant by an "appropriate request."

The sections to which the company refers in the Affiliate Transactions Report contain cost summaries using the Uniform System of Accounts (USOA). It is insufficient for

compliance with this Rule to present the required data in this summary form. The Rule states: "A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts." SoCalGas should document in detail its tariffed and nontariffed transactions with its affiliates to comply with this Rule. Mere USOA cost summaries are not sufficient.

Further, JPC is correct to point out that it is not satisfactory for SoCalGas to refer in its filing to documents unavailable to most interested parties, such as the Affiliate Transactions Report. The relevant tables in Sections C and D in the Report are only two pages in length and could have easily been included as attachments to either compliance filing or to the response. The Protest of JPC is granted in part and denied in part on this issue.

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

SoCalGas promises to be in full compliance by January 1, 1998 and to use communications, training and internal controls to enforce compliance. Once again, the company is reminded to keep complete records, and not simply summaries.

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

SoCalGas promises mandatory training to all affected employees that will incorporate both FERC and CPUC reporting requirements. This Rule is not controversial.

V. Separation

Rules V.A and V.B state:

> **Corporate Entities:** A utility and its affiliates shall be separate corporate entities.
>
> **Books and Records:** A utility and its affiliates shall keep separate books and records.
>
> 1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).
>
> 2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.

SoCalGas reports that SoCalGas and its regulated affiliates of PE maintain books and

records in accordance with GAAP and USOA, that this is already part of its normal accounting systems. PE and each of its unregulated subsidiaries and the joint ventures of PE and/or its subsidiaries also keep their books and records in accordance with GAAP.

Rule V.C states:

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

Common e-Mail System

SoCalGas says that its affiliates have already achieved physical separation in computer and information systems except for those systems that are permitted by these Rules to perform permissible shared corporate support services.

In AL 2661 SoCalGas interprets this rule to permit the use of a common electronic mail (e-mail) system and network communications systems between SoCalGas, PE, and their affiliates. SoCalGas regards e-mail and network communications systems as communication media, like the telephone, and argues that e-mail and other network communications systems are not related to the traditional utility merchant function. SoCalGas assures that the e-mail system and any other network communications systems jointly used by SoCalGas and its affiliates include user authentication and identification using industry-standard information protection technology and procedures to ensure that no affiliate employee may access the e-mail files of a utility employee, or vice versa. SoCalGas refers to what it thinks would be the economies of scale[2] gained through joint e-mail and other network communications systems.

JPC Protests that the Rules do not permit SoCalGas and its affiliates to use a common e-mail system and network communications system.

We agree with JPC that the sharing of internal e-mail systems and supporting infrastructure between SoCalGas and its affiliates is prohibited by the Rules because e-mail is part of the computer and information system. It is sufficient for each company to keep and maintain its own communications "infrastructure" and to transfer data as two separate companies. Allowing SoCalGas and its affiliate to share a common e-mail and

2 The Decision makes it clear that this would be a scope economy, not a scale economy.

network communication system goes beyond shared corporate functions. SoCalGas should separate its e-mail from that of its affiliates. We grant the Protest of the JPC on this issue.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E state that "a separate data center . . . was purchased to house Sempra Energy's information technology needs." This data center will be used to provide computer services to all of the Sempra business units, including the utilities and the affiliates covered by these Rules. The Commission staff has been informed that the hardware is owned partially by at least one of the utilities. Access to data will be governed by "strict security measures and firewalls in place to ensure that there is no sharing of information or data not permitted by the Rules." (p. 21) The companies further state that the parent has established a service which allows all of its affiliates to share e-mail service. Finally, the parent has established "a common 'help' desk, and shared computer maintenance and support services."

The issue of shared internal e-mail was addressed above. Shared internal e-mail is prohibited by these Rules, and each company should keep and maintain its own computer and information systems. Further, these Rules do not provide for shared maintenance of facilities or "help desk" services. The utilities should report in their revised compliance plans on how they are restructuring their computer and information systems in order to comply with these Rules.

The utilities are unclear about their proposal to use "firewall" technology to prevent unauthorized access to data stored in a computer which is used by several business units. This technology is not explained or described in the filing, and the Commission does not have sufficient information to decide whether the methods proposed by the utilities ensure compliance with these Rules. It is crucial that Sempra separate effectively the computer and information systems of its utilities and affiliates. In their revised compliance plans, the utilities should explain these firewall systems thoroughly, including not only their design but their proven efficacy, and show to the Commission's satisfaction that these firewalls are sufficient to ensure compliance with the Rules. Interested parties to this proceeding are invited to provide relevant comments on these revised plans regarding these proposed methods and technologies.

Rule V.D. states:

> **Joint Purchases:** To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint

> purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

SoCalGas claims that pipe and equipment can be purchased jointly under this Rule. JPC finds this difficult to comprehend since such material is used to deliver gas supplies as part of the "traditional utility merchant function." In its March 30 response, SoCalGas explains that these items are used by it to provide transmission and distribution services for customers, not for purchasing natural gas for core and core subscription customers as part of the "traditional utility merchant function."

The Rule gives as examples of allowable joint purchases "office supplies and telephone services." JPC is correct to point out that pipe and equipment are more closely associated with the "traditional utility merchant function." The Protest of JPC is granted on this issue.

Rule V.E. states:

> **Corporate Support:** As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.
>
> As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.
>
> Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.
>
> Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

SoCalGas lists several functions that it claims are allowed shared corporate support, with little explanation. This is insufficient information for a compliance plan. There are some functions listed that appear to violate this Rule. Several, if shared, appear to "provide a means for the transfer of confidential information from the utility to the affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of

affiliates." Some examples taken from SoCalGas's "shared" list are: advertising support, computer operations, computer infrastructure support, copy center, everything in the "support services" category except emergency preparedness, everything in the "design services" category. Note that this is a cursory list of SoCalGas categories that appear to be excluded by this Rule. The company argues that some engineering categories are allowed, those that do not use "confidential utility engineering information," even though the Rule specifically excludes engineering as a shared function.

JPC points out that the list of shared functions tendered by SoCalGas is not justified and needs to be explained, and that SoCalGas's reasoning to exempt some engineering services from this Rule is not compelling. JPC also notes that the required corporate officer verifications are missing from the company's filings. The JPC is correct and in its revised compliance plan SoCalGas should thoroughly describe and justify each function it claims should be allowable under this Rule. The company should also include the corporate officer verifications required by this Rule. The Protest of JPC is granted on this issue.

SoCalGas lists public affairs as one of the functions it believes is sharable under this Rule. In D.98-08-035, in response to several petitions to modify these Rules, including one filed by SoCalGas, the Commission stated:

> "We also clarify that corporate communications and public relations functions are permitted corporate support services which may be shared, provided that these activities are not used to engage in joint marketing or advertising by the utility and any affiliate covered by these Rules. We make this clarification so that the corporation can prepare such publications as its annual report." (D.98-08-035, *Slip op.* at pp. 15-16)

The Commission goes on to warn the utilities:

> "As stated in Rule V.E, as a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates."

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E state that, following the merger, "the bulk of the corporate governance and shared support services" are being moved to a "consolidated corporate center." (p. 2). The companies say that the purpose of this corporate model is to achieve efficiencies available from the merger, to separate the monopoly functions of the utility from the competitive functions of the unregulated affiliates "by corporate boundaries instead of intra-corporate divisions that are more difficult and expensive to monitor . . ." and to "avoid inefficient duplication in corporate governance and shared support services . . ." The companies say that placing shared services "at the corporate center tends to resolve

or greatly mitigate potential self-dealing, cross-subsidy, and market power concerns that justify close regulation in this area." (p. 3) They further recognize that such a structure might engender concerns about the potential for information "conduits" through the corporate center, and that they "are taking concrete steps to ensure" that these problems do not come to fruition.

The Affiliate Compliance Department (ACD) is the first function the companies describe as being centralized at the parent level. It will be initially staffed with the following: director, manager, four analysts, an administrative assistant, and a compliance coördinator. This department reports directly to the Sempra Energy VP and Controller (currently Frank Ault), who will be the affiliate transaction officer (ATO) and member of the Executive Steering Committee and Corporate Compliance Committee. This latter committee will have oversight responsibilities regarding Sempra compliance with these Rules, and the ATO has ultimate responsibility for enforcement of these Rules. In addition, the companies are establishing an Affiliate Transaction Advisory Committee, to provide "guidance and support" to the ACD, which will include representatives of legal and regulatory departments, as well as other unspecified areas of these companies.

The ACD will compile a manual comprising Commission and Federal Energy Regulatory Commission affiliate transaction rules. This "Sempra Energy Guidelines" manual will be made "available to all employees via the appropriate intranet web site (hard copy will also be available)." The company will submit a copy of this report in its Affiliate Transaction Report to be filed in May, 1999. The company is reminded that it is important that the definitions and explanations included in this manual be accurate, and that it should be reviewed and updated in accordance with our discussion of the errors found in the SoCalGas Policy Memorandum described above.

In their revised compliance plans, the companies should provide elaboration on the makeup of its Affiliate Transaction Advisory Committee, list its members from the utilities and the unregulated affiliates, and describe how the companies intend to prevent this committee from being a "conduit" of information in violation of these Rules.

The companies report that the parent "will oversee and analyze its financial risks on an enterprise-wide basis . . ." and that this management activity is compliant with Rule V.E. (p. 14) The function will be overseen by Sempra Energy's Risk Management Officer and cannot include officers shared between parent and either utility. The risk management oversight function may include officers shared between parent and nonutility affiliate, but these officers cannot "direct specific trades or positions," they do not immediately supervise "physical or financial commodity traders" at the affiliate, and they do not use confidential information to influence positions taken by their affiliate. The companies say that "[t]o the extent feasible" the information used for risk management activities "will be aggregated and/or redacted" to conceal the exact positions of each business unit from the members of the risk management group.

Rule V.E says: "As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems, and personnel." (emphasis added) While the Rule allows "financial planning and analysis" to be shared, it gives "[e]xamples of services that may not be shared" which include "hedging and financial derivatives and arbitrage services . . ." Although enterprise-wide policies concerning risk management may be developed and promulgated by the parent downward to its various companies, individual company-specific management of the sort described by the utilities in this filing is specifically prohibited by this Rule. In addition, the companies' proposal is to combine both gas and electricity operations under the aegis of this program. The utilities have received authority from the Commission to participate, individually, in risk management of their gas operations only. The companies should report in their revised compliance plans that they have discontinued this shared function.

As explained in the Background section, above, SoCalGas compliance with Rule V.F.1 will be addressed by a separate Resolution.

Rules V.F.2 through V.F.3 state:

> 2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.
>
> 3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

Reciprocal Billing Envelope Space

SoCalGas is offering to sell space in its billing envelopes to companies as part of its Third Party Services program. This service is being promoted at its web site: http://www.socalgas.com/3rdparty/billspace/. According to this site, the company solicited bids for these inserts between July 1 and July 15, 1998. The minimum bid was $.055 per insert. One company, a SoCalGas affiliate, was deemed the winner of this bidding process. The company has informed Commission staff that only one firm will be given access to its billing envelope space at one time through this process, and that will be the company that submits the bid that gives the utility the greatest total revenue.

It appears that all companies are welcome to bid for this service, including SoCalGas's affiliates and other utilities' affiliates. However, in AL 2661-A, SoCalGas introduces the following condition to offering advertising space to other utilities or affiliates of other utilities: Bill inserts from California utilities or their affiliates will be accepted only if those utilities offer non-discriminatory access to their own utility bill envelope.

In its February 19 Protest, Edison Source argued that this condition of reciprocal billing envelope space is a restriction added by SoCalGas solely to disadvantage affiliates of utilities that have chosen to use their billing envelope space only for utility purposes. Source argues that Rule V.F.3. was carefully phrased to allow energy utilities to decide freely whether or not they wish to allow their affiliates (and consequently, other providers) to access available space in utility billing envelopes It did not require them to do so.

In its March 4, 1998 response, SoCalGas points to the option available to Source and other affiliates of gaining access to their own affiliated utility's envelope. There is no compelling public interest to require one utility to carry advertising for another utility's affiliate when that utility could choose to provide open access to its own envelope, particularly in cases where the utilities serve overlapping service territories.

SoCalGas is also concerned that permitting an affiliate of another utility to advertise in its billing envelope space would create customer confusion as customers would receive advertisements associated with the name Edison in their SoCalGas billing envelope. SoCalGas explains that its proposal for reciprocal use of billing envelope space prevents the inequitable situation where an affiliate of a California utility, like Edison, is permitted to advertise in the billing envelope space of a utility, like SoCalGas, but an affiliate of SoCalGas is not permitted to advertise in the billing envelope space of Edison.

In its March 19 submittal, JPC Protests SoCalGas' offer as being available to the highest bidder and therefore exclusionary; limiting access to commercial advertisement inserts from entities selling energy-related or home safety-related products or services are limitations not in the Rules. JPC argues that SoCalGas has crafted a rule that seems impossible for any creditor to comply with and that gives SoCalGas unlimited authority to decide what competitors can say in their advertisements. They say it is unclear why SoCalGas requires parties wishing to use envelope space to meet the credit requirements of Tariff Rule 32. They say that rather than offering benefits to competitors this offering seems to be a way of rendering a billing service to SoCalGas' affiliates.

The arguments of Source and JPC are compelling here. SoCalGas states that its policy requireing other utilities to provide space in their billing enveloped before SoCalGas will offer space to those utilities' affiliates is designed to encourage such reciprocity. This is a positive goal which would further the Commission's objectives for these developing markets. However, SoCalGas cannot achieve even this positive outcome by imposing additional restrictions on the Commission's Rules. Rule V.F.3 requires that space in the billing envelope, if offered to its own affiliates, must be offered to other service providers as well. The company certainly cannot choose restrictions that exclude its affiliates' competitors from access to its billing envelopes. There are other procedural vehicles available to SoCalGas with which it can effect whatever change the company seeks.

Further, it appears that the particular procedure chosen by SoCalGas to determine how it

allocates the space in the billing envelope does little to advance competition in any of these developing markets. As pointed out by JPC, SoCalGas has created a winner-take-all system which limits participation by all but a few firms, including its own affiliates. The Rule requires that, if the utility's affiliate is offered space in its billing envelope, the utility must provide "access to all other unaffiliated service providers on the same terms and conditions." The methodology chosen by SoCalGas does not provide access by its affiliates' competitors to the utility billing envelope as required here. While the company can limit the types of firms to which it will offer billing envelope access to service providers, consistent with the Rule, it cannot choose restrictions which exclude its affiliates' competitors, as the company currently does.

We note that SoCalGas has not yet filed an advice letter addressing this new service, as required by Rule VII.E. This nontariffed service is not authorized by the Commission. The company should file the required advice letter within 30 days of the effective date of this Resolution, and describe in this filing how it will revise its method of selling space in its billing envelope in order to provide "access to all other unaffiliated service providers on the same terms and conditions." The Protests of Edison Source and JPC are granted on this issue.

Rule V.F.4. states:

> A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:
>
> a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;
>
> b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term joint activities includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;
>
> c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

ORA states that Energy Pacific, an unregulated affiliate of SoCalGas and now Sempra Energy Solutions, has a web site advertising an earthquake shut-off valve. While several companies are authorized to install this device, the order form found at this site (https://secured.socalgas.com/forms/energypacific/valveord.html) makes the following statement: "A company representative will contact you shortly to schedule an appointment to install your valve." No mention is made of the fact that the consumer is not required to have the valve installed by the company. Further, payments on the valve

will be billed by SoCalGas in the customer's monthly gas bill. ORA sees this as "joint activity" in violation of Rule V.F.4.b.

In its March 30 Response, SoCalGas explains that the advertisement refers

> "to installers 'authorized' by SoCalGas. This does not mean, or even imply, that only employees of SoCalGas may install earthquake valves, but reflects the requirement that any non-employees that work on the SoCalGas side of the meter must be trained and authorized by SoCalGas." (p. 23)

The company says that this is a public safety matter. SoCalGas does not address the joint billing issue raised by ORA.

The advertisement says:

> To assure proper operation, Energy Pacific has partnered with only those installers who are trained and authorized by Southern California Gas Company . . ."

On the next page,

- Option of installation by Southern California Gas Company authorized representatives
- All installers trained by Southern California Gas Company

While these statements do not say that SoCalGas employees must install the valves, the strong implication is that the customer cannot choose the installer, that Energy Pacific will arrange for installation with one of its partners. This is misleading. SoCalGas offers in its Response to work with ORA on the language of the advertisement. This is appropriate and the advertisement should clarify that the customer has several authorized installers to choose from, not just those recommended by Energy Pacific. The Protest of ORA is granted on this issue.

ORA also raises the issue of joint billing practices, where Energy Pacific is allowed to bill customers for these valves using the monthly SoCalGas utility bill. Rules III.B and III.B.1 require that non-tariffed services sold by utilities to their affiliates must be offered also to the affiliates' competitors contemporaneously, in an open, competitive bidding process, and on the same terms and conditions. SoCalGas's internet web site indicates that it is selling space on its bill to businesses for their own billing. At http://www.socalgas.com/3rdparty/ , the following advertisement is found:[3]

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3 The company also advertises Bill Insert Space, Seismic Services, Salvage Sales (surplus equipment and materials), and Energy Marketplace.

> "Line Item Billing - Save your business time and mailing costs by having us provide space on our bill for your billing information."

As long as this billing service is offered to both affiliates and their competitors consistent with these Rules, there is no prohibited joint activity. For instance, if SoCalGas imposes a restriction similar to what it is attempting to impose for access to its billing space, discussed above, which would effectively result in access to this service being denied to SoCalGas's affiliates' competitors, this procedure would violate these Rules. No evidence has been presented by the parties that SoCalGas is in violation here. The Protest of ORA is denied on this issue.

Rule V.F.5 states:

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

SoCalGas reports that procedures have been adopted to implement this rule. No Protest was received on this issue. In its revised compliance plan, SoCalGas should elaborate on these procedures to ensure compliance with this Rule.

Rule V.G.1 states:

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

In AL 2661, SoCalGas proposes to share with its affiliates the executives titled General Counsel, Chief Financial Officer, Treasurer and Controller. PE/SoCalGas' General Counsel has signed a document verifying the adequacy of the specific mechanisms and procedures set forth herein to ensure that the utility will not utilize shared officers and directors as a conduit to circumvent any of these Rules.

SoCalGas argues that, as PE's Board of Directors and PE officers must fulfill their fiduciary duties and legally mandated responsibilities to shareholders and provide adequate corporate governance and oversight, this requires that PE officers and directors have access to all material information concerning all of the businesses of PE, to schedule, direct and attend strategic meetings concerning such businesses, and to meet periodically with officers and directors of PE subsidiaries to discuss matters of importance to the corporation's growth and profitability. However, the company says that to ensure that such meetings cannot be used as a conduit to circumvent these rules, the Affilate Transactions Compliance Officer (ATCO) in the office of the general counsel or a member of his or her staff will review meeting agendas and will attend such meetings to ensure that the topics discussed are necessary for adequate corporate governance and oversight and are not used, for example, to convey confidential utility information to affiliates that could provide them with a competitive advantage.

In its March 19 Protest JPC observed that the Rule implemented by D.97-12-088 does not provide any such exceptions.

In its March 30 submittal, SoCalGas argues that Rule V.G. provides for exceptions for those shared functions as permitted in Section V E (Shared Corporate Support). SoCalGas submits that the Commission concluded that the prohibition on sharing common officers or directors of utilities and affiliates does not apply to corporate support services, and the Commission intended to permit the General Counsel, the Chief Financial Officer, the Controller and the Treasurer to provide services to all companies within a utility's organization and that such positions may be officers of both the utility and non-utility affiliates. In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E list the officers appointed to head the merged organization. They state that Sempra will "triple-hat" officers "essential to the efficient and responsible delivery of corporate oversight." Thus these will be officers of the parent, utility and affiliate.

In D.98-08-035, the Commission agreed in part with the arguments of SoCalGas and others who petitioned to modify these Rules:

> "We clarify that Rules V.E and V.G.1, when read together, can provide for limited sharing of directors and officers not only as explicitly set forth in Rule V.G.1, but also in their performance of the corporate support functions set forth in Rule V.E, and as set forth in the examples cited above which Edison has provided, namely, the Chief Financial Officer or General Counsel. However, we view Rule V.E as a limited exception which would not encompass Edison's proposal for the CEO and Chairman of the Board of the utility to be able to serve as a director and Board Chairman of affiliates covered by these Rules. We make this determination, in light of the nascent state of competition in the energy marketplace and our competitive concerns. However, we will reconsider this after the industry moves to a more competitive structure, and when we review the Rules as provided for in D.97-12-088, *slip op.* at 87." (D.98-08-035, *slip op.* p. 15)

Thus, it permissible for SoCalGas officers to be shared between the utility and its affiliates covered by these Rules provided that their shared duties are limited to those

necessary for the performance of corporate support services allowed under Rule V.E. However, the utility should be judicious when allowing such shared functions, as the Commission reminds the parties later in this decision:

> "As stated in Rule V.E. as a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates." (D.98-08-035, *slip op.* p. 16)

The decision also requires that all directors and officers shared between the utility and an affiliate be listed in the compliance plan mandated under Rule VI. SoCalGas should include this list in its revised compliance plan. The protest of the JPC is denied on this issue.

The merged companies have formed a centralized law department "providing legal services to all Sempra Energy affiliates." (p. 8 of the joint SoCalGas/SDG&E filing) While this is permissible under Rule V.E, for the limited and specific purposes of performing allowed shared corporate support functions, the companies should recognize that D.98-08-035 specifically prohibits the Chairman of the Board from serving as a director "of affiliates covered by these Rules." (D.98-08-035, slip op. at p. 15) The companies state that "Sempra Energy's General Counsel . . . is tasked with managing the delivery of legal services and assisting the Office of the Chairman in exercising and maintaining the highest level of corporate governance and fiduciary responsibility." This assistance must be limited to duties expressly permitted under Rule V.E, and cannot be used as a vehicle to circumvent the Rules.

SoCalGas and SDG&E state in their joint Advice Letter of July 2 that the companies have formed "several corporate governance committees to maintain adequate oversight of the entire enterprise . . ." (p. 10) The companies provide outlines of three of these committees, along with cursory descriptions of their functions. (p. 12) The companies state that the committees will limit their discussions to "broad governance issues. . .and will refrain entirely from discussing matters which would be inconsistent with the Rules, like operational matters and customer-specific information." The agendas of these committee meetings will be reviewed by Mr. Ault, and he will either attend or (more likely) designate someone to attend to "intervene" and enforce these Rules, to ensure that these meetings "will not be allowed to become a conduit for the exchange of information prohibited by the Rules." (p. 13) The committee members listed in the filing (p. 12) include all "business unit presidents" as well as each of the Regulated and Nonregulated Group Presidents.

The companies are reminded that D.98-08-035 allows some sharing of officers for the execution of the limited functions allowed under Rule V.E. The inclusion of the presidents of the Sempra affiliates and utilities on these committees, regardless of the assurances of internal oversight by Mr. Ault's office, give rise to concern that these committees can be, in the words of the Advice Letter, "conduits for the flow of

confidential information not permitted by the Rules." (p. 8) Further, the companies state that "the Sempra Energy officers will generally meet monthly in separate meetings with the regulated and unregulated business unit officers to discuss operating issues, recent accomplishments, current issues, and other relevant activities." (pp. 13-14) These topics, including those having to do with operations and specific events, are excluded from allowable shared services and cannot be construed to be "joint corporate oversight" or governance, as allowed under Rule V.E. In their revised compliance plans the companies will report to the Commission what steps it has taken to restructure these meetings to prevent the sharing of operational and other data which is prohibited by these Rules.

The companies describe their efforts to create physical separation between utility and affiliate employees, but indicate that this effort was still ongoing on July 2, 1998 (pp. 16-17). In their revised compliance plans, the companies should update this section to report to the Commission on the progress and success of these efforts.

Rule V.G.2.a states:

> 2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:
>
> a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

SoCalGas promises to comply and use communications, training and internal controls to enforce compliance. JPC submits that SoCalGas must provide information on how it will track employee movement. As this is an ongoing requirement and requires no further documentation from the company. The Protest of the JPC is denied on this issue.

Rules V.G.2.b and V.G.2.c state:

> b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.
>
> c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-

> executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

Employee Transfer Fee

SoCalGas reports that the PE Affiliate Policy has already provided for non-regulated affiliates to pay the regulated utility a one-time transfer fee for non-clerical employee transfers. The fee is generally 25% of the employee's base utility pay. This fee does not apply to employees hired by an unregulated affiliate due to the transfer of a support function from the utility to that affiliate or because the utility employee's function is eliminated as a result of industry or other restructuring. JPC contends that this blanket statement is incorrect under the Rules implemented by D.97-12-088 because this exemption only applies to the initial transfer of employees during the initial implementation period of these rules or pursuant to a P.U. Section 851 proceeding.

In its March 30 response SoCalGas agreed with JPC and that it would await the outcome of a petition for modification to D.97-12-088 requested by Edison. This modification would allow the utility to attempt to demonstrate that a fee less than 15% is appropriate in some circumstances. The Commission modified the Rule to specify that "In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants." The protest of JPC is denied on this issue.

SoCalGas defines base annual compensation as used in Rule V.G.2.c. as base utility pay. JPC points to D.97-12-088 language of base annual compensation that should include

pension and benefits. In its March 30 response SoCalGas propounded that the Commission did not intend to change the method from that used in holding company and Telco decisions.

SoCalGas' reference to base utility pay does not comport to the base annual compensation referred to in the Rule V.G.2.c, as it is too restrictive. It is reasonable for SoCalGas to compute the base annual compensation of its employees for purposes of a transfer fee on the basis of both cash and non-cash compensation, i.e. including wages, salaries, bonuses, commissions, all other cash compensation, health care packages, pension benefits, stock options and all other non-cash benefits. The Protest of the JPC is granted on this issue.

Implementation Period

SoCalGas interprets a reasonable initial implementation period during which SoCalGas employees transfer to affiliates to perform corporate support functions, or to a separate affiliate performing corporate support functions to be six months from December 16, 1998, the date D.97-12-088 was signed. During this interval it will not be subject to the 25 percent transfer fee. JPC Protests this as an excessive amount of time. In D.98-03-073 the Commission allowed the six month implementation period requested by SoCalGas. The Protest of JPC is denied on this issue.

Rule V.G.2.d states:

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

Enforcement procedures include exit interviews and physical inventory checks of materials in possession of the utility employee prior to transfer appear to satisfy the rule. However, SoCalGas provides no examples of the exit interview materials. The employee who leaves the utility to work for an affiliate must be given information about these Rules which stresses the importance of preventing the transfer of information to the affiliate. In its revised compliance plan, SoCalGas should include copies of these exit interview materials.

Rule V.G.2.e states:

> e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:
>
> i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the

affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.

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

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

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

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

Employees Supporting Out-of-State Projects

In Advice Letter 2661 SoCalGas states that it has implemented procedures that will prevent temporary or intermittent assignments, or rotations, of employees to affiliates, with the very limited exception of projects outside of California. The modification to this Rule implemented by D.98-08-035 allows certain temporary assignments, with several specific restrictions and conditions imposed on these assignments. SoCalGas should report in its revised compliance plan on its procedures to enforce the conditions implemented on this activity by this modified Rule.

Rule V.H. states:

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

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

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

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

4 Goods and services produced, purchased or developed for sale on the open market

by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.

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

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

SoCalGas states that the PE Affiliate Policy was amended to reflect the forgoing pricing provisions so that the new provisions apply to any transfer of goods on or after January 1, 1998.

VI. Regulatory Oversight

Rule VI.A states:

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

SoCalGas says that it "will act pursuant to the provisions of this Compliance Plan and put procedures into place to ensure the filing of subsequent Compliance Plans on an annual basis."

Rule IV.B states:

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

SoCalGas communicated this requirement to its employees, included it in its training and will enforce this rule through employee performance evaluation and internal audit.

Rule IV.C states:

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

In Advice Letter 2661 SocalGas promises to comply with the Commission requirement to "submit to an independent audit... every year for the first three or four years." JPC observes that this rule requires SoCalGas to file every year thereafter with no limitation to the first three or four years. In its March 30 submittal, SoCalGas agreed the Rule places no limitation on the number of years utilities must submit annual audits. SoCalGas now appears to comply, which moots the Protest of JPC.

Rule VI.D states:

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

SoCalGas says that its existing policy is in full compliance with Code Section 314 and such compliance will continue. This appears to satisfy this Rule.

Rules VII.A through VII.F (Utility Products and Services) are addressed by SoCalGas in a separate Advice Letter that will be considered separately.

SoCalGas did, however, propose to offer seismic-related services including assembly and distribution and warehousing. JPC Protested that SoCalGas seismic related services are not permitted by the Rules and SoCalGas should explain under what authority it is providing assembly, warehousing, and distribution service. If SoCalGas wishes to offer these services, it must file with the Commission in accordance with the provisions of these Rules, particularly Rule VII. The Protest of JPC is granted on this issue.

FINDINGS OF FACT:

1. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII) 97-04-011/97-04-012 to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services.

2. Decision 97-12-088 established affiliate transaction rules that address, among other things, nondiscrimination, disclosure and information, and separation standards.

3. The utilities were required to submit compliance plans in accordance with OP 2 of D.97-12-088.

4. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until January 30, 1998.

5. SoCalGas filed a preliminary compliance plan by Advice Letter 2661 on December 31, 1997, followed by a Supplement to its compliance plan, AL 2661-A, on January 30, 1998.

6. Protests were filed by SCUPP/IID, JPC and ORA on January 20, 1998, by Source on Febuary 19, 1998, and another by ORA and by JPC on March 19, 1998.

7. SoCalGas responded to the earlier Protests on January 27, 1998.

8. Pacific Enterprises, the parent company for SoCalGas, and Enova, the parent for SDG&E, were given conditional approval to execute a plan of merger by this Commission in D.98-03-073, issued in March, 1998, and final regulatory approval was obtained by the companies on June 26, 1998. On July 2, 1998, SoCalGas and SDG&E filed jointly Advice Letter 2661-B and 1068-E-B/1078-G-B, respectively, which described some of the initial organizational changes engendered by this merger, and how these changes are affected by these Rules. There was no protest received regarding this joint Advice Letter.

9. On August 6, 1998, in response to certain petitions for modification of D.97-12-088, the Commission issued D.98-08-035, which changed some of the Commission's Affiliate Transaction Rules established by D.97-12-088. These changes are reflected in this Resolution.

10. Rule V.F.1, regarding the use of the utility name and logo, is the subject of a pending Petition for Modification of D.97-12-088 filed by SDG&E and SoCalGas. This Resolution does not address compliance with Rule V.F.1, but defers this issue to a separate resolution which will follow the issuance of a decision on the Petition for Modification. SoCalGas should file a revised compliance plan regarding Rule V.F.1 no later than 30 days after the Commission acts on the Petition for Modification of SDG&E and SoCalGas.

11. There are other petitions for modification and applications for rehearing regarding D.97-12-088 as well as various applications, motions, and complaints arising from our adopted affiliate Rules. This Resolution does not address or prejudge these filings.

12. SoCalGas should file a new compliance plan by advice letter to comply with OP 2 in the Decision, incorporating the corrections discussed in this Resolution, no later than 30 days from the effective date of this Resolution.

13. SoCalGas' revised compliance plan should be a stand-alone document with citations to each relevant section of the rules and with appropriate portions of its policies and procedures that demonstrate compliance with these rules.

14. OP 2 of the Decision requires a demonstration of the adequacy of SoCalGas's mechanisms and procedures for the implementation and enforcement of these Rules. A demonstration should include portions of SoCalGas' or PE's standard procedure, policies, training materials or forms that set forth the mechanisms and procedures that ensure compliance with these rules.

15. The submission provided by SoCalGas is not sufficient to demonstrate that procedures are in place which adequately implement these rules. SoCalGas should provide portions of its policies, training materials, and procedures to demonstrate adequate compliance.

16. SoCalGas provides a copy of "Pacific Enterprises Company's Policy Memorandum on Affiliate Transactions and Activities." This Policy Memorandum is often incorrect in its explanation of these Rules, and its attempts at summarization often leave out crucial details of the Rule.

17. It is important that SoCalGas' employees, who will be implementing these Rules on a daily basis, be informed completely and accurately on these Rules.

18. SoCalGas should include examples of its training materials, policy manuals, memos, letters, and other materials used to spread information about these Rules in its revised compliance plan. The company should quote verbatim from these Rules in these materials, and should make copies of these Rules available to its employees in its training manuals as well as on the company intranet and internal e-mail.

19. The issue of employee sanctions in their implementation of these rules are better addressed in the upcoming Rulemaking 98-04-009 which will consider new enforcement measures for these rules.

20. This compliance plan is responsive to and should satisfy the requirements set forth in D.97-12-088, as modified by D.98-08-035.

21. The Commission recently approved a plan of merger between PE and Enova (parent to SDG&E) in D.98-03-073 (A.96-10-038), which exempted transactions between the utilities themselves from most of these Rules. These companies have obtained final regulatory approval and have recently executed the merger. In accordance with the statement of the company in its AL 2661, SoCalGas and

SDG&E should submit a combined compliance plan that addresses these Rules as well as D.98-03-073. The combined compliance plan should be filed no later than 60 days from the effective date of this Resolution.

22. The merged company is creating a new affiliate, Sempra Energy Utility Ventures, which will "develop and operate regulated utility distribution operations throughout the country." The companies argue that this new business unit should not be classified as an affiliate for the purposes of these Rules. They state that the company's projects "will be small to medium-sized regulated energy utilities . . ." (their emphasis)

23. The companies are incorrect and this new business unit is an affiliate as defined by these Rules. These Rules make no provision for exemption based on the size of the project or the regulatory status of its holdings. It is clear that the new affiliate will be "engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity" as specified in Rule II.B, and is thus covered fully by the requirements of these rules.

24. Further, the merged companies state that "Mr. Warren Mitchell, Sempra Energy Group President of regulated operations. . .will serve on the board of directors of Sempra Energy Utility Ventures." This is not allowed under these Rules, as Sempra Energy Utility Ventures is an affiliate as defined by these Rules. SoCalGas should file the advice letter required by Rule VI.B which addresses this new affiliate within thirty days from the effective date of this Resolution, and advise the Commission in this advice letter about the duties of Mr. Mitchell.

25. SoCalGas seeks to exempt from the rule a contract with its affiliate DGN Mexicali for transportation of gas through the SoCalGas system to Mexico since damages could be awarded to third parties unaffiliated with SoCalGas for breach of contract. That contract for tariffed service between SoCalGas and its affiliate DGN-Mexicali for transportation of gas through the SoCalGas system to Mexico is currently before the Commission in A.97-03-015.

26. JPC is correct when it says that this compliance filing is the improper forum in which to seek a change or exemption in these Rules. The exemption SoCalGas seeks, for its transportation contract with DGN-Mexicali, is better addressed through the Commission's proceeding on A.97-03-015. We do not grant the exemption here, but defer consideration to that proceeding.

27. It is reasonable to require SoCalGas to should show for each of its affiliates the products or services it offers and demonstrate clearly whether it is engaged in the provision of a product that uses gas or the provision of services that relate to the use of gas. Without such explanations SoCalGas is out of compliance.

28. SoCalGas should specify what steps the company is taking to ensure compliance

with Rule III.A in its revised compliance plan.

29. SoCalGas lists several contracts it believes must be grandfathered and exempted from the Commission's Affiliate Transaction Rules. The company argues that compliance with Rule III.B.1 will, in some cases, change pricing terms and/or conditions of the contract which may breach the contract, creating in turn substantial liability to the third parties involved.

30. The Rules do not provide for a grandfathering exception for existing contracts. If SoCalGas desires to change these Rules, there are appropriate instruments available to the company. SoCalGas must make the same contractual arrangement available to all market participants that it has made to its affiliates in order to comply with Rule III.

31. SoCalGas may continue its current billing service arrangement for the Appliance Protection Plan and Earthquake shut-off valve with Energy Pacific, but it must contemporaneously extend the same offer to all other competitors desiring this same service.

32. As long as SoCalGas offers its Line Item Billing service on an open, competitive basis, its proposal is in compliance with Rule III.

33. SoCalGas already provides line item billing service to its affiliate.

34. D.97-12-088 required SoCalGas to file an advice letter describing its existing tariffed and nontariffed services, in accordance with Rule VII, by January 30, 1998. SoCalGas failed to include line item billing, an existing service, in its advice letter. Line item billing service is not authorized by this Commission.

35. It is reasonable to require SoCalGas to file the advice letter specified under Rule VII.F within 30 days of the effective date of this Resolution, and describe in this filing how its offering will satisfy the requirements of Rule VII, and how the company will extend the offer of this service to all other competitors in accordance with these Rules.

36. Access to the GasSelect EBB is not available to "any market participant."

37. Information about SoCalGas's transactions with its affiliates must be provided to the relevant market contemporaneously with the transactions in order to satisfy the Commission's goal of increased competition in these emerging energy markets. SoCalGas's affiliates' competitors should be given the same access to the EBB given to the affiliates.

38. SoCalGas should post notice of its affiliate transactions, including but not limited to notice of available information, services, and unused capacity or supply, and

discounts given to affiliates, in relevant industry publications, those targeted to the market(s) which its affiliates are serving. SoCalGas should also post notice of its affiliate transactions on its internet web site no later than the time of the transaction. For the convenience of market participants, SoCalGas should devote a particular page of this site to its transactions with its affiliates, as SDG&E, Edison, and PG&E have each done. This web site page should be developed and in place prior to the submission of SoCalGas's revised compliance plan.

39. We do not require SoCalGas to more fully define "tying" in its compliance plan, but we will address this issue on a case by case basis in the future.

40. SoCalGas should develop a form and written procedure for use by utility employees if they provide a discount for an affiliate, provide this form in its revised compliance plan, and post the form on its affiliate transaction web site page, once it is developed.

41. SoCalGas should include its form for obtaining, maintaining, and recording affirmative written consent provided by customers for transfers of customer information to affiliates or unaffiliated providers in its revised compliance plan.

42. Non-customer specific non-public information should be posted to SoCalGas's affiliate transaction web site, once it is developed.

43. These Rules do not prevent truthful communications to SoCalGas's customers.

44. The lists required under Rule IV.C.2 are both truthful and complete.

45. Until a Commission-authorized list of service providers is available, SoCalGas may refer customers who inquire about product or service providers to a generally available listing of service providers (e.g., the Yellow Pages).

46. Energy Marketplace is a web site (http://www.energymarketplace.com) developed by SoCalGas, with the apparent participation of SDG&E and PG&E, to provide core gas customers with on-line access to participating and authorized gas core aggregators.

47. The company states that it presently has no affiliates who are participants in the Energy Marketplace program.

48. SoCalGas provides a list in its web site of all authorized core aggregators.

49. As long as utility affiliates are not actual participants in the Energy Marketplace program, the utilities are not in violation of Rules III.E.1 through III.E.3 or Rule V.F.4.b. Participation by utility affiliates in this program will violate these Rules.

50. SoCalGas may not reroute callers who inquire about an affiliate to its affiliate's call center, and shall only provide the caller with the list required in Rule IV.C.2, or if such a list is not yet available, should refer the caller to a generally available listing of service providers (e.g., the Yellow Pages).

51. SoCalGas is bound by Rules IV.C.1 and 2 and should provide the customer who inquires about the C.A.T. program with a list of all service providers, including its affiliates.

52. SoCalGas must provide a list of all service providers operating in its service territory authorized by the Commission in a semi-annual filing. If such a list has not yet been authorized by the Commission, SoCalGas may refer such inquiries to the Yellow Pages.

53. In its revised compliance plan, SoCalGas should include copies of any forms or training materials developed for the implementation of Rule IV.D.

54. The company should provide in its revised compliance plan copies of communications and training materials associated with Rule IV.E, and examples of the internal controls it uses to enforce this Rule.

55. Although links between the utility and its affiliates may not constitute "advice," they are clearly "assistance" as used in Rule IV.E. Further, the objective of the Commission's Separation Rules is undermined by such direct linkages between utility and affiliate.

56. SoCalGas and SDG&E state that the utilities are sometimes asked technical questions concerning proposals made by service providers having to do with "the merits of by-passing utility pipes and wires infrastructure."

57. The Sempra utilities have filed for rehearing on Rule IV.E., and state that they do not provide non-public information to customers about direct access providers and related products and services. They apparently do, however, currently provide information about technical and tariff issues.

58. Rule IV.E prohibits the utilities from providing "advice or assistance with regard to its affiliates or other service providers." The Rule makes no exception for "technical advice" or advice requiring a particular expertise which may be held by the utility.

59. Until their Application for Rehearing has been acted upon by the Commission, the utilities must follow the requirements of the Rule and refrain from providing advice and assistance regarding any service providers (including their affiliates), or any proposal of a service to provide services to a customer.

60. These Rules do not prevent the utility provision of general technical advice not related to a specific service provider or to a proposal for services tendered a provider, however. In its revised compliance plan, SoCalGas should reaffirm that it has modified its policies to comply with Rule IV.E.

61. It is reasonable to interpret the 72 hour requirement of Rule IV.F as three business days to accommodate those requests for information that might be received at the end of the week.

62. The statement of SoCalGas that it needs an "appropriate request" before it will release information pursuant to Rule IV.F is unnecessarily restrictive. The Rule says "[t]he utility shall make such records available for third party review" and does not define what is meant by an "appropriate request."

63. Documentation of affiliate transactions is required by Rule IV.F, not just USOA cost summaries.

64. SoCalGas should document in detail its tariffed and nontariffed transactions with its affiliates to comply with Rule IV.F.

65. It is not satisfactory for SoCalGas to refer in its filing to documents unavailable to most interested parties, such as the Affiliate Transactions Report.

66. These Rules prohibit the sharing of internal e-mail systems and supporting infrastructure between SoCalGas and its affiliates, because e-mail is part of the computer and information system. It is sufficient for each company to keep and maintain its own communications "infrastructure" and to transfer data as two separate companies.

67. Allowing SoCalGas and its affiliate to share a common e-mail and network communication system goes beyond shared corporate functions. SoCalGas should separate its e-mail from that of its affiliates.

68. The merged companies state that "a separate data center . . . was purchased to house Sempra Energy's information technology needs." This data center will be used to provide computer services to all of the Sempra business units, including the utilities and the affiliates covered by these Rules.

69. The Commission staff has been informed that the hardware is owned partially by at least one of the utilities.

70. Access to data will be governed by "strict security measures and firewalls in place to ensure that there is no sharing of information or data not permitted by the Rules."

71. The companies state that the parent has established a service which allows all of its affiliates to share e-mail service.

72. The parent has established "a common 'help' desk, and shared computer maintenance and support services."

73. Shared internal e-mail is prohibited by these Rules, and each company should keep and maintain its own computer and information systems.

74. The "firewall" technology proposed by the utilities is not explained or described in the filing, and the Commission does not have sufficient information to decide whether the methods proposed by the utilities ensure compliance with these Rules. It is crucial that Sempra separate effectively the computer and information systems of its utilities and affiliates. In their revised compliance plans, the utilities should explain these firewall systems thoroughly, including not only their design but their proven efficacy, and show to the Commission's satisfaction that these firewalls are sufficient to ensure compliance with the Rules. Interested parties to this proceeding are invited to provide relevant comments on these revised plans regarding these proposed methods and technologies.

75. These Rules do not provide for shared maintenance of facilities or "help desk" services.

76. SoCalGas should report in its revised compliance plan on how it is restructuring the computer and information systems in order to comply with these Rules.

77. Pipe and equipment are more closely associated with the traditional utility merchant function, and are not allowable joint purchases under Rule V.D.

78. In its revised compliance plan SoCalGas should thoroughly describe and justify each function it claims should be allowable under Rule V.E. The company should also include the corporate officer verifications required by this Rule.

79. SoCalGas and SDG&E state that, following the merger, "the bulk of the corporate governance and shared support services" are being moved to a "consolidated corporate center." The stated purpose of this corporate model is to achieve efficiencies available from the merger, to separate the monopoly functions of the utility from the competitive functions of the unregulated affiliates "by corporate boundaries instead of intra-corporate divisions that are more difficult and expensive to monitor . . ." and to "avoid inefficient duplication in corporate governance and shared support services . . ."

80. The companies say that placing shared services "at the corporate center tends to resolve or greatly mitigate potential self-dealing, cross-subsidy, and market power concerns that justify close regulation in this area." They further recognize that such

a structure might engender concerns about the potential for information "conduits" through the corporate center, and that they "are taking concrete steps to ensure" that these problems do not come to fruition.

81. The Affiliate Compliance Department is being centralized at the parent level. This department reports directly to the Sempra Energy VP and Controller (currently Frank Ault), who will be the affiliate transaction officer (ATO) and member of the Executive Steering Committee and Corporate Compliance Committee. This latter committee will have oversight responsibilities regarding Sempra compliance with these Rules, and the ATO has ultimate responsibility for enforcement of these Rules.

82. In addition, the companies are establishing an Affiliate Transaction Advisory Committee, to provide "guidance and support" to the ACD, which will include representatives of legal and regulatory departments, as well as other unspecified areas of these companies.

83. The ACD will compile a manual comprising Commission and Federal Energy Regulatory Commission affiliate transaction rules. This "Sempra Energy Guidelines" manual will be made "available to all employees via the appropriate intranet web site (hard copy will also be available)." The company will submit a copy of this report in its Affiliate Transaction Report to be filed in May, 1999.

84. It is important that the definitions and explanations included in the "Sempra Energy Guidelines" manual be accurate, and that it should be reviewed and updated in accordance with our discussion of the errors found in the SoCalGas Policy Memorandum.

85. In its revised compliance plan, SoCalGas should provide elaboration on the makeup of its Affiliate Transaction Advisory Committee, list its members from the utilities and the unregulated affiliates, and describe how the merged companies intend to prevent this committee from being a "conduit" of information in violation of these Rules.

86. The merged companies report that the parent "will oversee and analyze its financial risks on an enterprise-wide basis . . ." and that this risk management activity is compliant with Rule V.E.

87. The companies state that the risk management function will be overseen by Sempra Energy's Risk Management Officer and cannot include officers shared between parent and either utility. The risk management oversight function may include officers shared between parent and nonutility affiliate, but these officers cannot "direct specific trades or positions," they do not immediately supervise "physical or financial commodity traders" at the affiliate, and they do not use confidential information to influence positions taken by their affiliate.

88. The merged companies say that "[t]o the extent feasible" the information used for risk management activities "will be aggregated and/or redacted" to conceal the exact positions of each business unit from the members of the risk management group.

89. Rule V.E says: "As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems, and personnel." (emphasis added) While the Rule allows "financial planning and analysis" to be shared, it gives "[e]xamples of services that may not be shared" which include "hedging and financial derivatives and arbitrage services . . ."

90. Although enterprise-wide policies concerning risk management may be developed and promulgated by the parent downward to its various companies, individual company-specific management of the sort described by the utilities in this filing is specifically prohibited by this Rule. The utilities have received authority from the Commission to participate, individually, in risk management of their gas operations only. The merged companies should report in their revised compliance plans that they have discontinued this shared function.

91. SoCalGas is offering to sell space in its billing envelopes to companies. This service is being promoted at its web site: http://www.socalgas.com/3rdparty/billspace/.

92. SoCalGas states that its policy requiring other utilities to provide space in their billing envelopes before SoCalGas will offer space to those utilities' affiliates is designed to encourage such reciprocity. This is a positive goal which would further the Commission's objectives for these developing markets. However, SoCalGas cannot achieve even this positive outcome by imposing additional restrictions on the Commission's Rules.

93. Rule V.F.3 requires that space in the billing envelope, if offered to its own affiliates, must be offered to other service providers as well. The company certainly cannot choose restrictions which exclude its affiliates' competitors from access to its billing envelopes. There are other procedural vehicles available to SoCalGas with which it can seek Commission approval for whatever change in these Rules the company seeks.

94. SoCalGas' winner-take-all system for selling advertising space in its billing envelopes, which limits participation by all but a few firms, including its own affiliates, does little to advance competition in any of these developing energy markets.

95. Rule V.F.3 requires that, if the utility's affiliate is offered space in its billing

envelope, the utility must provide "access to all other unaffiliated service providers on the same terms and conditions." The methodology chosen by SoCalGas does not provide access by its affiliates' competitors to the utility billing envelope as required here.

96. While the company can limit access to "service providers," consistent with the Rule, it cannot choose restrictions which exclude its affiliates' competitors from access to its billing envelope, as the company currently does.

97. SoCalGas has not yet filed an advice letter addressing this new service, as required by Rule VII.B. This nontariffed service is not authorized by the Commission. The company should file the required advice letter within 30 days of the effective date of this Resolution, and describe in this filing how it will revise its method of selling space in its billing envelope in order to provide "access to all other unaffiliated service providers on the same terms and conditions."

98. Sempra Energy Solutions has a web site advertising an earthquake shut-off valve. As no mention is made of the fact that the consumer is not required to have the valve installed by the company, this advertisement is misleading.

99. SoCalGas offers to work with ORA on the language of the advertisement. This is appropriate and the advertisement should clarify that the customer has several authorized installers to choose from, not just those recommended by Energy Pacific.

100. SoCalGas allows Energy Pacific to bill customers for these valves using the monthly SoCalGas utility bill. As long as this billing service is offered to both affiliates and their competitors consistent with these Rules, there is no prohibited joint activity.

101. It is reasonable to require SoCalGas to elaborate on its procedures to ensure compliance with Rule V.F.5 in its revised compliance plan.

102. SoCalGas and SDG&E state that Sempra Energy will "triple hat" officers "essential to the efficient and responsible delivery of corporate oversight." These officers will be shared between the parent, utility, and affiliate.

103. As clarified by D.98-08-035, it permissible for SoCalGas officers to be shared between the utility and its affiliates covered by these Rules provided that their shared duties are limited to those necessary for the performance of corporate support services allowed under Rule V.E.

104. The Commission states in D.98-08-035: "... as a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential

treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates." (D.98-08-035, slip op. p. 16)

105. The decision also requires that all directors and officers shared between the utility and an affiliate be listed in the compliance plan mandated under Rule VI. SoCalGas should include this list in its revised compliance plan.

106. The merged companies have formed a centralized law department "providing legal services to all Sempra Energy affiliates."

107. D.98-08-035 specifically prohibits the Chairman of the Board from serving as a director "of affiliates covered by these Rules." The merged companies state that "Sempra Energy's General Counsel . . . is tasked with managing the delivery of legal services and assisting the Office of the Chairman in exercising and maintaining the highest level of corporate governance and fiduciary responsibility." This assistance must be limited to duties expressly permitted under Rule V.E, and cannot be used as a vehicle to circumvent the Rules.

108. SoCalGas and SDG&E state that the companies have formed "several corporate governance committees to maintain adequate oversight of the entire enterprise . . ." The companies state that the committees will limit their discussions to "broad governance issues. . .and will refrain entirely from discussing matters which would be inconsistent with the Rules, like operational matters and customer-specific information."

109. The agendas of these committee meetings will be reviewed by Mr. Ault, and he will either attend or (more likely) designate someone to attend to "intervene" and enforce these Rules, to ensure that these meetings "will not be allowed to become a conduit for the exchange of information prohibited by the Rules." The committee members include all "business unit presidents" as well as each of the Regulated and Nonregulated Group Presidents.

110. D.98-08-035 allows some sharing of officers for the execution of the limited functions allowed under Rule V.E. The inclusion of the presidents of the Sempra affiliates and utilities on these committees, regardless of the assurances of internal oversight by Mr. Ault's office, give rise to concern that these committees can be, in the words of the Advice Letter, "conduits for the flow of confidential information not permitted by the Rules."

111. The merged companies state that "the Sempra Energy officers will generally meet monthly in separate meetings with the regulated and unregulated business unit officers to discuss operating issues, recent accomplishments, current issues, and other relevant activities." These topics, including those having to do with operations and specific events, are excluded from allowable shared services and

cannot be construed to be "joint corporate oversight" or governance, as allowed under Rule V.E. In its revised compliance plan, SoCalGas should report to the Commission what steps it has taken to restructure these meetings to prevent the sharing of operational and other data which is prohibited by these Rules.

112. The merged companies describe their efforts to create physical separation between utility and affiliate employees, but indicate that this effort was still ongoing on July 2, 1998. In its revised compliance plan, SoCalGas should update this section to report to the Commission on the progress and success of these efforts.

113. SoCalGas' reference to base utility pay does not comport to the base annual compensation referred to in the Rule V.G.2.c, as it is too restrictive.

114. It is reasonable for SoCalGas to compute the base annual compensation of its employees for purposes of a transfer fee on the basis of both cash and non-cash compensation, i.e. including wages, salaries, bonuses, commissions, all other cash compensation, health care packages, pension benefits, stock options and all other non-cash benefits.

115. In D.98-03-073 the Commission allowed the six month implementation period for employee transfers requested by SoCalGas.

116. The employee who leaves the utility to work for an affiliate must be given information about these Rules which stresses the importance of preventing the transfer of information to the affiliate. In its revised compliance plan, SoCalGas should include copies of its exit interview materials.

117. In Advice Letter 2661 SoCalGas states that it has implemented procedures that will prevent temporary or intermittent assignments, or rotations, of employees to affiliates, with the very limited exception of projects outside of California. The modification to RuleV.G.2.e, implemented by D.98-08-035, allows certain temporary assignments, with several specific restrictions and conditions imposed on these assignments. SoCalGas should report in its revised compliance plan on its procedures to enforce the conditions imposed on this activity by this modified Rule.

118. Rules VII.A through VII.F (Utility Products and Services) are addressed by SoCalGas in a separate Advice Letter which will be considered separately.

119. If SoCalGas wishes to offer seismic-related services including assembly and distribution and warehousing, it must file with the Commission in accordance with the provisions of these Rules, particularly Rule VII.

THEREFORE IT IS ORDERED THAT:

1. SoCalGas shall file a new compliance plan by advice letter to comply with OP 2 in the Decision, incorporating the corrections discussed in this Resolution, no later than 30 days from the effective date of this Resolution.

2. SoCalGas shall file a revised compliance plan regarding Rule V.F.1 no later than 30 days after the Commission acts on the Petition for Modification of SDG&E and SoCalGas.

3. SoCalGas' revised compliance plan shall be a stand-alone document with citations to each relevant section of the rules and with appropriate portions of its policies and procedures that demonstrate compliance with these Rules.

4. SoCalGas shall provide portions of its policies, training materials, and procedures to demonstrate adequate compliance.

5. SoCalGas shall include examples of its training materials, policy manuals, memos, letters, and other materials used to spread information about these Rules in its revised compliance plan. The company shall quote verbatim from these Rules in these materials, and shall make copies of these Rules available to its employees in its training manuals as well as on the company intranet and internal e-mail.

6. In accordance with the statement of the company in its AL 2661, SoCalGas and SDG&E shall submit a combined compliance plan that addresses these Rules as well as D.98-03-073. The combined compliance plan shall be filed no later than 60 days from the effective date of this Resolution.

7. SoCalGas shall show for each of its affiliates the products or services it offers and demonstrate clearly whether it is engaged in the provision of a product that uses gas or the provision of services that relate to the use of gas. Without such explanations SoCalGas is out of compliance.

8. SoCalGas should file the advice letter required by Rule VI.B which addresses new affiliate, Sempra Energy Utility Ventures, within thirty days from the effective date of this Resolution, and advise the Commission in this advice letter about the duties of Mr. Mitchell.

9. SoCalGas shall specify what steps the company is taking to ensure compliance with Rule III.A in its revised compliance plan.

10. SoCalGas shall make the same contractual arrangement available to all market participants that it has made to its affiliates in order to comply with Rule III.

11. SoCalGas may continue its current billing service arrangement for the Appliance Protection Plan and Earthquake shut-off valve with Energy Pacific, but SoCalGas must extend the same offer to all other competitors desiring this same service.

12. SoCalGas shall file an advice letter under Rule VII for authority to offer line item billing within 30 days of the effective date of this Resolution, and describe in this filing how its offering will satisfy the requirements of Rule VII, and how the company will extend the offer of this service to all other competitors in accordance with these Rules.

13. SoCalGas's affiliates' competitors shall be given the same access to the EBB given to the affiliates.

14. SoCalGas shall post notice of its affiliate transactions, including but not limited to notice of available information, services, and unused capacity or supply, and discounts given to affiliates, in relevant industry publications, those targeted to the market(s) which its affiliates are serving. SoCalGas shall also post notice of its affiliate transactions on its internet web site no later than the time of the transaction. For the convenience of market participants, SoCalGas shall devote a particular page of this site to its transactions with its affiliates, as SDG&E, Edison, and PG&E have each done. This web site page shall be developed and in place prior to the submission of SoCalGas's revised compliance plan.

15. In its revised compliance plan, SoCalGas shall elaborate on its instructions and mechanisms it uses to ensure that Rules III.D and III.E are observed by its employees.

16. SoCalGas shall develop a form and written procedure for use by utility employees if they provide a discount for an affiliate, provide this form in its revised compliance plan, and post the form on its affiliate transaction web site page, once it is developed.

17. SoCalGas shall include its form for obtaining, maintaining, and recording affirmative written consent provided by customers for transfers of customer information to affiliates or unaffiliated providers in its revised compliance plan.

18. Non-customer specific non-public information shall be posted to SoCalGas's affiliate transaction web site, once it is developed.

19. Rule IV.C.2 requires the utility to provide a list of all service providers if a customer requests information about any affiliated service provider. If a Commission-authorized list is not yet available, the company may refer the customer to a generally available list of service providers (e.g., the Yellow Pages). SoCalGas shall comply with this Rule.

20. SoCalGas shall not reroute callers who inquire about an affiliate to its affiliate's call center, and shall only provide the caller with the list required in Rule IV.C.2.

21. If an affiliate joins SoCalGas' CAT program, SoCalGas is bound by Rules IV.C.1 and 2 and shall provide the customer who inquires about the program with a list of all service providers, including its affiliates.

22. SoCalGas' current practice is not in compliance with Rule IV.C.2. SoCalGas shall provide a list of all service providers operating in its service territory authorized by the Commission in a semi-annual filing. Until such a list is approved by the Commission, SoCalGas may refer customers to a generally available listing of service providers (e.g., the Yellow Pages).

23. In its revised compliance plan, SoCalGas shall include copies of any forms or training materials developed for the implementation of Rule IV.D.

24. The company shall provide in its revised compliance plan copies of communications and training materials associated with Rule IV.E, and examples of the internal controls it uses to enforce this Rule.

25. Until its Application for Rehearing has been acted upon by the Commission, SoCalGas must follow the requirements of Rule IV.E and refrain from providing advice and assistance regarding any service providers (including their affiliates), or any proposal of a service to provide services to a customer.

26. In its revised compliance plan, SoCalGas shall reaffirm that it has modified its policies to comply with Rule IV.E.

27. SoCalGas shall separate its e-mail from that of its affiliates.

28. Sempra shall separate the computer and information systems of its utilities and affiliates covered by these Rules.

29. SoCalGas shall report in its revised compliance plan on how it is restructuring the computer and information systems in order to comply with these Rules. The utility shall also explain its proposed firewall systems thoroughly, including not only their design but their proven efficacy, and show to the Commission's satisfaction that these firewalls are sufficient to ensure compliance with the Rules. Interested parties to this proceeding are invited to provide relevant comments on these revised plans regarding these proposed methods and technologies.

30. In its revised compliance plan SoCalGas shall thoroughly describe and justify each function it claims should be allowable under Rule V.E. The company shall also include the corporate officer verifications required by this Rule.

31. In its revised compliance plan, SoCalGas shall report to the Commission what steps it has taken to restructure its management meetings to prevent the sharing of operational and other data which is prohibited by these Rules.

32. The merged companies describe their efforts to create physical separation between utility and affiliate employees, but indicate that this effort was still ongoing on July 2, 1998. In its revised compliance plan, SoCalGas shall update this section to report to the Commission on the progress and success of these efforts.

33. SoCalGas shall report in its revised compliance plan that the merged companies have discontinued their shared risk management program as described in their July 2 filing.

34. If SoCalGas offers space in its billing envelopes, it shall afford equal opportunity to its affiliates and its affiliates' competitors.

35. SoCalGas has not yet filed an advice letter addressing this new service, as required by Rule VII.E. This nontariffed service is not authorized by the Commission. The company shall file the required advice letter within 30 days of the effective date of this Resolution, and describe in this filing how it will revise its method of selling space in its billing envelope in order to provide "access to all other unaffiliated service providers on the same terms and conditions."

36. SoCalGas shall compute the base annual compensation of its employees for purposes of a transfer fee on the basis of both cash and non-cash compensation, i.e. including wages, salaries, bonuses, commissions, all other cash compensation, health care packages, pension benefits, stock options and all other non-cash benefits.

37. In its revised compliance plan, SoCalGas shall include copies of its exit interview materials.

38. SoCalGas shall report in its revised compliance plan on its procedures to enforce the specific conditions imposed by Rule V.G.2.e, as modified, on the temporary use of utility employees by its affiliates.

39. If SoCalGas wishes to offer seismic-related services including assembly and distribution and warehousing, it shall file with the Commission in accordance with the provisions of these Rules, particularly Rule VII.

40. The Protests of JPC, ORA, SCUPP, and IID are granted in part and denied in part in accordance with the discussion herein.

41. This Resolution is effective today.

I hereby certify that the foregoing Resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the state of California held on November 5, 1998, the following Commissioners voting favorably thereon:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

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

I will file a written concurrence.

/s/ JOSIAH L. NEEPER
Commissioners

Concurring Opinion of Commissioner Josiah L. Neeper on Item E-2

I wish to file a Concurrence on one point.

The Resolution provides for some follow-up filings on matters such as Corporate Governance. On this, Sempra is to file processes for ensuring that inappropriate topics are not discussed at the various meetings discussed in the Resolutions. I had no problem with Sempra's assurance in their Advice Letter that a compliance officer would perform this function. I tend to believe that we are dealing with honest people who will endeavor to follow our Rules.

But the Resolution as voted out requires further assurances. That is acceptable to me as well. In considering what to propose, I have articulated a thought that I wish to become part of the written decision today.

One method that Sempra might consider to ensure compliance is to a) have a written agenda for these meetings upfront, b) take minutes of the meetings, and c) have a written certification that the discussions were appropriate – and send all of this information to the Commission. I would assume that proper confidentiality procedures would be followed. This provides a stronger assurance of compliance than the original Sempra plan, since an individual will be accountable for a written document in our hands.

Sempra may propose what it wishes; this is simply my thinking on this matter at this time.

Josiah L. Neeper

JOSIAH L. NEEPER
Commissioner

San Francisco, California
November 5, 1998