

**APPENDIX A****Page 1****Affiliate Transaction Rules****I. Definitions**

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

- A. "Affiliate" means any company 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. 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.

**APPENDIX A****Page 2**

- 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.

**II. Applicability**

- A. 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.
- B. 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.
- C. Unless the Commission provides otherwise, these Rules do not apply to transactions between a Commission-regulated utility and another utility who have sought and obtained this Commission’s authority to merge or otherwise conduct joint ventures, and the Commission has addressed the utility’s application after the effective date of the decision adopting these Rules.
- D. These rules do not apply to the exchange of operating information 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.

**APPENDIX A****Page 3**

- 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:** 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.

**III. Nondiscrimination**

- 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.
- B. **Affiliate Transactions:** 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

**APPENDIX A****Page 4**

process, or as provided for in Section V E (corporate support) and Section VII (new products and services) below.

1. **Provision of Supply, Capacity, Services or Information:** 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.
  2. **Offering of Discounts:** 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.
  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.
- C. **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.

**APPENDIX A****Page 5**

- D. 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.
- E. 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.
- F. 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;

**APPENDIX A****Page 6**

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.

**IV. Disclosure and Information**

- A. **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.
- B. **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

**APPENDIX A****Page 7**

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 appropriate compensation is paid, 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.

**C. Service Provider Information:**

1. Except upon request by a customer or as otherwise authorized by the Commission, 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.
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. 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.

**APPENDIX A****Page 8**

- 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.
- 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.
- F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and non-tariffed 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.

In the limited instance where the utility believes that a third party's request encompasses information which it believes should not be disclosed to the third party under existing grounds (i.e., a statute, Commission decision or General Order), the utility may apply to this Commission for a determination on whether the information should be protected from public disclosure. The utility shall (1) make such written request to the Executive Director no later than 48 hours after it receives the third party's request (or on the first business day thereafter if the 48 hours expires on a weekend or holiday); (2) fully and completely document its request; and (3) serve the request on the third party making the initial request and on all parties to this proceeding. The utility shall serve the third party making the request in a manner that the third party receives the document within 24 hours of service. Parties may respond to the request within three days of service. There will be no replies. The utility has the burden of proof in demonstrating that the information should be protected from public disclosure. However, 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 documents within 24 hours of service.

- 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



**APPENDIX A****Page 9**

period of three years, and longer if this Commission or another government agency so requires.

- 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.

**V. Separation**

- A. **Corporate Entities:** A utility and its affiliates shall be separate corporate entities.
- B. **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.
- C. **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. 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 sharing certain corporate support services with its affiliates as provided for by Rules below. Nor does this provision 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).
- D. **Joint Purchases:** Utilities are prohibited from purchasing goods and services jointly with their affiliates.

**APPENDIX A****Page 10**

- E. Corporate Support:** As a general principle, a utility and its affiliates may use 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 a general principle, unless otherwise permitted by these Rules, such joint utilization shall not allow or provide a means for the transfer of confidential information, create the opportunity for preferential treatment, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, corporate legal unrelated to marketing or regulatory issues, and pension management.

Examples of services that may not be shared include: state and federal regulatory affairs, state and federal regulatory legal, state and federal lobbying, employee recruiting, other financial planning and analysis, 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.

**F. Corporate Identification and Advertising:**

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
  - a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";
  - b. the affiliate is not regulated by the California Public Utilities Commission; and
  - c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

**APPENDIX A****Page 11**

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 communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.
4. 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 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.
5. 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.

**APPENDIX A****Page 12****G. Employees:**

1. 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.
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.).
  - 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 two years. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the two-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 three 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. 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

**APPENDIX A****Page 13**

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.

- 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.
- e. A utility shall not make temporary or intermittent assignments, or rotations to its affiliates.

**H. 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, 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.

**APPENDIX A****Page 14**

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.

**VI. Regulatory Oversight**

- A. **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).
- B. **New Affiliate Compliance Plans:** Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission and parties to the service list of this proceeding of the creation of the new affiliate. 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.
- C. **Affiliate Audit:** No later than one year from the effective date of the decision adopting these Rules, and every year thereafter, the utility shall have audits prepared by independent auditors that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file this audit with the Commission's Energy Division, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.
- D. **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.

**APPENDIX A****Page 15****VII. New Products and Services**

- A. Except as provided for in these rules, new products and services shall be offered through affiliates.** As used in this section, “products” includes use of real, intellectual, and personal property. “Tariff” or “tariffed” refers to Commission-approved terms and conditions of service, whether by traditional tariff or by approved contract or other such approval process as may be deemed appropriate by the Commission.
- B. Types of New Products and Services:** A utility may only offer for sale the following products and services:
1. Products and services that are currently offered by the utility pursuant to tariff;
  2. Unbundled versions of currently-offered utility products and services, with the unbundled versions being offered on a tariffed basis;
  3. New products and services that are offered on a tariffed basis; and
  4. Products and services which are offered on a non-tariffed basis and which utilize a portion of a utility asset or capacity where:
    - a. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
    - b. the involved portion of such asset or capacity may be used for the purpose of offering a product or service on a non-tariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services; and
    - c. the utility offering is restricted to less than 1% of its customer base.
  5. Unless the Commission establishes a different methodology, a utility should use the standard cost allocation methodology established to “calculate and determine the cost allocations used to apportion the cost of providing any good or service between the utility and its affiliate entities,” as set forth in Appendix A, Section II B in D.93-02-016, 48 CPUC2d 163, 174-175, in allocating the costs attributable to its offerings made pursuant

**APPENDIX A****Page 16**

to subsections 1 - 4 above. The utility should include this information in its annual report made pursuant to D.93-02-016, and should address this information in its annual audit conducted pursuant to these rules.

In no event, however, shall utilities offer natural gas or electricity commodity service on a non-tariffed basis. Examples of products and services which may be offered on a non-tariffed basis according to this rule include products or services which can be marketed with no incremental capital, little or no new forms of liability or business risk being incurred by the utility, and little or no direct management control.

- C. Conditions Precedent to Offering New Products and Services:** Before offering a nontariffed new product or service, the utility shall submit an advice letter stating its intention to offer such new product or service. The advice letter shall:
1. demonstrate compliance with these rules;
  2. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;
  3. demonstrate that the utility has not received recovery in the Transition Cost Proceeding, A.96-08-001, or other applicable Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and
  4. address the potential impact of the new product or service on competition in the relevant market.

In the absence of a protest to the advice letter, the utility may commence offering the product or service 30 days after submission of the advice letter. If a protest is filed, a utility offering of the product or service shall commence only after Commission approval of the advice letter process.

Further, products and services may be offered on a non-tariffed basis only if the offering of such product or service by the utility would not constitute an unfair competitive advantage, and only if :



**APPENDIX A****Page 17**

5. the utility abides by the cost allocation methodology, reporting, and auditing requirements in Rule VII B 5 above; and
  6. the Commission has approved and the utility has established a reasonable mechanism for treatment of revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, rather than doing so by application or other vehicle.
- D. **Current Offerings:** Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of April 9, 1997, may continue to offer such products and services, provided that (1) the utility complies with the cost allocation and reporting requirements in this rule, and (2) the Commission has approved such existing offerings of products and services prior to April 9, 1997 through a general rate case, application, advice letter, or other similar Commission procedure. No later than December 31, 1997, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, and requesting continuing authorization for the utility's continued provision of this product in compliance with or service the criteria set forth in Rule VII.
- E. **Section 851 Application:** A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a non-tariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in Rule VII C above.

**(END OF APPENDIX A)**