

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

Order Instituting Rulemaking to Implement Registration of Third Party Natural Gas Procurement Service Providers, Known as “Core Transport Agents,” pursuant to Public Utilities Code Sections 980-989.5 to Regulate non-rate matters, including Registration Standards, Complaint Resolution Practices, and Minimum Standards of Consumer Protection.

R.14-03-002
(Filed March 13, 2014)

**OPENING COMMENTS TO THE UTILITY REFORM NETWORK RESPONDING TO
THE QUESTIONS RAISED IN THE ORDER INSTITUTING RULEMAKING**



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TABLE OF CONTENTS

I. INTRODUCTION	2
II. CTA REGISTRATION SHOULD BE RIGOROUS ENOUGH TO PROTECT CONSUMERS AND THE MARKET WHILE NOT ACTING AS A BARRIER TO COMPETITIVE ENTRY	2
A. CTAs Must Post A Bond To Provide Customers Adequate Resources In the Event of Fraud or Nonperformance by the CTA	4
B. CTA Registration Should Be Denied, Suspended or Revoked if CTA Owners, Officers, and Management Have Been Convicted of Criminal Activities	6
C. Fairness to All CTAs Requires Standardization of CTA Credit Application .	6
D. Criteria for Suspension or Revocation of CTA Registration Should Mirror the Denial of Registration Criteria	7
E. The Commission Should Create a Range for the Period of CTA Registration Suspension	7
F. Customers Involuntarily Returned to an IOU Should Not Be Punished for Being Forced to Do So	8
III. INFORMAL AND FORMAL COMPLAINT RESOLUTION PROCESSES MUST BE INSTITUTED	11
A. The Commission Should Institute an Informal Resolution Process for Customer Complaints	11
B. The Commission Should Institute a Formal Resolution Process for Customer Complaints As Well	11
C. CTA Customers Who Have Suffered From CTA Fraud or Non-Performance Should Not Continue to Be Punished By Requiring Them to Keep CTA Service	12
IV. RIGOROUS CONSUMER PROTECTION STANDARDS MUST BE IMPLEMENTED	12
V. CUSTOMERS MUST BE PUT ON NOTICE OF THE PRICE, TERMS, AND CONDITIONS FOR CTAS	15
VI. CONCLUSION	16

I. INTRODUCTION

Pursuant and in response to Order Instituting Rulemaking (“OIR”) 14-03-002,¹ The Utility Reform Network (TURN) submits these comments.

As an initial matter, TURN appreciates that Senate Bill (SB) 656 establishes a regulatory framework for Core Transport Agents (CTAs). This framework endorses competitive supply while also demanding adequate consumer protections for those core gas customers who choose to purchase their natural gas from CTAs. Moreover, TURN compliments the Commission for issuing an OIR to consider registration, customer complaints, and aggressive marketing issues for CTAs in a deliberate and detailed manner. TURN looks forward to fully participating in this proceeding.

In these comments, TURN has focused on selected issues and not responded to every question posed in the OIR. TURN reserves the right to respond further in reply comments and other aspects of this proceeding. As noted below, there are many issues raised in the OIR that would benefit from the use of the Commission’s workshop process and TURN recommends the Commission convene one or more such workshops in this proceeding. However, as a general matter, TURN believes that the policies and procedures for CTAs should be similar to those outlined for Electric Service Providers (ESPs) so that the standards remain the same for all utilities. Therefore, where appropriate, TURN refers to the ESP standards.

II. CTA REGISTRATION SHOULD BE RIGOROUS ENOUGH TO PROTECT CONSUMERS AND THE MARKET WHILE NOT ACTING AS A BARRIER TO COMPETITIVE ENTRY

Through CTA registration and the implementation of other procedures, the Commission can enforce and maintain CTA accountability. Both SB 656 and the OIR clearly note that there

¹ See Ordering Paragraph 3 at p. 25.

have been CTAs who have been bad actors in the California natural gas market. It is important that such players – aggressive marketers, CTAs committing fraud, and those who misrepresent prices, terms, and conditions to customers – be discovered and dealt with quickly. Those CTAs who have engaged in such behavior should have their registration denied, suspended or revoked. Just as important, the Commission must develop a registration process that identifies and denies registration to potential bad actors before they enter the market. That said SB 656 also intended to create a robust competitive alternative for gas consumers. Thus, any registration requirements must strike the difficult balance between encouraging efficient market entry while affording consumers the maximum protection possible.

D.99-05-034, D.98-03-72, and D.03-12-015 describe the framework for ESP registration.

TURN submits that CTA registration should have a similar framework:

1. The CTA must execute an agreement with each IOU in which service territory it plans to offer service and submit copies of each executed Service Agreement with its application.
2. The CTA must complete a CTA Registration Application Form and include the information in Senate Bill 656, Section 981(a).
3. The CTA must provide fingerprints for required personnel: (1) If a sole proprietorship, the registrant must provide fingerprints; (2) If a partnership, it must provide fingerprints for all general partners; (3) If it is a corporation, it must provide fingerprints for all corporate officers; and (4) If a limited liability company, fingerprints must be provided for all members, managers, and officers.
4. As described more fully below, each CTA should be required to post a security bond in the minimum amount of \$25,000.

5. The CTA must provide customers a notice (similar to the Section 394.5 Notice for ESPs) prior to commencement of service which must include the following: a statement that it is a registered CTA and the registration number; the CTA's mailing address and telephone number; a statement that the CTA's price does not include the charges that the customer is obligated to pay the existing utility company; a statement that the pricing could be more or less than the IOU for any given month; the contractual period; a statement that the customer has the right to terminate the agreement earlier than the contractual arrangement and a statement of the early termination fee; a statement that the customer has the right to cancel the contract without fee or penalty until midnight of the third business day after the day the customer signed the contract; and a statement of all other prices, terms, and conditions.
6. A copy of the CTA's Notice must be submitted to the Energy Division of the CPUC.

A. CTAs Must Post A Bond To Provide Customers Adequate Resources In the Event of Fraud or Nonperformance by the CTA

TURN appreciates that the Commission recognizes financial viability as an important factor in determining whether a CTA should be approved for registration. Though there is no guarantee that problems may not arise after registration, the Commission should thoroughly examine a CTA's financial status prior to registration to investigate potential pitfalls before they occur. Dire results can happen if a CTA in poor financial health is approved for registration: countless CTA customers may be forced back to an Investor-owned Utility (IOU) which would require an IOU to increase their gas supply – potentially at a higher purchase rate. Assuredly,

the IOU would attempt to pass on the price increases to customers, including those who were not CTA customers. It is important that the Commission recognizes and intensely examines the financial viability of CTAs in order to combat the potential for these results.

Though financial viability is an important issue, TURN does not take a position on how to define it at this time. In determining standards for CTA registrant financial viability, the Commission should utilize the standards already implemented for ESPs in Decision (D.) 99-05-034. in *Order Instituting Rulemaking in the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation; Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Service Industry and Reforming Regulation*. Accordingly, TURN tentatively recommends that each CTA post, at a minimum, a security deposit in the amount of \$25,000. *Id.* CTAs with between 1 to 250 customers should post a \$25,000 bond; those with between 251 and 500 customers should be required to post a \$50,000 bond; CTAs who have between 501 and 1,000 customers would be required to post a \$75,000 bond; and CTAs with 1,001 customers or more would be required to post a bond in the amount of \$100,000. *Id.* at 26. As explained in D.99-05-034, the purpose of an increasing security deposit based on CTA customer number is that “as the number of customers grow, customers will have adequate recourse in the event of fraud or nonperformance” by the CTA. *Id.* As also addressed in the ESP Decision, TURN urges the Commission to allow the Energy Division staff to initiate a process to suspend or revoke the CTA’s registration if there is noncompliance with posting the bond. *Id.* at 27-28. TURN suggests that the Commission hold a workshop with all parties and consumer groups to discuss additional details of determining the financial viability of a CTA for purposes of registration.

B. CTA Registration Should Be Denied, Suspended or Revoked if CTA Owners, Officers, and Management Have Been Convicted of Criminal Activities

It is important that consumers are protected against overly aggressive marketing and dishonest practices. Those CTAs that engage in such behavior should be denied registration or have their registrations suspended or revoked. To combat such future consumer abuses, TURN suggests that any CTA owner (directly or indirectly) with more than ten percent interest, partner, affiliate, officer, director, agent or individual working in a management capacity convicted of the criminal activities described below should be denied registration or have their CTA registration suspended or revoked. The types of criminal activities for the CTA owners, officers, managers, and agents should be similar in nature to those described in SB 656, Section 983.5(3)(b) for the CTAs themselves:

- (1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers or administering those service agreements or
- (2) Dishonesty, fraud or deceit with the intent to substantially benefit the core transport agent or its employees, agents or representatives or to disadvantage retail gas customers.

C. Fairness to All CTAs Requires Standardization of CTA Credit Application

Standardizing the CTA credit application will ensure fairness amongst the utilities in that all CTAs would be required to provide the same information and be judged using the same standards. The following requests for information should be included in the credit application: annual revenue, number of employees, and years in business. TURN acknowledges that this is

not an exhaustive list of criteria. TURN requests that the Commission conduct a detailed discussion of this issue in a workshop in this proceeding with all parties and consumer groups.

D. Criteria for Suspension or Revocation of CTA Registration Should Mirror the Denial of Registration Criteria

The criteria for suspension or revocation should be the same as the grounds for denial of registration: misrepresentation; dishonesty or deceit; nondisclosure; fraud; aggressive or improper marketing tactics; other violations of consumer protection laws; or a felony conviction related to consumer protection issues. As part of the Commission’s investigatory process, the Commission should consider any consumer complaints received, Commission-initiated investigations, and utility-documented complaints received by the Commission. After information gathering the Commission should allow the CTA to submit any evidence or information it may have in opposition to suspension or revocation. After submission of all evidence, the Commission should weigh the information and make a determination of whether a suspension or revocation is necessary. TURN suggests that the details of the suspension or revocation process be determined in a workshop in this proceeding involving all parties and consumer groups.

E. The Commission Should Create a Range for the Period of CTA Registration Suspension

TURN suggests that the registration suspension period be based on the severity of the offense. Suspension periods should range from 6 months to 5 years. Whether the CTA received previous suspensions should also be taken into consideration in determining the period of a current suspension. TURN suggests that further details – including what constitutes a severe

offense – be discussed and determined in a workshop in which all parties and consumer groups provide input.

F. Customers Involuntarily Returned to an IOU Should Not Be Punished for Being Forced to Do So

TURN suggests that a customer should be determined to be involuntarily returned to an IOU if (1) the CTA becomes bankrupt; (2) the CTA goes out of business; (3) the IOU terminates the CTA agreement for nonpayment or for any other reason;² or (4) the CTA has been convicted or determined by the Commission to have committed fraud, misrepresentation, dishonesty, nondisclosure, nonperformance, engaged in aggressive or improper marketing tactics, or violated other consumer laws. Further, similar to the ESP requirement,³ TURN urges the Commission to require a CTA pay any fee or penalty for a customer’s return to an IOU when there is an involuntary return.

CTA customers involuntarily returned to IOU service should be informed of the change to their natural gas service as soon as possible but no later than within 30 days of the change. In order to ensure customer awareness of the change, CTA customers should be notified of the change on their bill rather than through a bill insert. TURN recommends that the notice should be consistent among CTAs to create uniformity and clarity and include a statement of the following: the customer did not cause the return; the date of return; notification of which utility the customer has been returned to; notification that the customer has the right to switch to another CTA immediately, if desired; and an explanation of the reason for the return (i.e., statement that the CTA is in bankruptcy, its registration has been suspended or revoked, or that it

² For example, PG&E’s Gas Rule 23 allows the utility to terminate its agreement with a CTA for nonpayment. *See* PG&E Gas Rule 23, Sheet 17, (C)(3)(a).

³ D.03-12-015 at 25-26.

no longer conducts business in the state of California). The notice should be highly visible so a customer will likely notice it.

Moreover, because an involuntarily returned customer returns to a gas utility service through no fault of his own, TURN recommends that the customer have no restrictions or time constraints placed on his choice of replacement CTA or utility service. The customer should be allotted one opportunity to freely switch to a gas utility service or replacement CTA without reentry or return fees.

In contrast, a voluntary customer return would be defined as a customer making a determination, based on any other reason, to return to an IOU or otherwise leave the CTA. TURN suggests that customers be allowed to voluntarily return once per contractual period with the CTA. TURN recommends that reasonable charges with a maximum cap (with the charges and cap to be determined through a workshop in this proceeding) for the voluntary return to an IOU or replacement CTA should be paid by the customer – provided that the fee or penalty charged by the CTA associated with the early termination service be disclosed in the CTA contract.

A standardized notice ensures fairness to all CTA customers. Thus, TURN recommends that a standardized written notice be provided to all potential customers in advance of entering into the agreement. TURN's recommendations for the details of the notice are described more fully in Section II above.

Further, TURN recommends that for purposes of bonds or insurance coverage, "fraud" should be defined in the same manner that it is defined in California Civil Code Section 3294(c)(3): "Fraud" means an intentional misrepresentation, deceit, or concealment of a material

fact known to the defendant with the intention on the part of the [CTA] of thereby depriving a person of property or legal rights or otherwise causing injury.”

TURN recommends that the Commission define non-performance as when a CTA has agreed to perform gas utility services for a customer pursuant to a contract, but the CTA has failed to perform as outlined by the contract, unless full performance has been legally excused, prevented or delayed by the act of the CTA customer or another party.

TURN understands that the utilities have several mechanisms in place to ensure that CTAs post security or demonstrate creditworthiness to cover incremental costs of procurement in the event of an unforeseen involuntary return of CTA customers. However, in order to equalize the process and create fairness among CTAs and utilities, TURN recommends that the Commission institute its own creditworthiness or security requirements.

In the OIR the Commission notes that it requires IOUs to demand ESP payment of reentry fees no later than 60 days after the initiation of involuntary returns to service and that reentry fees are to be due to the IOU within 15 calendar days of the IOU’s demand issuance. TURN supports applying the same rules to CTAs. If the Commission takes this approach, the IOU’s will not be overly burdened by the reentry and need not wait an inordinate amount of time to receive payment or force the IOU to pass on the fees to its bundled customers.

TURN does not take a position now on whether to require that CTA bond or insurance coverage sizes be determined semi-annually. However, TURN does recommend that the size be determined periodically in order to ensure that the coverage size remains appropriate in the event that the CTA becomes bankrupt or is no longer doing business in the state of California.

III. INFORMAL AND FORMAL COMPLAINT RESOLUTION PROCESSES MUST BE INSTITUTED

A. The Commission Should Institute an Informal Resolution Process for Customer Complaints

For informal complaints, the Commission should use the same process it uses for informal complaints of utility services. Thus, the Commission should allow customers or utilities to write, email, or call the Commission to voice their complaints and concerns about CTAs. As is the complaint process in place now, TURN recommends that Commission staff review the complaint, assess the CTA's position, and analyze any collected data. Staff would then issue an informal opinion on the dispute, notify each party of its findings, and, if appropriate, send money on deposit to either the customer or the CTA.

B. The Commission Should Institute a Formal Resolution Process for Customer Complaints As Well

If the customer is dissatisfied with the disposition of the complaint through the informal complaint process, TURN recommends that the customer be allowed to "appeal" by way of a formal complaint process in the same manner formal complaints are lodged currently. Thus, TURN suggests that, in the formal proceeding, the customer and the CTA be allowed to present information and evidence to the Commission. The Commission should provide a written decision to all parties and the Commission would have the ability to order the CTA to take corrective action, including an adjustment to a customer's bill or order reparations if a service which has been paid for has not been provided.

C. CTA Customers Who Have Suffered From CTA Fraud or Non-Performance Should Not Continue to Be Punished By Requiring Them to Keep CTA Service

A customer who has been the victim of fraud or non-performance by a CTA should not be victimized again by requiring them to complete the contractual agreement period or face early termination fees. TURN suggests that fraud or non-performance be considered a breach of the contractual agreement and the customer be allowed to immediately return to the IOU or find a replacement CTA without requiring the customer to pay any early termination fees. Any reentry fee should be paid by the CTA that had been determined to engage in fraudulent practices or otherwise had not performed under the agreement. Furthermore, TURN suggests that the customer be permitted to terminate the contract at any time during the contractual period after a CTA has been determined to have engaged in fraudulent practices or has not performed under the contract. There should be no time restrictions on the customer's period of return.

IV. RIGOROUS CONSUMER PROTECTION STANDARDS MUST BE IMPLEMENTED

The Commission has sufficient authority to implement consumer protection language to enforce the complaint resolution of SB 656. SB 656(h) states that “[t]he commission or the governing body may adopt additional core gas consumer protection standards in the public interest.” In our initial analysis, it appears that PG&E’s Gas Rule 23 has a significant number of consumer protections that TURN believes could benefit CTA customers. TURN suggests that – at a minimum – the Commission adopt consumer protection language from PG&E’s Gas Rule 23 to enforce the complaint resolution provisions of SB 656. At the very least, the following

language from PG&E's Gas Rule 23- adapted for CTAs generally – should be adopted by the Commission:⁴

1. If a bill rendered to the CTA for the IOU transportation service provided to the Customer remains unpaid after fifteen (15) days, the IOU will issue to the CTA a 7-day notice of nonpayment to the CTA, with a copy to the Customer. If the bill continues to be unpaid, the IOU will issue a 24-hour notice of nonpayment to the CTA with a copy to the Customer. If the bill remains unpaid, the IOU may immediately terminate the CTA Agreement without further notice. If the IOU issues the 24-hour notice, the IOU will also discontinue the billing arrangement that permits the CTA to collect IOU transportation charges from the Customer; bill the CTA for the unpaid Customer transportation charges; and send all subsequent Customer transportation charges directly to the Customer.

2. If the CTA does not pay any bills rendered to the CTA by the IOU within fifteen (15) days after transmittal, then the CTA may not add Customers until past due amounts, including all late charges, are paid.

3. Upon termination of a CTA Agreement, notice of such termination will be sent to the CTA, to each of the Customers in the CTA's Group, and to the CPUC.

4. The IOU will establish an escrow agreement/account for collections of outstanding Customer payments.

5. The CTA or its authorized agent(s) shall comply with the Customer Sign-Up Process and obtain the Customer's authorization.

⁴ PG&E Gas Rule, Sheets 17-25.

6. The CTA, or its authorized agent(s), shall not make, with dishonest, fraudulent or deceitful intent, material verbal or written misrepresentations in the course of soliciting or serving core gas aggregation customers.

7. The CTA or its authorized agent(s) shall not, with dishonest, fraudulent or deceitful intent, act to substantially benefit the CTA or its employees, agents, or representatives, or to disadvantage customers.

8. Customers may submit complaints to the IOU about the actions of the CTA.

9. If the IOU receives a complaint from a Customer, the IOU may provide the CTA with an opportunity to investigate and resolve the complaint with the Customer. The IOU may provide the CTA with relevant information, including a description of the complaint and Customer contact information, to investigate and resolve the complaint. If the complaint concerns an unauthorized enrollment, then the IOU shall also provide the CTA with the Customer's relevant Service Account Number(s).

10. Responses to a Customer complaint are due back to the IOU and the Customer within three (3) business days, starting with the day following the IOUs notification.

11. The CTA's response to the IOU will explain the resolution, the date that the Customer was informed of the resolution, and the means of communication with the Customer.

12. Regardless of the CTA's initial resolution of the Customer complaint, the IOU may request written documentation of the Customer's authorization for enrollment, marketing materials, the sales call or Third-Party Verification (TPV) for any complaint.

13. If the IOU does not receive a response from the CTA indicating resolution by the specified deadline, or if the IOU, or the Customer, finds a problem with the information provided, the IOU shall provide the CTA with an opportunity to provide supporting evidence,

such as, marketing material (for a general complaint), or proof of authorized enrollment (in instances where the complaint is about an unauthorized enrollment).

14. The IOU may make a determination of whether the Customer's enrollment authorization was properly obtained.

15. A Third-Party Verification should not use the IOU's phrasing or terminology for its gas programs such as "PG&E's Customer Choice Program," which is misleading to customers. Instead, the TPV should refer to "Core Gas Aggregation Service."

16. The Third-Party Verification must obtain a customer's acceptance of each of the principal terms and conditions for the service that will be provided.

V. CUSTOMERS MUST BE PUT ON NOTICE OF THE PRICE, TERMS, AND CONDITIONS FOR CTAS

As a general matter, TURN reiterates our request that customers are to be put on notice concerning the price, terms, and conditions for the CTA with which they enter into an agreement. As stated above, in order to avoid potential misrepresentations by CTA representatives or confusion by customers, prior to entering into an agreement, CTA must provide each customer with a written notice that includes, as described more fully above, the price, terms, and conditions of the CTA agreement.

