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Decision 97-10-087 October 30, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

OPINION REGARDING DIRECT ACCESS IMPLEMENTATION PLANS AND RELATED TARIFFS

I. Summary

In Decision (D.) 97-05-040 the Commission adopted a series of direct access policies and rules. The details of carrying out these policies and rules were left up to a series of workshops, workshop reports, and filings. Among the required filings that the investor-owned electrical corporations were ordered to prepare were their direct access implementation plans (DAIPs) and the pro forma tariffs and service agreements associated with the provisioning of direct access. Today's decision addresses the issues raised by those filings. We approve the tariff provisions and the ESP agreement that are attached to this decision as Appendix A and B, respectively. Other affected tariff rules, rate schedules, and attachments are also approved as discussed in the text of this decision.

Our decision today is the result of a dynamic process regarding the direct access tariffs. Part of this process was to allow the parties an opportunity to develop a uniform tariff that could be used on a statewide basis. Although a single, statewide tariff was never agreed to by all of the parties, this process did lead to a convergence of opinions. Together, the proposed tariffs and the tariffs we adopt today represent the substantial efforts of all market participants to reach agreement on a number of contentious issues.

Although we permit Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) to use its own tariffs on certain issues, we have attempted to move toward the use of a uniform direct access tariff for statewide use. Current system constraints prevent the use of such a statewide tariff at this time. However, in the near future, a uniform tariff is a distinct possibility. Such a tariff will eliminate inconsistent and differing rules among the utilities. The processes and systems that we adopt today are far from perfect, and are unlikely to please every direct access market participant. However, as time goes by and we gain more experience with direct access, these processes and systems are likely to undergo further revision as part of the ongoing review process which we adopt as part of this order.

II. Background

In D.97-05-040, the Commission ordered the utility distribution companies (UDCs) to file their DAIPs, along with their pro forma tariffs. Prior to the submission of the DAIPs, the UDCs were ordered to meet with interested parties in an attempt to reach agreement on the protocols and policies needed to implement direct access.

In a letter dated June 25, 1997, Edison on behalf of itself, PG&E and SDG&E requested to separately file the DAIPs and the pro forma tariffs. That request was granted in a June 27, 1997 letter from the Commission's Executive Director. The joint DAIP of PG&E, SDG&E, and Edison was filed on July 1, 1997. PacifiCorp and Sierra Pacific Power Company (Sierra Pacific) also filed separate DAIPs on the same date.[1] Southern California Water Company (SCWC) filed its DAIP, along with its proposed tariffs and service agreements on July 29, 1997.[2]

An Administrative Law Judge's (ALJ) ruling dated July 9, 1997 announced the schedule for filing comments on the DAIPs and on the pro forma tariffs of PG&E, SDG&E, Edison and SCWC.[3] The ruling also determined that the Energy Division should hold a workshop to address the pro forma tariffs of PacifiCorp, PG&E, SDG&E, and Edison.

Comments to the DAIP were filed by the various interested parties. Reply comments were permitted, and filed by PG&E and Edison on July 29, 1997, and July 31, 1997, respectively.

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[1] The DAIPs of PacifiCorp and Sierra Pacific contained their proposed tariffs. Sierra Pacific's filing also included the electric service provider (ESP) service agreement. PacifiCorp subsequently revised its DAIP in a filing made on July 18, 1997. PacifiCorp also made revisions to its proposed tariffs in a September 22, 1997 filing made in its transition plan proceeding, Application 97-05-011.

[2] Revised tariff pages were submitted by SCWC on July 30, 1997.

[3] The schedule for filing comments on the pro forma tariffs was extended to August 4, 1997 in a July 23, 1997 letter from the Executive Director.

In accordance with the June 27, 1997 letter, separate pro forma tariffs and service agreements were filed by PG&E, SDG&E, and Edison on July 15, 1997.[4] Comments to the pro forma tariffs and service agreements were filed in accordance with the ALJ ruling of July 9, 1997.

On August 7 and 8, 1997, the Energy Division convened a workshop to address the pro forma tariffs and service agreements of PacifiCorp, PG&E, SDG&E and Edison. At the workshop, a panel made up of PG&E, SDG&E, and Edison representatives answered questions and provided clarification about their respective utility's policies and practices as contained in the pro forma tariffs and service agreements. On August 22, 1997, the Direct Access Pro Forma Tariffs and Service Agreements Workshop Report (Workshop Report) was submitted and served on the workshop participants.[5]

The workshop also resulted in the formation of the Direct Access Alliance (Alliance). The Alliance represents diverse participants in the direct access market. The utilities began talks with representatives from the Alliance in late July to see if consensus could be reached on direct access tariffs and service agreements for statewide use. These negotiations continued even after the comments to the Workshop Report were filed.

Despite the many discussions, the participants were unable to agree on a consensus document prior to the due date for filing comments on the Workshop Report. The Alliance though had developed a draft of statewide tariffs. For the Commission to have the most current proposals before it, the Workshop Report

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[4] PG&E subsequently revised its proposed tariffs, rate schedules, and service agreement on August 1, 1997, September 16, 1997, and October 15, 1997. Edison made revisions to its proposed tariffs, rate schedules, and service agreements in filings made on July 25, 1997, September 16, 1997, and October 15, 1997.

[5] Apparently, the Workshop Report was not filed with the Docket Office. To ensure that there is a complete record of the filings upon which we have made decisions, we will direct the Energy Division to file the Workshop Report with the Docket Office. The Docket Office is directed to file the Workshop Report as of the date the Energy Division submits it for filing.

attached the Alliance's proposed statewide tariff and service agreement (Attachment 5 of the Workshop Report). PG&E and Edison also developed a revised draft of PG&E Rule 23 and Edison Rule 22 and a draft of the ESP service agreement. This was attached to the Workshop Report as Attachment 6.

As a result of the discussions between the UDCs and the Alliance, the Alliance and SDG&E were able to reach a consensus on a set of proposed tariffs for statewide use.[6] These tariffs were attached to their joint comments on the Workshop Report. PG&E and Edison were unable to reach agreement with the Alliance and SDG&E, but made some modifications to their proposed tariffs as a result of these discussions. The revised tariffs of PG&E and Edison were attached to their respective comments on the Workshop Report. As a result of the discussions with the Alliance, the revised tariffs of each of the utilities share the same format, offer similar direct access sign-up procedures and service options, and use the same or similar language on many pages.

Enron filed a motion on September 17, 1997 to file its comments on the Workshop Report one day out of time. The motion recites that Enron tendered its comments to the Docket Office for filing at 5:01 p.m. on September 16,1997. Due to delays in electronic transmission of the comments between Enron and its attorney, and because of delays in transportation in arriving at the Docket Office, the comments were not timely filed. Enron states that it was able to serve all parties by mail on the due date. No one filed any objection to Enron's motion. Since all the parties were served in a timely manner, and because Enron's filing arrived shortly after the Docket Office closed, Enron's motion should be granted, and the Docket Office should be directed to file the comments to the Workshop Report that were attached to Enron's motion as of September 17, 1997.

Due to the timing of the filing of these revised tariffs in the comments to the Workshop Report, an ALJ Ruling was issued on September 18, 1997, which provided

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[6] The joint proposed tariffs of the Alliance and SDG&E were revised in a filing dated September 19, 1997.

interested parties with the opportunity to file a response to the revised tariffs that were submitted as part of PG&E's and Edison's comments, and to the joint tariff filing of the Alliance and SDG&E.

The talks between the Alliance and the UDCs continued after the comments were filed. As a result of those ongoing discussions, PG&E and Edison were able to resolve some additional issues with the Alliance, which are reflected in their revised tariffs filed on October 15, 1997.

III. Direct Access Implementation Plans, Tariffs And Service Agreements

In D.97-05-040, the Commission ordered the UDCs to develop a plan which details the process and procedures that each UDC plans to use to implement direct access and to manage the direct access transaction requests. The result was the filing of the DAIPs. The DAIPs perform the following functions:

(1) to specify the direct access service options that are available to customers and ESPs under the new market structure;

(2) to describe the processes and procedures for customers and ESPs to select these service options; and

(3) to specify the roles, responsibilities and commercial relationships that will govern transactions between the UDCs and other market participants.

The DAIPs also refer to other Commission workshops and proceedings that have an impact on the provisioning of direct access.

The direct access tariffs and service agreements reflect the process and procedures contained in the DAIPs, and translate that information into tariff language and contractual agreements. They describe the specific terms and conditions by which market participants will be allowed to participate in direct access. Because the tariffs and service agreements reflect what is contained in the DAIPs, many of the comments on the DAIPs are reflected in the comments on the tariffs and service agreements, as well as in the comments on the Workshop Report. The areas of agreement and disagreement were reflected in the agenda organized for the workshop by the Energy Division staff and in the staff's Workshop Report. Instead of reciting and detailing all the different parties' comments and arguments on the DAIPs, pro forma tariffs, and

Workshop Report, we have summarized the areas of major disagreements in the sections on the Workshop Report, draft tariffs, and service agreements.

IV. Workshop Report

A. Introduction

The Workshop Reports notes that the agenda for the workshop was derived from a review of the comments on the DAIP, the pro forma tariffs, and service agreements. The Workshop Report also notes that the workshop process made considerable progress toward reaching a consensus on a number of issues.

B. Direct Access Service Election Process

The DAIP explains that two steps are required to change a consumer's energy supplier from the UDC to an ESP. The first step is for the ESP to enter into an agreement with the UDC which enables the ESP and the UDC to coordinate the provision of basic and additional direct access services to the customer. The second step is for the ESP to submit the direct access service requests (DASRs) to the UDC.

The Workshop Report identified the following issues with respect to the direct access service election process.

- UDCs' requirement for direct access customers to execute individual competition transition charge (CTC) agreements.
- Option to have customers contact UDC to make direct access request.
- Batch processing of DASRs.
- DASR processing criteria and treatment of "deficiencies."
- Partitioning of a meter or single account with multiple meters.
- Notification of former ESP of customer change in ESP.
- Role of UDC in disputes between customer and the ESPs.
- Charges for processing DASRs.
- Standardization of formats for UDCs' tariffs and service agreements.

According to the Workshop Report, a consensus was reached on five issues. The first item is with respect to the UDCs dealing directly with customers who elect direct access. Section 3.4.1 of the joint DAIP states that for initial implementation,

all necessary arrangements for direct access must be coordinated between the customer and the ESP. SDG&E and Edison had reserved the option to deal directly with customers who elect direct access. SDG&E and Edison clarified at the workshop that it was their intention to facilitate election of direct access for those customers who choose to contact the UDCs directly for information about switching to a non-UDC provider. The UDCs propose the following consensus language for the joint DAIP:

> "UDCs will assist customers requesting Direct Access information or service by providing general information on Direct Access, providing general information on the process for signing up for Direct Access, and providing a list of CPUC approved ESPs if available by the Commission. UDC Direct Access service sign-up must be done through the submittal of a DASR by the customer's chosen ESP as stated in the tariff and the ESP/UDC Agreement. SDG&E and SCE reserve the right to change this practice at a later date."

The second item of consensus pertains to batch processing of DASRs. The UDCs stated that it would be possible to perform batch processing of electronic DASRs. PG&E and Edison appear to require that all DASRs be submitted in electronic form, while SDG&E is willing to accept paper DASRS.

The third item of consensus pertains to DASR processing criteria and how deficient DASRs will be treated. The UDCs provided clarifying information about their processing criteria for DASRs, and how they would define and respond to deficiencies. The UDCs propose the following consensus language as part of the joint DAIP:

> "UDCs will generally work towards providing materiality standards for discretionary items in the tariffs, including specific guidelines on DASR submission and rejections, and Customer and ESP defaults."

The fourth item of consensus is with respect to the partitioning of a meter or a single account with multiple meters. The UDCs propose the following consensus language as part of the joint DAIP:

> "Utilities will clarify tariff language to explicitly state that a Customer with multiple accounts on a single premises can be

served by different ESPs as long as the accounts are not totalized or their energy measurements partitioned."

The last item of consensus about the election process pertains to notifying a former ESP of a change in ESP. The UDCs propose that the UDC will notify the former ESP of a customer's switch to a new ESP. This would not include the initial set up of direct access where one ESP's DASR may replace the DASR of another ESP.

The Workshop Report notes that the parties were unable to reach a consensus on several issues. They were unable to agree on whether a direct access customer must execute individual CTC agreements with the UDC. (See joint DAIP, section 3.4.2.) The Workshop Report recommends that this issue be clarified.

C. Billing

The Workshop Report states that D.97-05-039 allows the ESPs to select one of three billing options for each direct access customer served by an ESP. The first option is utility consolidated billing. Under this option, the utility bills for both the UDC and ESP charges, and presents a single bill to the customer. The second option is ESP consolidated billing, where the ESP bills the customer on a single bill for both the UDC and ESP charges. The third option is separate bills to the customer from the UDC and the ESP.

The workshop addressed four billing related issues. The issues are: (1) how notices and bill inserts will be treated with ESP consolidated billing; (2) the requirement for the billing agent to conform to the meter agents' schedule for reading meters; (3) whether ESPs must be able to provide both consolidated and dual billing; and (4) rate-ready versus bill-ready billing.

On the issue of bill inserts and consolidated billing, a consensus was reached with respect to the use of the billing envelope space. In Attachment 6 of the Workshop Report, revised Rule 23 and 22 of PG&E and Edison, respectively, permit the ESP in a consolidated billing situation to enclose any additional material in its billing envelope at its sole discretion. Agreement regarding the mailing of mandated notices in a consolidated billing scenario was also reached. This is reflected in revised Rule 23 and 22 of Attachment 6 at page 29.

Where meters need to be read manually, the metering and data management agent (MDMA) must be able to determine the schedule for reading meters in order to optimize routes and maximize meter reading efficiencies. This schedule must recognize any billing frequency requirements. Edison believes that there can be some flexibility in changing the billing cycle data, but that is limited by billing system constraints and meter reading limitations. The UDCs propose the following consensus language to the joint DAIP:

> "UDCs have limited ability to accommodate customers who wish to change their billing cycle dates. If ESPs develop a criteria on how the utilities may proportion the limited billing capacity to handle a customer's switch to a particular billing day, the UDCs will consider changing some customer billing dates as requested by the ESPs."

Another issue that was raised was whether the ESPs should be required to provide both consolidated and dual billing. Based on the discussion at the workshop, the UDCs offered the following consensus language:

> "An ESP doesn't need to have 'dual billing' capability. However, if the ESP or UDC consolidated billing service defaults, then the only options available are to take all the ESP's DA customers off DA service altogether, or for the ESP to find another, non-UDC billing agent."

An unresolved issue is whether PG&E should be required to offer bill-ready service on January 1, 1998. Under bill-ready billing, the ESP computes and provides the utility with the ESP's bill that is ready to be incorporated into the consolidated bill the utility presents to its customers. Under rate-ready billing, the ESP provides the utility with its rates for energy, which the utility then applies independently to the usage of the customer, and computes the bill for inclusion in the utility consolidated bill.

PG&E contends that it cannot offer bill-ready service on January 1, 1998 because of limitations imposed by existing billing systems and because of the time frame for implementation of direct access. This would require the ESP to supply rate schedules to PG&E which PG&E will then apply to the customer's usage to compute

the ESP's charges for the consolidated bill. SDG&E and Edison will offer bill-ready service under utility consolidated billing. That is, they will accept the ESP's charges in a bill-ready format that requires no computation by the utility.

According to the Workshop Report, the ESPs believe that PG&E should be required to provide the same billing options as Edison and SDG&E. The ESPs argue that if PG&E is not required to do so, this will be a barrier due to the increased cost of communicating customer information using multiple formats. In addition, the ESPs contend that rate-ready billing allows the UDC access to confidential rate information which could be used to the advantage of PG&E's unregulated affiliate.

The workshop participants also agreed that an ESP should not be required to be able to provide all billing options.

D. Credit And Collections

The issues addressed at the workshop regarding credit and collections are as follows:

- Partial and prorated payments under UDC consolidated billing, and what happens when there is a disputed bill.
- Delinquent payments prior to switching to direct access.
- Circumstances under which UDCs may disconnect and reconnect distribution service.
- Purchasing of receivables.

With respect to the first issue, the Workshop Reports states that the primary concern of the UDCs is that Public Utilities(PU) Code Section 779.2 prohibits the UDCs from disconnecting service for non-payment of non-utility charges. When there is only a partial payment, this could lead to disconnection of service because the utility charge may not be paid.

If the customer owes an outstanding balance to the UDC, the issue arises as to whether the UDC must be paid before the customer is allowed to switch to direct access. The Workshop Report states that the UDCs appear willing to work collaboratively with ESP representatives to develop a mutually acceptable policy as to

which delinquent balances must be settled before a customer is allowed to switch to direct access.

On the issue of disconnection, the UDCs have stated that they will not disconnect service for nonpayment of ESP bills. The ESPs have requested that in such a situation, the UDCs expedite a DASR to transfer the customer back to the UDC from the ESP. The UDCs and the other participants have not reached an agreement on this issue.

PG&E proposes to require the ESPs who select utility consolidated billing to sell their accounts receivable to PG&E. The sale would not be at a negotiated discount, but will instead involve an initial assumed bad debt rate with periodic true-ups to reflect actual uncollectible accounts. PG&E asserts that over a period of time, the money received by the ESP under the purchase of accounts receivable will be the same as under the straight pass-through method proposed by the other utilities.

PG&E contends that purchasing the accounts receivable is necessary because PG&E's current billing system can track only one receivable per customer account. Major system changes would be required to track payments, delinquencies and similar elements of ESP receivables as well as PG&E receivables for the same customer account.

E. Metering

The following metering issues were discussed at the workshop:

- Meter ownership issues related to direct access customers returning to bundled service.
- Whether ESPs may install meters prior to January 1, 1998.
- Conditions regarding the unbundling of metering functions.
- Whether ESPs may provide billing/metering without providing energy service.
- Meter timing issues related to inspection and installation prior to January 1, 1998.

With respect to meter ownership, Section 7.4.2 of the DAIP states that if a direct access customer returns to bundled UDC service, the UDC may either purchase the existing meter or replace it. At the workshop, the UDCs indicated that they will

allow direct access customers returning to bundled service to maintain ownership of a meter purchased while receiving direct access service, provided the meter meets Commission-approved standards and the UDCs can safely access and read the meter with its existing system.

Regarding installation of meters prior to January 1, 1998, the workshop participants agreed that once all the criteria, standards, registration and certification procedures, tariffs, and systems infrastructures are approved, obtained, and otherwise in place, an ESP may install a meter for its customers prior to January 1, 1998, as long as the UDC can read the meter with its existing system.

With regards to the tariff references to the metering-related schedules, standards, and equipment or procedures, the workshop participants agree that those should be tied to Commission-approved standards.

The Workshop Report notes that there are a number of unresolved metering issues. One area of disagreement concerns the provisioning by the UDCs of default metering services to the ESPs' direct access customers. The terms and conditions of default metering remain in contention between the ESPs and the UDCs.

Another unresolved issue is whether the transformers behind the meter are part of the meter and subject to the provisions that apply to meters. Edison and SDG&E consider the transformers to be part of the distribution system, and not subject to the meter provisions.

Another concern is over the provisioning of default metering services for direct access customers. Edison proposes that it provide default metering services for direct access customers only if it provides the services as a package. The ESPs oppose the packaging of these services, while ORA contends that the package concept is inconsistent with the Commission's unbundling decision.

The DAIP requires that the ESPs can provide metering and billing only to their direct access customers and that these services can only be selected by a customer through an ESP. Section 7.3.3 of the DAIP provides that the ESPs must agree to assume responsibility for all the functions in the metering service package. The Workshop

Report states that the inference is that unless an ESP provides the entire package of metering services, it cannot provide any portion of the package.

Another unresolved issue is whether the ESPs can provide billing or metering functions without having to provide energy service. The UDCs contend that the ESPs must provide energy service to offer billing or metering services. Enron contends that the ESPs should be allowed to provide billing or metering services without having to offer energy service.

Under Section 7.3.2 of the joint DAIP, the ESPs may either purchase the UDC's existing metering equipment, or they may remove or pay the UDC to remove the equipment and install their own. The sell or replace choice is the option of the UDC. The ESPs contend that the sell or replace choice should be at the option of the ESP.

F. Procedures For Aggregation

The main issue regarding aggregation is whether a customer can change rate schedules, and how the subsequent calculation of the transmission and distribution charges and the CTC will be calculated. The UDCs believe that customers should not be able to escape the CTC responsibility associated with a particular rate schedule through the aggregation process.

G. Service Fees

The joint DAIP proposes that certain service fees be implemented. The following service fee issues were discussed at the workshop:

- Timing of implementation of service fees and avoided cost credits.
- Application of direct access service fees that currently apply to UDC service.
- Application of service fees to ESPs vs. direct access customers.

At the workshop, PG&E offered to develop an outline of a compromise concept that would allow the Commission to adopt a workable fee structure effective on January 1, 1998, without limiting the opportunities of parties to take issue with the detail underlying these fees. PG&E provided a draft of this document to the Energy Division following the workshop. This material was included in the Workshop Report as Attachment 4. PG&E's compromise concept proposes to set interim charges that

would become effective on either November 1, 1997 or January 1, 1998. A review of these interim charges could take place with the avoided-cost-credit review that is scheduled for later in 1998. If the charges are adjusted by the Commission after that review, a recovery or crediting of the difference would take place.

V. Proposed Tariffs And Service Agreements

A. Introduction

We note at the outset that this decision does not specifically adopt the DAIP that was jointly filed by PG&E, SDG&E, and Edison on July 1, 1997. Instead of written revisions to the DAIP, PG&E and Edison have changed their proposed tariffs and service agreements. Changing the language in the tariffs and service agreements would change the language of the joint DAIP as well. Thus, we will analyze each of the proposed tariffs, and decide which of the tariff provisions should be adopted, rather than deciding how the language of the joint DAIP should be revised.

The proposed tariffs that we are comparing consist of the revised joint tariff submitted by SDG&E and the Alliance dated September 19, 1997, the "Revised Direct Access Tariff And ESP Service Agreement Of PG&E" filed on October 15, 1997, and the "Revised Direct Access Tariff And ESP Service Agreement Of Edison" filed on October 15, 1997. The revised tariffs of PG&E and Edison use the September 19, 1997 joint tariff of SDG&E and Alliance as the foundation for their latest revised tariffs.

The revision process that the Alliance and the UDCs have gone through has allowed us the opportunity to focus on the few issues in dispute, rather than several hundreds of issues. The Alliance and the UDCs share the spotlight and accolades for narrowing the issues, and for attempting to create one uniform statewide tariff.

In our analysis of the tariff provisions, we address most of the issues in the order that they appear in the draft tariffs. If we do not mention a particular tariff section, that indicates that the joint tariff of SDG&E and the Alliance are the same or substantially similar with the proposals of PG&E and Edison, and do not require further discussion. In that instance, we have adopted the tariff language that is

contained in the joint tariff. Our reason for doing so is that the vast majority of market participants do not have any opposition to the adoption of that tariff language.

We have separated our discussion of the proposed tariffs of the three large UDCs from the discussion of the three smaller UDCs, for two reasons. First, no comments were filed by other parties on the DAIPs and the proposed tariffs of the smaller UDCs. Second, the smaller utilities have in separate applications requested relief from certain provisions of Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854.).

B. PG&E, SDG&E and Edison

1. Introduction

Some existing system constraints limit the ability of the UDCs to comply with all the direct access rules we would like to adopt today. Even though the UDCs were made aware that changes to the electric industry were going to occur, the UDCs had preexisting customer information systems to handle their customer accounts. Changes of the kind contemplated by our electric restructuring decisions to these kinds of systems cannot be accomplished overnight, or even over several months. Also, the changes to the customer information systems and procedures are still being developed, and will undoubtedly face additional revisions in the months to come. In recognition of those constraints, we allow the limited use of differing tariffs for PG&E, SDG&E, and Edison, as discussed below. Eventually, we will move to eliminate such differences, and adopt one uniform, statewide direct access tariff. Today's decision places us on that path.

Since the revised tariffs of PG&E and Edison use the joint tariff of SDGE and the Alliance as their foundation, we will use the joint tariff proposal as the point of reference for all the tariff changes. Appendix A presents the direct access tariff that we adopt today. For ease of reference, Appendix A reflects the changes that we have made to the September 19, 1997 joint tariff in strikeout and underlining. As

discussed below, the direct access tariffs of each UDC may vary somewhat from Appendix A.[7]

2. Preface To Rule 22

In the preface to Rule 22, the three tariff proposals use different terminology to refer to the "small customer." PG&E capitalizes the term, while Edison uses the term "residential or Small Commercial." We will permit PG&E, SDG&E and Edison to use the terminology that they have proposed. Each utility's definition affects how it categorizes small customers.[8]

3. Customer Service Elections

In the last sentence of Section A.(1), the tariff language states "Customers may choose to return to default UDC services after having elected direct access." By including this sentence in Appendix A, it is our intent that any customer returning to default UDC service during the transition period will be returned to the customer's previous rate schedule at the frozen rate level.

The first difference in this section appears in Section A.(3) of the joint tariff. Billing options are more properly described in Section N (Billing Service Options And Obligations) rather than in Section O (Payment And Collection Terms). The tariffs of each of the three UDCs should reflect that "The billing options are described in Section N, Billing Service Options and Obligations."

The second difference appears in Section A.(3) in the use of the term "small commercial." It appears that the joint tariff intended that the term "small commercial" should actually be "Small Customers." This intent is evident from the reference in Section A.(3) of the joint tariff as to who is required to have interval metering in place. All three UDCs should reflect this change in their tariffs.

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[7] Should brackets "[ ]" appear in Appendix A that signifies either a message to the reader of the tariff, or that the correct tariff reference number should be inserted.

[8] Similar language changes appear in Sections B.(10), C.(1)(b), D.(2), and E.(9) of the joint tariff. We will permit the individual UDCs to use their own terminology.

4. General Terms

The first difference appears in Section B.(1). The tariff proposals of PG&E and Edison add the following: "Unless otherwise stated, all references to UDC charges shall include the Trust Transfer Amount (TTA) charges." PG&E had used the term "Fixed Transition Amount" (FTA) instead of the TTA in an earlier version of PG&E's tariff. The FTA is described in PG&E's Rule 1, which was attached to its July 15, 1997 tariff filing, as:

> "A non-bypassable, separate charge that is authorized by the Commission to be charged to residential and small commercial customers to allow PG&E to recover financed transition costs and the costs of providing, recovering, financing or refinancing transition costs, including the costs of issuing, servicing, and retiring Rate Reduction Bonds."

It is our understanding that PG&E and Edison plan to replace all references to the FTA with the TTA, and that the definition of TTA would be the same as for FTA. Since the inclusion of this proposed tariff language seems only to clarify that the TTA charges are included in the UDC charges, we will adopt this provision and require that it be included in all three UDCs' tariffs.[9]

The second difference in the General Terms section is found in Section B.(2)(a), B.(2)(b) and B.(2)(c). PG&E and Edison propose language that the UDC should not discriminate, and that the UDC shall discharge its responsibilities in compliance with the rules adopted in the affiliate transactions proceeding, Order Instituting Rulemaking (R.) 97-04-011.

We have compared the provisions of the joint tariff to the proposed language of PG&E and Edison. Section B.(2)(a) and B.(2)(b) of the joint tariff is supported by D.97-05-040. At page 67 of that decision, the Commission stated that one

[9] The name change from FTA to TTA is also found in Sections C.(3), N.(5)(a), N.(5)(b), and R.(2)(b). We will permit those changes to the UDCs' tariffs as well.

of the affiliate transaction guidelines that the investor-owned utilities would have to follow is the following:

> "The regulated UDC shall not discriminate in the treatment of the affiliated and the non-affiliated electric service providers in the processing of direct access requests or other transactions."

This affiliate transaction guideline is expressed in the joint tariffs in Sections B.(2)(a) and B.(2)(b). The purpose of the affiliate transaction guidelines is to prevent the kinds of things that are spelled out in the joint tariff. The proposed language of PG&E and Edison would rely instead on the rules adopted in the CPUC's 'affiliate transactions' proceeding, R.97-04-011. Since no rules arising out of that proceeding have been adopted yet, the preferred tariff language should use the existing affiliate transaction guidelines. For that reason, the tariffs of all three UDCs shall reflect the language contained in the joint tariff in Sections B.(2)(a) and B.(2)(b). The heading in Section B.(2)(a) shall be changed from "Neutrality" to "Non Discrimination." We will also require all three UDCs to delete the language in Section B.(2)(c) of the joint tariff. Such a provision presupposes the outcome in R.97-04-011.

The next difference occurs in Section B.(2)(d) of the joint tariff. PG&E and Edison propose to add two sentences to this section from their tariffs. The suggested language provides the UDCs with a mechanism to justify delays in providing direct access. We decline to adopt this additional language.

The next difference occurs in Section B.(2)(e) of the proposed tariffs of PG&E and Edison. The proposed deletions of two references to the ESP by PG&E and Edison are more reflective of what the UDC is actually doing. The UDC is providing transmission and distribution services to deliver electric power to direct access customers. The deletions proposed by PG&E and Edison result in more precise tariff language. The tariffs of all three UDCs should reflect these deletions.

The next difference occurs in Section B.(9) of the joint tariff. PG&E and Edison propose to add the words "or providers" in two places. The proposed additions have the effect of prohibiting the splitting of loads between more than one

provider. One of the parties commented that the UDCs should not be permitted to unjustifiably limit a customer's choice of providers by defining a customer's accounts and limiting each account to a single ESP. The addition of these two words is reasonable. The joint tariff would prohibit the partitioning of electric loads of a service account among electric service options. In addition, the joint tariff provides that the entire load of a service account must be nominated for only one of the available electric service options. The reason for such restrictions is to ensure efficient administration. If a single service account were allowed to have multiple service options, or multiple providers, complex tracking mechanisms would be needed to keep track of all these different options or providers. We will adopt the additions proposed by PG&E and Edison. The tariffs of the three utilities should reflect this change.

The next change involves Section B.(10) of the joint tariff. PG&E's proposal to include a notation about the load profile workshop is not necessary. Should the load profiling decision alter this particular tariff section, the utility may file an advice letter seeking to modify the tariff section. The strikeout proposed by PG&E and Edison is appropriate. The tariffs of the three utilities should make these changes.

The proposed change to Section B.(12) would add some language about the use of statistical load profiles to calculate the CTC for hourly power exchange (PX) rate option customers.[10] We will permit that language to be included in the tariffs of all three utilities.

Section B.(13) covers master metered customers. PG&E and Edison have proposed to insert the word "provider(s)" in two places. This change is similar to the splitting of load issue that we discussed earlier. This addition makes sense as well for this provision. The tariffs of all three utilities should reflect the change proposed by PG&E and Edison to Section B.(13).

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[10] In D.97-08-056 at page 38, customers on the hourly PX rate option are referred to as "virtual direct access" customers. We prefer to use the term hourly PX rate option. (See D.97-05-040, fn. 17, p. 36.)

We indicated in D.97-05-040 that we would address the issue of master meters and direct access in an upcoming decision. We still plan to do so. As an interim measure, we will permit master metered customers who provide sub-metered tenant billing to participate in direct access as a single account. This interim measure is necessary to afford master metered customers the opportunity to participate in direct access.

PG&E and Edison propose to add Section B.(14), "Service Fees and Other Charges," to the tariff. For non-competitive services, i.e., those services for which the Commission determines that there are insufficient providers to ensure customer choice, service fees are to be established by the UDC based on incremental cost and shall be approved by the Commission. Once approved, these fees will be included in the appropriate UDC rate schedule. During the interim period between the start (November 1, 1997) of direct access and a Commission decision approving specific fees for non-competitive services, PG&E and Edison propose that the UDC will record the net incremental costs associated with providing non-competitive services in a memorandum account. The proposed tariff provides that the ESP or customer shall be responsible for payment of those fees upon the Commission's approval. If the UDC is unable to collect such fees due to the insolvency of the ESP or the customer, the proposed tariff provides that the UDC shall collect such fees under the direct access implementation charge as provided for in PU Code Section 376.

PG&E and Edison also propose that for competitive services, i.e., those services for which the Commission determines there are sufficient providers to ensure customer choice, service fees will be established by the utility through an advice letter that is effective five days after filing. For competitive services, such as billing and metering services, the proposal would permit the utility to charge interim fees. During the interim period between November 1, 1997 and Commission approval of these fees, the UDC will track the fees and costs associated with such services in a memorandum account. If the service fees that are approved by the Commission vary from those included in the appropriate rate schedule, the fees that were previously charged will be subject to refund or adjustment.

With respect to fees for competitive services, PG&E and Edison are in accord with the position of the Alliance. That is, fees for these kinds of services are appropriate, subject to oversight by the Commission. With respect to non-competitive services, such as the processing fee for DASRs, in earlier proposed tariff filings PG&E and Edison had taken the position that interim fees should be imposed at the outset. The Alliance opposes the imposition of interim fees for non-competitive services. The latest tariff filing of PG&E and Edison reflects the position of the Alliance.

The first issue to resolve is whether imposing or booking the interim fee to a memorandum account would violate the rate freeze provisions of AB 1890. The Energy Producers and Users Coalition (EPUC) and the Cogeneration Association of California (CAC) filed joint comments on the Workshop Report. They do not believe that the imposition of fees for either competitive or non-competitive services is lawful or reasonable. EPUC/CAC argue that the proposal to impose direct access fees is prohibited by the rate freeze provisions of AB 1890 because it would increase rates above the level in effect on June 10, 1996. EPUC/CAC contend that the UDCs have no legal right to impose additional charges on direct access customers until the rate freeze expires.

PG&E argues that the reasonable costs of implementing direct access are recoverable under PU Code Section 376. PG&E contends that AB 1890 did not intend for the rate freeze to prevent the utility from recovering those kinds of costs.

We agree with PG&E that the imposition of an interim fee for "competitive services," and the booking of "non-competitive services" to a memorandum account, is not unlawful.[11] The argument of EPUC/CAC relies on PU

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[11] We believe that the term "competitive services" should be replaced by "discretionary services." It is a discretionary service because the customer has the right to choose a service provider. The term "non-competitive services" should be changed to "non-discretionary services." The customer does not have a choice when non-discretionary services are offered. Our change in nomenclature avoids having to engage in a debate as to whether each "competitive service" offering faces competition. The provisions contained in Appendix A have been revised to reflect the change in terminology.

Code Sections 330(v), 367, and 368. PU Code Section 330(v) states in part : "Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations." The "charges associated with the transition" is meant to refer to the uneconomic costs for generation-related assets and obligations, and other costs deemed to be transition costs. (PU Code Sections 367 and 368.) The reasonable cost of uneconomic generation and other specified costs which are not recoverable in market prices are to be amortized, "consistent with not increasing rates for any rate schedule contract, or tariff option above the levels in effect on June 10, 1996." (PU Code Section 367(a).) Each UDC's cost recovery plan is to be designed so that the rates in effect on June 10, 1996 remain in effect until uneconomic costs are recovered, but no later than March 31, 2002. (Section 368(a).) Given the preceding language, the rate freeze provision does not prevent the recovery of costs of programs to accommodate the implementation of direct access. However, we refrain in this decision from deciding whether the non-discretionary services should be permitted to be recovered under PU Code Section 376. That issue will be deferred until we examine the costs of providing those kinds of services.

Our next inquiry is whether interim fees for discretionary services should be imposed subject to trueup. The term "competitive services," now referred to as discretionary services, is described in Section B.(14)(c) of the tariff proposals of PG&E and Edison as those kinds of services for which the Commission determines there are sufficient providers to ensure customer choice.[12] In separate filings made on October 1, 1997, SDG&E and Edison provided additional information on the type of service fees they propose to collect, and provided their interpretation of what are

[12] We have changed the description of discretionary services in Section B.(14)(c) to the following: "For services for which there are sufficient providers to ensure customer choice…."

"competitive" and "non-competitive" services.[13] SDG&E and Edison generally describe competitive services as metering and billing services.

D.97-05-039 permits competition for metering and billing services. We agree with the Alliance and other parties that the UDCs should be able to charge for these kinds of discretionary charges. Interim fees and the booking of incremental costs to a one-way memorandum account are needed to ensure that the UDCs are not disadvantaged when direct access begins. [14] We will permit the UDCs to collect interim fees for competitive metering and billing services subject to refund at a later time. To the extent that the memorandum subaccounts authorized in D.97-05-040 at page 77 are inadequate to track the fees and costs associated with metering and billing services, the UDCs are authorized to establish additional memorandum subaccounts for such purposes. Should a UDC decide to do so, an advice letter requesting the establishment of such subaccounts shall be filed within 21 days of the effective date of this decision. Pursuant to General Order (GO) 96-A, interested parties will have 20 days to protest those advice letters.

In allowing the UDCs to collect interim fees for discretionary services, we want to make clear that such action should not be construed as a decision on the merits of the October 1, 1997 filings of SDG&E and Edison, nor as approval of the fees charged by the UDCs. Those issues, and the question of where these issues should be considered, will be addressed in a future ruling or decision.

The next question is whether the fee for non-discretionary services should be booked to a memorandum account pending further Commission action, or whether an interim fee should be imposed subject to true up. The term "non-

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[13] In an oral ruling on October 13, 1997, the ALJ permitted interested parties to file comments on those filings on October 24, 1997.

[14] By a one-way memorandum account, we mean that if the costs of providing the service are lower than the interim fee that is collected, the customer will receive a refund. However, if the cost of providing the service is higher than the interim fees that have been collected, the fees will only be adjusted on a prospective basis.

competitive" services, now relabeled in Appendix A as "non-discretionary," is described in Section B.(14)(a) as services for which the Commission determines that there are insufficient providers to ensure customer choice. These are the kind of services which only the UDC can provide. For example, access to essential facilities, such as the distribution system, is clearly not a discretionary service. SDG&E and Edison plan to assess service fees for DASR processing, ESP account establishment, ESP credit-worthiness checks, other direct access administrative services, and customer requests for usage information.

Although PG&E and Edison now adopt the position of the Alliance that interim fees should not be collected at the start, there is some merit in the argument that the fees should be imposed on the ESPs and end-use customers at the outset. By assessing fees at the outset, customers are sent a true price signal of how much their electricity choices actually cost them. However, since the parties disagree whether these costs are being collected elsewhere, and whether credits should apply as well, we agree that interim fees for non-discretionary services should not be collected at the outset.

PG&E and Edison's proposal to book the incremental costs of the non-discretionary services to a memorandum account and then seek to recover the amount from the customer presents a retroactive billing question. We believe that the better approach is to allow the incremental costs to be booked to a memorandum account. The Commission should then determine whether the incremental costs are proper or if other credits or other revenues should offset the incremental costs. If the costs are found to be proper, and money is owed to the UDCs, then PU Code Section 376 recovery may be considered if the costs were incurred to implement direct access and all the other conditions of PU Code Section 376 are met.

We will adopt the tariff proposal of PG&E and Edison to book the incremental costs of non-discretionary services to a memorandum account pending a Commission decision regarding the appropriateness of such costs and possible recovery under PU Code Section 376. As discussed earlier, the adoption of this interim procedure should not be viewed as a decision on the merits regarding service fee issues. Consistent with the above discussion, the UDCs may file an advice letter to set

up additional memorandum subaccounts to track the costs of providing these non-discretionary services pending further Commission action.

With respect to the services fees, it would be useful for us to provide some guidance to assist the parties in developing appropriate levels of non-discretionary fees. We are permitting the UDC to book what it believes is the incremental cost of implementing direct access to a memorandum account. These incremental costs include both non-recurring and recurring costs. Examples of non-recurring costs are those costs associated with the development of new systems and processes, while recurring costs are those that recur each time a transaction is processed. We believe that fees should be based only on recurring costs. To send the proper economic signal as to the costs of switching providers, it is appropriate to base the DASR processing fees of the UDC on the costs that actually vary with the number of DASRs processed. By basing the DASR fee on the incremental cost of processing a DASR, we will send the proper price signal and will allow a competitive market to develop. The costs associated with the development of a DASR processing system and other direct access start-up costs may either be given PU Code Section 376 treatment, if they meet the conditions and requirements of that section, or they may be recovered in non-recurring charges imposed on ESPs for establishing the ability to provide direct access. In the latter case, only those non-recurring costs that vary with the number of ESPs should be recovered in fees for non-discretionary services. Since all customers of the UDC have the ability to choose as a result of the direct access program, it is appropriate to recover these costs, to the extent they are eligible for recovery, from all customers. To require only those that exercise their choice to pay all the costs of having choice would result in unreasonable service fees for non-discretionary services and would impede the efficient operations of the market. Further, the greatest uncertainty in setting fees to recover costs borne by the UDC to implement direct access is the uncertainty of the actual demand for direct access. Recovery of fixed costs in a variable fee, such as a per-DASR fee, creates unnecessary risk for both ratepayers and the UDC.

We approve the use of tariff language contained in Section B.(14)(a) through B.(14)(e) and B.(14)(g) of the tariff proposals of PG&E and Edison with some

slight modification as discussed above. In Section B.(14)(b), the phrase "pending the CPUC's decision approving specific service fees" shall be replaced by: "pending the CPUC's decision regarding service fees." In addition, the phrase, "payment of such fees upon the CPUC's approval" shall be replaced with "payment of such fees if the CPUC approves such fees." The phrase in Section B.(14)(d) that states "and CPUC approval of these fees" shall be replaced with "and a Commission decision regarding such fees,..." Also, the phrase "If the service fees approved by the CPUC vary from those included" shall be replaced with "If the service fees are approved by the CPUC, and such fees are lower than those included…." These modifications are appropriate because the proposed tariff language presumes that the Commission will ultimately approve the fees.

Section B.(14)(f) of the proposed tariffs of PG&E and Edison make reference to the fees for direct access services.[15] These fees are contained in the following utility rate schedules shown in Table 1.[16]

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[15] PG&E's proposed tariff appears to have mistakenly referred to its direct access fee rate schedules as DASF-DAC and DASF-ESP.

[16] PG&E and Edison have proposed that fees for discretionary services can be filed by an advice letter that is effective five days after filing. We believe 30 days is more appropriate. Section B.(14)(c) of Appendix A reflects this. This issue will be revisited in the proceeding addressing the charges and proposed fees for discretionary and non-discretionary services.

TABLE 1

PG&E	
Schedule E-DASR	September 16, 1997 Comments
Schedule E-ESP	
Schedule E-EUS	
SDG&E	
Schedule DA	October 1, 1997 Filing Of Interim
	Direct Access Service Charges
Edison	
Schedule DASF-DAC	October 1, 1997 Supplementary
Schedule DASF-ESP	Tariff Filing

As discussed above, interim fees for discretionary services need to be adopted prior to the start of direct access. However, no interim fees for non-discretionary services are being approved at this time. Instead, we are permitting the incremental costs of providing non-discretionary services to be booked to a memorandum account.

Among the non-discretionary fees that the UDCs seek to impose is a DASR switching charge. This charge ranges from $5.00 for PG&E, $8.00 for SDG&E, and $12.00 or $24.00 for Edison. If such fees are approved in a proceeding examining the non-discretionary fees, we would consider the possibility of waiving the DASR switching charge for all existing customers on a one-time per customer basis, and allowing all new customer accounts to avoid the charge altogether, or waiving the charge for a certain period of time. Such a waiver would help to level the playing field because all existing customers are the customers of the utilities. With one-time waiver, there is no cost to the customer for initially switching to an ESP. It is analogous to the situation where a new telephone customer is free to choose among the many interexchange carriers (IECs) when the customer first signs up for service. Any subsequent change of an IEC by the customer involves a switching fee.

We approve on an interim basis those fees for discretionary services for each of the three utilities shown in the rate schedules identified in Table 1 above or the rate elements that are contained in those rate schedules. As noted above, our interim approval of the above rate schedule shall not be construed as a decision on

the merits of those rate schedules or of the elements contained in the rate schedules. The specifics of each of those rate schedules, the costs of providing such services, and possible offsets to those costs shall be examined in a proceeding to be determined in the future.[17] Each of the utilities shall include Section B.(14)(f), as shown in Appendix A, in their tariff with reference to their appropriate rate schedules.

With respect to the rate schedules for non-discretionary services, or the elements of the rate schedules which apply to non-discretionary services, those will be examined in a proceeding to be determined. Since we have only permitted the incremental costs of providing those non-discretionary services to be booked to a memorandum account, we do not need to approve those schedules at this time.

A third type of service fee is also contemplated for services which SDG&E refers to as exception services. Exception services, as contemplated by SDG&E, are: (1) re-reading an ESP meter; (2) re-billing UDC charges; (3) late payments from ESPs; (4) returned check for ESP; and (5) ESP credit-worthiness check.

The next change between the joint tariff and the tariff proposals of PG&E and Edison occurs in Section B.(14) of the joint tariff. This provision deals with the CTC obligation. The current proposal of PG&E and Edison, labeled as Section B.(15), represents a change from their original position. Originally, they had taken the position that the ESPs would have to obtain an agreement in writing from each of their direct access customers that the customer remains liable for the CTC. Their current position essentially adopts, with slight modifications, the position taken by SDG&E that PU Code Section 370 requires a written agreement only when the consumer is not using the utility's facilities for direct access. We will accept the tariff language that PG&E and Edison made to SDG&E's language as proposed in Section B.(15) of their tariffs, and require that language to be included in the tariffs of the three UDCs.

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[17] Attachment 4 to the Workshop Report suggests that these fees and charges be reviewed in the avoided-cost credit review that is scheduled for 1998.

As PG&E and Edison have come to recognize, a written agreement is needed from a consumer only when that consumer is no longer using the utility's facilities for a direct access transaction. This is specifically provided for in PU Code Section 370. Although the Preferred Policy Decision[18] at page 141 and in Ordering Paragraph 28 stated that direct access customers must sign an agreement to pay their share of transition costs, PU Code Section 370 should control. This section was enacted after the Preferred Policy Decision was issued. If written agreements are required of all direct access customers, this would require an enormous effort, and would discourage consumers from signing up for direct access. Furthermore, PU Code Section 392(a)(2) provides that the utilities are to provide conspicuous notice that if the customer elects to purchase electricity from another provider that the customer will continue to be liable for payment of the CTC. When PU Code Sections 370 and 392 are read together, it is clear that the Legislature intended that the statutory provision of PU Code Section 370 should prevail.

The next change occurs in Section B.(15) of the joint tariff, or Section B.(16) of the proposed tariffs of PG&E and Edison. Southern California Gas Company (SoCalGas) commented that franchise fees are based upon contractual relationships between a UDC and the cities and counties in which its transmission and distribution property is located. SoCalGas contends that the UDCs should continue to pay these fees and include such fees within their tariffed UDC charges. We note that another fee is the annual fee imposed upon the utilities pursuant to PU Code Section 401. That fee is collected by the utility from its "customers and subscribers." (PU Code Sections 404, 431.)

It appears that the proposed phrase, "The UDC will continue to bill for Franchise fees for energy services performed by an ESP," was meant to include the fees imposed by cities and counties on a utility that transports electricity over utility and nonutility transmission or distribution systems. These fees are provided for in PU

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[18] D.95-12-063 as modified by D.96-01-009.

Code Section 6350 et seq. Section 6354 specifically provides that these fees are to "be recovered from the transportation customer through the energy transporter's normal billing process." The proposed tariff language is incorrect because the franchise fee is imposed on the "transportation customer who receives transportation service." (PU Code Section 6352.) It is not imposed on the transportation customer for the energy services that it performs. The tariff should be changed to reflect this. We will adopt Section B.(16) of the proposed tariffs of PG&E and Edison with some modification, and require it to appear in the tariffs of all three UDCs.

With respect to the Commission's fee imposed upon utilities, since the Commission's fee is to be collected from the utilities' customers and subscribers, the UDC should bill the ESPs for this fee as well in the same manner that franchise fees are billed. This will ensure that the Commission's fee is collected from all the utility's customers and subscribers. As for the "other fees, taxes, and surcharges," both SoCalGas and PG&E point out that the UDC and the ESP should be separately responsible for complying with the utility user tax because the UDC does not possess the data to calculate these kinds of charges. We agree.

The next difference is found in Section B.(16) of the joint tariff, or in Section B.(17) of the proposed tariffs of PG&E and Edison. Three key differences are found in subsection (b). The first is that PG&E and Edison propose to insert a broad disclaimer of liability for both the UDC and the ESP "for any indirect, special, consequential, or punitive damages of any kind whatsoever, either in contract, tort or strict liability." We decline to adopt such a disclaimer. The Commission should not be the body to decide whether the UDC or an ESP should be shielded from liability for damages of the kind described.

The second difference is that PG&E and Edison propose to add language regarding the Commission's exclusive jurisdiction to resolve interpretations of, modification of, or compliance with any of the direct access tariff provisions or the ESP-UDC service agreement. Although the Commission is the regulatory body charged with the restructuring of the electric industry in California, the decisions of the Commission are still subject to appellate review. (See PU Code Section 1756 et seq.) The

following proposed tariff provision is appropriate, and should be included as Section B.(17)(c) in the tariffs of the three UDCs:

> "The CPUC shall have initial jurisdiction to interpret, add, delete or modify any provision of this tariff or the ESP-UDC Service Agreement, and to resolve disputes regarding the UDC's performance of its obligations under the UDC's electric rules and tariffs, the ESP-UDC Service Agreement and requirements related to Direct Access service, including any disputes regarding delays in the implementation of Direct Access."

The third difference is that PG&E and Edison propose to add a sentence that would impliedly permit the Commission to address disputes involving a claim for damages, and if the Commission fails to resolve the damages issue, the dispute is to be resolved by binding arbitration. We decline to adopt that provision as part of our direct access tariffs. One of our reasons is PU Code Section 394.2, which was recently added to the PU Code by Senate Bill (SB) 477. (Ch. 275, Stats. 1997, Section 15.) PU Code Section 394.2 permits residential and small commercial customers to proceed with a complaint against an ESP in either a civil action or by filing a complaint with the Commission. However, PU Code Section 394.2(b) specifically provides that the Commission's authority "shall not be expanded to include … an award of any other damages…." The proposed sentence is contrary to the provisions of that section. Another reason for not adopting this tariff provision is that the Commission has no jurisdiction to award monetary damages. (30 CPUC2d at 123; *Vila* v. *Tahoe Southside Water Utility* (1965) 233 Cal.App.2d 469.)

5. Customer Inquiries And Data Accessibility

The first difference in this section is found in the last paragraph of Section C.(1)(b). PG&E proposes to make some slight revision to how new customers will receive information about their choices for electric service. We find the proposed language reasonable, and it should be included in the tariffs of all three UDCs.

We believe that when a customer begins the process of initiating electric service with the UDC, that the UDC should be obligated to inform the customer

of the customer's ability to choose an electric provider, and that the information described in Section C.(1) is available to them. The customer should also be informed of the toll-free number of the Electric Education Call Center so long as it remains in operation. This will promote the availability of direct access at the primary point of contact for consumers. Section C.(2) of Appendix A reflects this requirement. We direct the UDCs to prepare a uniform, written script from which the UDC's customer service representative can read to inform customers initiating service that they have the right to select a supplier of electricity. Such a script shall be submitted within 20 days to the Energy Division for approval.

Section C.(4)(b) states:

> "It may be necessary for the UDC to shed or curtail customer load at the request of the ISO, or as otherwise provided by Commission tariffs. In such cases, the UDC will give both the affected customer and ESP as much notice as reasonably possible."

The California Large Energy Consumers Association (CLECA), the California Manufacturers Association, and Robinsons May Department Stores, collectively referred to as CLECA et al., commented that Section C.(4)(b) of the joint tariff proposal provides inadequate notice. They argue that under the current tariffs, the UDCs have a minimum notice provision that they must meet unless there is a major emergency. They propose that the tariff language state that the UDCs will meet their tariffed minimum notice provisions, or provide greater notice if possible, absent a major emergency.

The problem that we have with the recommendation of CLECA et al. is that it is uncertain how much notice the ISO will give to the UDC to shed load. The ISO may request that the UDC shed load immediately, in which case the UDC would have very little time to notify its customers and the ESPs. The recommendation of CLECA et al. illustrates that existing tariffs will need to be reexamined to ensure that they are consistent with the direct access tariffs. It may turn out that the language in other existing tariffs should control the direct access tariff. As discussed below, we will establish a process to review existing tariffs with the purpose of harmonizing other

tariffs with the direct access tariff and to make recommendations as to what tariff changes are needed.

6. ESP Service Establishment

PG&E and Edison propose to add the phrase "for all transactions" in Section D.(2). That additional language simply clarifies that the independent verification agent is being used by the ESP to confirm transactions. We will permit that addition to the UDCs' tariffs.

The next difference appears in Section D.(4). PG&E and Edison propose to replace the word "meter" with "MDMA" (metering and data management agent). This replacement is a more accurate description of the kinds of metering services that ESPs can offer. That change should be adopted.

PG&E and Edison propose to add Section D.(5) to the direct access tariff. That proposal calls for compliance testing to ensure that ESPs offering consolidated ESP billing services, meter services, or MDMA services have the ability to perform such functions. The proposed tariff language also provides that the UDC will continue to provide those services until the compliance testing has been completed. The issue about compliance testing was discussed briefly in the workshop on metering and data communications standards. We will adopt on an interim basis the proposed language in Section D.(5) for all three UDCs. This interim provision is needed to ensure that the ESPs offering these kinds of services are capable of providing such services. The issue about proof of the ESP's capability to provide these kinds of services will be addressed in the decision concerning the metering and data communications workshop.[19] In the interim, however, the UDCs should be aware that the standards for this compliance testing should not be unreasonable, and that any such testing should be

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[19] Section D.(4) of all three proposed tariffs refer to the Commission's "Electronic Data Exchange requirements." Those requirements were also raised in the workshop on meter and data communications standards. To the extent that we approve tariffs containing such issues, we do so on an interim basis. A final determination of those issues will be addressed in the decision on that particular workshop.

completed in a timely manner. Compliance testing shall not be used by the UDCs in an anti-competitive fashion to restrict the entry of any competitors.

7. Direct Access Service Request

We first address an issue raised in Section E.(1) of the proposed tariffs. Some of the parties have questioned why PG&E cannot process written DASRs. PG&E contends that it is unable to do so at this time, and that the processing of a large volume of DASRs can be done only with a paperless system. We agree with PG&E that in this age of computers and the Internet, the preferred process of handling these DASRs is through electronic rather than paper DASRs. Thus, we will leave it to the discretion of each UDC whether the ESPs can submit their DASRs in some other manner.

The first difference in this section is found in Section E.(2). PG&E and Edison propose to eliminate the reference to allowing a single DASR to be used for a group of service accounts. Although the Workshop Report indicates that some consensus regarding batch processing was reached, it is unclear what the various parties intended.

PG&E comments that many of the parties have requested that the ESPs be required to submit a single DASR for more than one service account. Such a process has been referred to as "batching." PG&E states that batching will not work for PG&E because its systems require that for each customer account, there must be a full record of all the DASR information. PG&E contends that it cannot upload this information if more than one service account is batched into a single DASR. PG&E proposes to provide a computer application to assist the ESPs with entering the data in the required format.

Unless our concept of batching is mistaken, we cannot envision a system where changes to multiple service accounts would consist of a single DASR. Each customer request will need certain identifying information as well as a list of what types of services are being changed. Although all three tariff proposals refer to the

DASR form as Appendix A (see Section E.(1)), only PG&E and Edison have provided the data elements that each of them require on the DASR form.[20] As noted by PG&E, an earlier version of the data elements that make up PG&E's DASR was included in the "UDC-ESP Communications: Supplement To The July 25, 1997 Workshop Report On Retail Settlement And Information Flows." We will adopt for all three UDCs the language proposed by PG&E and Edison in Section E(2) with the addition of the word "timely" to the last sentence of that section.[21]

We also approve the DASR form of PG&E and Edison, as shown in their October 1, 1997 filing, for use on an interim basis. SDG&E may use the DASR form of PG&E or Edison, or it may file a motion in this proceeding for the Commission to adopt its own DASR form. If such a motion is filed, any responses shall be due within ten days from the date of service. The assigned Commissioners are delegated the authority to rule on such a motion. The Commission may revise the approved DASR forms in its decision on the workshop on retail settlements and information flow.

As for future changes to the DASR form, PG&E proposed in its October 1 filing that "30 days prior to the effective date of any changes to the DASR data elements, PG&E will post the proposed changes on its website." Interested stakeholders could then provide input and make any necessary adjustments to their systems. We will defer resolution of this issue to the decision on the workshop on retail settlements and information flow.

The next difference between the joint tariff and the tariffs of PG&E and Edison occurs in Section E.(5). The proposal of PG&E and Edison clarifies that the

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[20] These were attached to PG&E's October 1, 1997 filing on DASR elements and additional errata, and in Edison's supplementary tariff filing dated October 1, 1997. In the Notice of Oral Ruling dated October 13, 1997, the ALJ allowed interested parties to comment on both of these filings no later than October 24, 1997.

[21] EPUC/CAC commented that all three proposed tariffs set no time limit for responding to a request for a status update. The addition of the word "timely" should rectify this potential problem.

information to be provided is for each service account, and that supplemental metering information that is "not included in the DASR will be required." If this supplemental information is not submitted within two business days, or if the supplemental metering information is false, incomplete, or inaccurate, the DASR will be rejected.

We decline to adopt the proposal of PG&E and Edison to include a requirement that supplemental metering information will be required. The metering information that is to be supplied should be specified in advance on the DASR form. The proposal of PG&E and Edison is too vague as to what may constitute supplemental metering information. We will adopt their proposal to specify that the DASR information is to be provided for each service account. Instead of the joint tariff language in Sections E.(5)(a), (b) and (c), reference should simply be made to the DASR form that is referred to in Section E.(1) as Appendix A. The changes that we adopt for all three utilities are shown in Section E.(5) of attached Appendix A.

An issue raised by Section E.(6) of the proposed tariffs is how soon should a customer be notified that a DASR has been submitted to the UDC on the customer's behalf. The tariff provision, as written, would give the UDC up to five days to notify a customer as to whether the DASR has been accepted, rejected or deemed pending for further information. Some of the parties have argued that the UDC should notify a customer as soon as possible of the receipt by the UDC of a DASR for the customer's account. This will provide the customer with sufficient notice so that the customer can take action to cancel the DASR if the change was not authorized by the customer.

We believe the notification period is adequate. As discussed below, there are existing safeguards to prevent customers from being switched without customer authorization. We will modify Section E.(7) of Appendix A slightly to make clear that both the ESP and the customer is to be notified as to the status of the DASR.

The next difference occurs in Section E.(7) where PG&E and Edison propose to add a reference to Rule 11 as justification for denying an ESP's request for service if the information provided by the applicant is false, incomplete, or inaccurate. The reference to Rule 11 is unnecessary, and will not be adopted.

The next difference is found in Section E.(9) of the tariff proposals. That provision covers the period in which a customer may cancel a DASR submitted to the UDC by an ESP. Three different variations are proposed, one from the Alliance, one from SDG&E, and one from PG&E and Edison. The primary difference between the Alliance proposal and the proposals of the others is that under the Alliance's proposal, large customers could cancel a DASR only if a DASR was submitted in error. Also, the timing for canceling a DASR is different from what PG&E and Edison propose.

Some of the end-users and ESPs contend that a customer should always have a right to cancel, and that a two-week cancellation notice is too long and limits a customer's ability to change service providers. We disagree. AB 1890 specifically provides for a three-day cooling off period for residential and small commercial customers. (See PU Code Section 395.) In addition, the verification procedures set forth in PU Code Section 366.5 ensure that residential and small commercial customers are indeed willing to make a switch. It is our belief that such safeguards are sufficient, and that residential and small commercial customers should follow through with a change in providers once they have gone through the process described above.[22] Accordingly, no right of cancellation is adopted for residential and small commercial customers beyond the cooling-off period. However, should a residential or small commercial customer believe that it was "slammed," the customer should notify the UDC immediately, and initiate the DASR to be switched back. The customer should also notify the Commission as well to lodge a complaint.

For small business and residential customers, a DASR should not be submitted until three days after the verification required under PU Code Section 366.5 has been performed. It is the responsibility of the ESP to ensure that small business and residential customer's requests to cancel service, in accordance with PU Code

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[22] This would not prevent such a customer from switching back to the original or some other provider by arranging to have a new DASR submitted on the customer's behalf in the next DASR processing period. In addition, the customer is free to lodge a complaint with the Commission if the customer thought that it had been "slammed."

Section 395 are honored. If a customer cancels an agreement, consistent with PU Code Section 395, the ESP shall not submit a DASR for that customer. Because of the method of confirming a customer's intentions may vary, it is possible that even with the built in delay between the verification and the submittal of the DASR that the DASR could be submitted prior to the expiration of the customer's cooling-off period provided for in PU Code Section 395. If that is the case and a DASR has been already been submitted, the ESP shall, within 24 hours, direct the UDC to cancel the DASR. This is reflected in Section E(6) of Appendix A. Failure to honor a properly executed request by a customer to cancel its change of service, properly executed under PU Code Section 395 could be considered an unauthorized change of service and handled appropriately.[23]

Larger customers are not afforded the protections that the residential and small commercial customers have. However, the Legislature found that the "Larger commercial and industrial customers are sophisticated energy consumers that have adequate civil remedies and are adequately protected by existing commercial law…." (PU Code Section 391(d).) The Alliance and SDG&E proposed that larger customers be allowed to cancel a DASR that has been submitted in error by providing notice to the UDC within two weeks after it has been notified of the DASR acceptance, or up until 3 business days prior to the scheduled service change date, whichever is earlier. PG&E and Edison would permit any customer to cancel a DASR by giving notice to the UDC at least three business days before the scheduled service change date.

We do not favor any right to cancel a DASR by the larger customers. When these customers sign up with an ESP to provide them with direct access, the ESP and the customer are likely to enter into some type of contractual arrangement. Any right of cancellation authorized by the Commission would defeat the purpose of having parties enter into a contract at all, and would provide customers

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[23] These same provisions should apply to UDC's when they are submitting a DASR for customers wishing to change back to UDC service.

with the ability to change their minds at the last moment. We decline to authorize a right to cancel a DASR by the larger customers. As noted in the preceding footnote, if the larger customers want to switch to another provider, the customer just needs to arrange to have a valid DASR submitted in the next DASR processing period. (See Appendix A, Section E.(12).)

Another issue raised by the first sentence of Section E.(9) is the start date of the UDCs for accepting DASRs. The revised joint tariff dated September 19, 1997, and the revised tariffs of PG&E and Edison, which were filed on October 15, 1997, state that: "The UDC will begin accepting requests for Direct Access on November 9, 1997." We had originally envisioned in D.97-05-040 that the UDCs could start accepting DASRs on November 1, 1997. Due to the tremendous amount of electric restructuring related activity, the decisions needed to effectuate direct access have not been issued as fast as we had originally thought. We will permit the UDCs to start accepting DASRs beginning on November 1, 1997, and they shall be required to begin accepting DASRs no later than November 9, 1997. The tariffs of all three UDCs should be changed to reflect this. We recognize, however, that after the issuance of this decision, it may take some time for the UDCs and the ESPs to adapt their systems to the choices that we have made today.

Section E.(11) of Appendix A raises the issue of whether a customer's claim of a priority under PU Code Section 365(b)(2) should be verified. That code section provides that customers shall be eligible for direct access irrespective of any phase-in if at least 50% of that customer's electric load is supplied by energy from a certified renewable resource provider. The California Industrial Users contend that such a claim should be verified at some point in the DASR process. We are concerned that some customers or ESPs may attempt to claim this priority even though they may not be entitled to it. However, no one has proposed who should do the verification. As the tariff provision is written, the "ESP must warrant to the UDC that it is providing electric power to that customer from a state-certified renewable energy resource supplier meeting the requirements of PU Code Section 365(b)(2)." This provision is adequate for the time being. The issue of who should do the verification should be

addressed by the working group discussed later in this decision. Since the California Energy Commission will be certifying renewable energy suppliers, its input on the verification process would be beneficial.

The only difference in Section E.(16) of the joint tariff and the tariffs of PG&E and Edison is that the joint tariff refers to the Commission approval of the action by the Independent System Operator (ISO) governing board. The interpretation of PG&E and Edison that no Commission approval is needed of an act by the ISO governing board is correct. All three tariffs should reflect the language contained in Section E.(17) of Appendix A.

The next difference occurs in Section E.(21) of the tariff proposals. The differences here concern how soon a customer moving to a new location who wants to retain or start direct access will have to wait. The joint tariff appears to favor an immediate start once system limitations are eliminated, and under present operating conditions, a DASR must be made no less than five business days before the customer's scheduled start date. As worded, PG&E and Edison appear to propose that once system constraints are eliminated, they will require ten days' notice before the customer can have service at the new location.

The 10-day wait before service can begin is unreasonable. Eventually, after all system limitations are eliminated, a change should take place immediately, as suggested by the joint tariff, and in any event no later than two days provided that the applicable metering requirements have been met. As noted in PU Code Section 391(a), electricity is essential to the health, safety and economic well-being of all California consumers. A customer should not have to provide ten days' notice to obtain such an essential service. Many people who change locations simply do not give ten days' advance notice to their utility. We will adopt the following change, and include it in Section E.(22) of Appendix A, which should be used by all three UDCs:

> "Following the removal of system limitations, a customer moving to new premises may retain or start Direct Access immediately, and in any event no later than two days after a DASR has been submitted. Due to current system limitations, a customer moving to new premises who wants

> to retain or start Direct Access must have the ESP submit a DASR to the UDC for the new premises no less than 10 business days before the customer's scheduled start date at the new premises. This DASR will need a special 'new customer' notation. If the DASR is received after that date or without the notation of 'new customer,' the customer will receive the UDC's bundled service until the DASR is processed under the procedures set forth in Section E.(13)."

It is our intention that the 10 business days should be reduced to 5 business days no later than one year from the effective date of this decision. That will give the UDCs the time and opportunity to revise their systems to provide direct access at a new location in a timely manner, and to provide other market participants with an opportunity to gear their products and services to meet a quicker start date.

As noted earlier, we are contemplating the possibility of waiving the DASR switching charge under certain circumstances. Having to wait ten days before a customer can be provided with electric service would seem to justify such a waiver. That issue will be explored further when the proposed fees for non-discretionary services are examined.

The next difference appears in Section E.(22) of the tariff proposals, which is shown in Appendix A as Section E.(23). PG&E proposes to delete the reference to the designation of a billing agent from its DASR because that is not an element on the DASR form. Edison has left the Alliance's language unchanged. We will permit PG&E to use the tariff language that it has proposed, while SDG&E and Edison shall use the version proposed in the joint tariff. Given the unbundling of billing services, at some point PG&E should consider including the designation of the billing agent on its DASR form.

8. Independent Verification

PG&E and Edison propose to replace the word "granted" with "submitted," and PG&E proposes to add the phrase "by an ESP." A reading of PU Code Section 366.5 confirms PG&E's understanding of the order of the DASR process. Before a DASR can be submitted by an ESP, the independent verification has to occur. We will adopt PG&E's tariff provision for use in all the UDCs' tariffs.

9. Metering Services

Section H of proposed Rule 22 contains the tariff provisions for metering services. Many of the issues contained in Section H have been raised in the metering and data communications standards workshop. To implement direct access, interim decisions regarding metering are needed until the Commission can issue its decision on those issues. PG&E and Edison assume that a Commission decision on the metering and data communications standards workshop will result in a rewrite of Section H.

We have reviewed the tariff proposals of SDG&E and the Alliance, and those of PG&E and Edison. Overall, the tariff proposals of PG&E and Edison are more precise than the joint tariff. However, the tariffs of PG&E and Edison avoid stating a precise time for compliance. We have attempted to merge the best of both tariff proposals. The results are shown in Appendix A.

We have also adopted the recommendation of Cellnet Data Systems, Inc. that if an interval meter cannot record in 15-minute intervals, hourly data with reporting in a 15-minute interval format will be permitted. This will prevent meter providers from having to design and install meters that record data in 15-minute intervals.

Since many of the tariff provisions in this section relate to issues addressed in the metering and data communications standards workshop, we will adopt the tariff provisions shown in Section H of Appendix A on an interim basis. Section H may change once the Commission has had the opportunity to review and resolve the issues raised at the metering and data communications standards workshop.

10. UDC Meter Service Options And Obligations

Section I of proposed Rule 22 discusses the UDC meter service option and obligations. These options were created as a result of the Commission's unbundling of revenue cycle services in D.97-05-039. The differences that appear in Sections I.(2)(c) and I.(4) are minor changes which should be adopted in the tariffs of all three UDCs.

The next series of differences occur in Sections I.(6) and I.(7). The tariff proposal of PG&E and Edison attempts to satisfy those parties who seek more flexibility in the setting of the meter reading date, while recognizing the meter reading efficiencies of the UDCs. We will adopt Section I.(6) as proposed by PG&E and Edison for use in all three tariffs.

In proposing Section I.(6), PG&E and Edison deleted the joint tariff proposal that customer data obtained from the customer's meter be made available to the customer. We believe that customers should be entitled to their own meter data. We will require that sentence to appear in Section I.(7) of the UDCs' tariffs.

11. Meter Reading Data Obligations

Much of the information contained in Section M. concerns topics that were addressed in the workshop on meter and data communications standards. All of the tariff proposals use the same language. We will adopt the tariff language in Section M. on an interim basis. As noted earlier, the tariff provisions in this section may change when the Commission addresses these issues in its decision on meter and data communications standards.

12. Billing Service Options And Obligations

Billing service options and the obligations are described in Section N. of the proposed tariffs. Four primary issues are raised in this section. The first is the mistaken impression that end-use customers have the choice of three billing service options. The second is whether full consolidated ESP billing should be permitted. The third concerns PG&E's inability to offer bill-ready billing. The fourth issue is billing adjustments for meter and billing errors.

In Section N.(1) of the proposed tariffs, the Alliance and the UDCs appear to be under the impression that it is end-use customers who can select the billing option. That is incorrect. In Ordering Paragraph 1 of D.97-05-039, we specifically stated that PG&E, SDG&E, and Edison "shall provide three billing options to competing retail energy services companies…." It is the ESP who has the option. The

introduction to Section N. of Appendix A has been changed to reflect this. An ESP may, however, offer its customers the choice of one or more billing options.

The second issue concerns full consolidated ESP billing. Full consolidated ESP billing option was proposed by the Alliance as a means of allowing qualified ESPs to calculate the UDC charges instead of having the UDC calculate those charges. The Alliance states that this provision arose as a result of discussions with the utilities about adjusting their billing cycles to accommodate the needs of the ESPs and their customers. Since the utilities could not or would not adjust their billing cycles, the Alliance sought to resolve this issue by allowing the ESPs to perform the UDC billing calculations themselves if they can demonstrate that they have the capability.

The Alliance contends that full consolidated ESP billing has multiple benefits for California's electric customers. First, it will introduce competition to the billing of UDC charges. If the ESPs can calculate UDC charges more efficiently and at a lower cost than the UDC, all customers will benefit. Second, it will enable customers to have their ESPs provide bills on schedules that are more convenient to the customer's needs instead of being tied to the timing of the UDC's bill. And third, this option will enable customers to have a single point of contact for the calculation of all the charges.

To alleviate the utilities' concern that their charges may not be calculated properly, the Alliance proposes that this option would be made available only with the utility's consent, based upon the ESP's demonstrated ability to accurately replicate the UDC's billing calculations. In addition, under this billing option, the ESP assumes all the risk of any errors that it might make in calculating these bills. Thus, the ESP will owe the UDC for the correct amount of the UDC charges regardless of any errors in its calculation of such charges.

Some of the parties favor the adoption of full consolidated billing, but express concern that the ESP could mark-up the distribution, transmission, CTC and other UDC charges without the customer knowing it, and pocket the difference. To protect against possible overbilling, the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) assert that a form of levelized payments should be

established to prevent the ESP from billing a customer an amount greater than the UDC would have charged for identical services.

SDG&E opposes consolidated ESP billing. SDG&E contends that no one ever discussed this manner of billing in the unbundling proceeding. SDG&E argues that to raise this issue now is inappropriate, and the proposal should be rejected. In addition, SDG&E argues that the proposal fails to address the inability of existing systems and processes to make such changes.

We agree with SDG&E that the issue of full consolidated ESP billing was never raised or discussed in our proceeding on the unbundling of revenue cycle services. However, D.97-05-039 at page 9 recognized that energy suppliers could provide consolidated electric bills if they wanted to. Since the parties have filed comments on the issue about full consolidated ESP billing, we will address this issue in this proceeding.

This billing option provides the ESPs with flexibility to arrange their billing and metering cycles around the needs of their customers. At the same time, safeguards must be in place to ensure that the ESP is capable of calculating the UDC charges accurately, and to ensure that the ESP does not charge the customer more than the actual UDC charges. This is unlikely to occur because a competitive marketplace will ensure that the rates are not "marked up." However, we would be concerned if an ESP marked up the UDC services, but lowered its energy price. This would distort pricing signals. Section N.(3) of Appendix A requires a pass through of UDC charges without a "mark up." We will permit full consolidated ESP billing for all three UDCs. Section N. of Appendix A reflects those changes.

The third issue is whether PG&E should be required to offer bill-ready billing. Bill-ready billing is when the ESP's charges are provided to the UDC in a bill-ready format that requires no computation by the utility. Bill-ready billing is to be distinguished from rate-ready billing. Rate-ready billing requires the ESP to supply rate schedules to the UDC, which the UDC then applies to the customer's usage to compute the ESPs charges for the consolidated bill.

PG&E contends that it cannot offer bill-ready service on January 1, 1998 because of limitations imposed by existing billing systems and by the time frame for implementation of direct access. In its October 15 tariff filing, PG&E states in Section N.(1)(a) that it can offer the bill-ready option no later than September 1, 1998.

As mentioned earlier, there are some system constraints that prevent the UDCs from offering certain services. The ability to offer bill-ready billing is such a constraint. PG&E also contends that a related constraint is the inability of its current billing system to track more than one receivable per customer account. PG&E asserts that major system changes would be required to track payments, delinquencies and similar elements of ESP receivables as well as PG&E receivables, for the same customer account. Thus, PG&E argues that the purchase of the accounts receivable is necessary. We will permit PG&E to deviate from the bill-ready tariff provision by permitting PG&E to use the rate-ready tariff provisions, including the purchase of accounts receivable, shown in Sections N.(1) and O.(1) of its October 15 tariff filing.[24]

PG&E shall, however, be required to offer bill-ready billing no later than September 1, 1998, and on the terms and conditions shown in Section N.(1) of Appendix A. In the interim, PG&E shall ensure that any rate and pricing information the ESP supplies to PG&E for rate-ready billing shall remain confidential, and shall not be disclosed to any unauthorized PG&E employees or to PG&E's affiliates.

The fourth difference between the joint tariff and the proposed tariffs of PG&E and Edison concerns the issue of billing adjustments due to meter error and billing error. Section N.(5) of Rule 22 of the proposed tariffs of PG&E and Edison contains billing adjustments for meter error, billing errors, and the unauthorized use of energy. The tariff proposals of PG&E vary somewhat from those of Edison.

PG&E contends that billing adjustments are needed under direct access for slow or non-registering meters, and in situations where meter tampering has

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[24] PG&E's rate-ready tariff provisions and accounts receivable provisions are not reflected in Appendix A.

permitted the unauthorized use of energy to occur. PG&E contends that in each of those situations, the customer has used more energy than the account was billed. Unless the charges for the customer's full usage are collected, the result is an increase in the Unaccounted for Energy (UFE) that is charged to all customers. PG&E contends that the customer's bill should be retroactively increased to account for any unbilled usage.

Edison contends that the adjustments for meter and billing error are critical to the utility's billing process. The Alliance tariff contains no comparable provisions.

PG&E included a substantially similar section when it first filed its pro forma tariffs on July 15, 1997. PG&E's billing adjustment language appeared in Section H of PG&E's Rule 23. The billing adjustment language also appeared in Attachment 6 of the Workshop Report, as well as in the subsequent revised tariffs of PG&E and Edison. The issues surrounding billing adjustments have not received much attention, however. Most of the comments on this issue point out only that the utility should provide credit adjustments when there are billing errors in the favor of the customer or the ESP. Also, parties raised concerns over the standards and practices for determining when the unauthorized usage of energy occurs.

We are faced with the problem of deciding whether the adopted tariffs should remain silent about billing adjustments, or if we should adopt the proposals put forth by PG&E or Edison. Metering error was discussed in the workshop on metering and data communications standards. However, the specific issue of the relationship of metering error to billing was not discussed to any extent. To ensure that billing adjustments can be made in the future for metering, billing, and energy theft, some rules should be in place before ESPs start offering direct access. Including such rules at the outset will make ESPs, other providers of metering, and customers aware of their responsibilities.

The next task is to address which of the tariff proposals should be adopted. The tariffs of PG&E and Edison differ over to what extent "Energy Supply" charges will be adjusted. PG&E proposes that in addition to adjusting the bill for the utility charges, an adjustment to the Energy Supply charges should be made when

there is a slow or non-registering meter. PG&E proposes to make this adjustment under consolidated UDC billing, consolidated ESP billing, and separate UDC/ESP billing. Instead of returning the recovered amount to the ESP who scheduled power for that customer, PG&E proposes to distribute the collected amounts in a fair and equitable manner to lower all customers' UFE costs. Edison's approach is to adjust only the UDC and TTA charges.

Since PG&E's proposal is to allocate the undercollected amounts to the UFE costs, we will revisit PG&E's proposal in our decision addressing the workshop on retail settlement and information flows where UFE was extensively discussed. Although we like some of Edison's language on billing adjustments, Edison's approach is not beneficial to the end-use customer. Section N.(5) of Appendix A reflects the inclusion of select provisions from the tariff proposals of Edison and PG&E, and consideration of the comments of other parties. Those tariff provisions should be included in all the UDCs' tariffs. We have declined to adopt the proposal of PG&E and Edison to broaden the definition of meter error and billing error. Many of the situations which PG&E and Edison seek to include as either billing or metering errors were the subject of discussion in the workshop on meter and data communications standards.

Section N.(6) establishes the UDC's right to conduct investigations and to make adjustments to the bills to recover all costs and charges associated with the unauthorized use of energy. Tariff provisions for this kind of activity should be in place before direct access begins. We have reviewed the tariff provisions offered by PG&E and Edison, and have considered the impact on customers. Section N.(6) of Appendix A reflects the tariff provisions that should appear in all three of the UDCs' tariffs.

Section N.(7) as proposed by PG&E and Edison is unclear. It is unclear what "electric supply charges" or what "electric power charges" are being estimated or adjusted. Also, the tariff provision as written would leave it to the discretion of the utility to decide when electric power charges should be adjusted. This discretion could lead to the uneven application of these kinds of adjusted charges. We decline to adopt this suggested tariff language.

13. Payment And Collection Terms

Section O. of the proposed tariffs covers payment and collection terms. The principal difference is found in the tariff provisions of PG&E in Section O.(1). As mentioned earlier, PG&E contends that it can offer only rate-ready billing when direct access implementation begins. In addition, PG&E asserts that its systems can track only one account receivable per customer. Thus, due to this system constraint, PG&E contends that it must purchase the accounts receivables of the ESPs for whom PG&E is doing consolidated UDC billing. According to PG&E's staging plan, it appears that PG&E's necessity to purchase the accounts receivables will not be eliminated until July 1, 1999.

We have some reservation about allowing PG&E until July 1, 1999 to remedy its system constraint of tracking multiple accounts receivables for a single customer account. Such a constraint may dissuade ESPs from using the UDC's consolidated billing, and force them to provide their own billing systems. For some smaller ESPs, this may prevent them from offering any services in PG&E's service territory because of the cost of establishing and maintaining a billing system. However, this concern is offset by PG&E's mandatory purchase of the accounts receivables of an ESP who uses PG&E's consolidated billing service. The purchase of the accounts by PG&E will leave the ESP no worse off over time once the accounts receivables process is established. Also, this procedure will leave it up to PG&E to bill, track, and collect the accounts that it has purchased. The ESP whose accounts receivables have been purchased will then presumably have more working capital, and will be free to concentrate on other direct access activities.

We will permit PG&E to deviate from Appendix A with respect to the payment and collection terms under consolidated UDC billing. Instead, PG&E shall be permitted to use the tariff provisions that appear in Section O.(1) as shown in its October 15, 1997 tariff filing. PG&E's authority to use these tariff provisions shall expire on June 30, 1999, or sooner if PG&E files an advice letter in compliance with the tariff provisions shown in Section O.(1) of Appendix A, or its successor. As a result of our approval of PG&E's right to purchase the ESP's accounts receivables, PG&E's "Terms

And Conditions For PG&E Purchase Of ESP Accounts Receivable Under PG&E Consolidated Billing" is approved for inclusion as part of Rule 22.

As for SDG&E and Edison, we adopt the tariff language that SDG&E and the Alliance proposed for use in Section O.(1). This is reflected in Section O.(1) of Appendix A.

Additional differences are found in Sections O.(2) and O.(3) of the joint tariff and the tariff proposals of PG&E and Edison. The differences are primarily over the period when payments are due to the UDC. Under the proposal of PG&E and Edison, the ESPs would have a shorter time to pay amounts owed than what the Alliance and SDG&E have proposed. Appendix A reflects the adoption of the provisions from the joint tariff proposal.

14. Late Or Partial Payments And Unpaid Bills

Section P. of the proposed tariffs addresses late or partial payments and unpaid bills. There are two primary differences. The first difference has to do with PG&E's proposal in Section P.(1). Since PG&E plans to purchase all of the accounts receivable of the ESPs who use consolidated UDC billing, PG&E proposes different tariff language to reflect this purchase. The other difference is found in Section P.(1)(b) of the proposed tariffs, which addresses how partial payments are to be applied.

Since we have permitted PG&E to purchase the accounts receivable of the ESPs who use PG&E for consolidated UDC billing, we will permit PG&E to use the language found in Section P.(1) of PG&E's October 15, 1997 tariff proposal. The authority to use this particular language shall end no later than June 30, 1999. Effective July 1, 1999, or sooner should PG&E file the appropriate tariff revisions, PG&E shall be required to use the language shown in Section P.(1) of Appendix A.

With respect to the partial payments and how payments are to be allocated, we will adopt the joint tariff language for both SDG&E and Edison. We will permit PG&E to use the language which appears in Sections P.(1)(b) and P.(1)(c) of PG&E's tariffs.

Appendix A reflects the tariff language that SDG&E and Edison shall use in Section P.(1) of Rule 22.

In Section P.(2)(c) of the proposed tariffs, PG&E and Edison propose to delete three sentences, and we agree. The UDC should not be required to remind the ESP if the ESP has not paid the charges owed to the UDC. It should be incumbent upon the ESP to keep track of when it needs to pay the UDC for whom it is performing consolidated ESP billing. Section P.(2) of Appendix A reflects this change.

15. Involuntary Service Changes

Involuntary service changes are described in Section Q. of Rule 22. The first difference appears in Section Q.1.(f) of the proposals of PG&E and Edison. PG&E and Edison propose to add another instance when the customer's service options could be changed involuntarily. That instance would be when the "customer fails to meet its direct access requirements and obligations under the utility's rules and tariffs." This proposed language is appropriate, and is reflected in some of the earlier tariff provisions we have adopted. Appendix A reflects that addition.

Other minor changes have been made to Section Q., as suggested by PG&E and Edison. We have also made changes to Section Q.(4) to permit some additional time before ESP consolidated billing is terminated.

All three of the utilities shall use the tariff language in Section Q of Appendix A in their respective tariffs.

16. Service Disconnections And Reconnections

Section R. of Rule 22 covers service disconnections and reconnections. Two differences are apparent in the tariff proposals. The first concerns when there is a backlog in DASR processing, and whether priority should be given to a DASR requesting transfer of a service account to bundled UDC service because of non-payment. The second difference is the timing of payments.

With regard to the first issue, we do not believe that a DASR which requests a transfer of a service account to bundled UDC service because of non-payment should be given a priority if there is a processing backlog. We agree with the comments of PG&E and Edison that the ESPs should screen their customers to ensure

that they will pay their bills on time. The UDCs should not be required to prioritize such a request.

On the second issue, we decline to adopt the timing suggested by PG&E and Edison.

These changes are reflected in Section R. of Appendix A. All three UDCs shall include this section in their tariffs.

17. Credit Requirements

Section S of the proposed tariffs discusses the credit requirements that the ESPs will face. In reviewing the different proposals, we find that some of the proposed requirements of PG&E and Edison are not unreasonable when viewed in light of what the ESPs will be doing, and the financial risks that the UDCs face if an ESP fails to pay. All three utilities shall use the tariff provisions that we have included in Section S of Appendix A.

18. ESP Service Agreement

a) Introduction

The Alliance and SDG&E also developed and agreed to an "Energy Service Provider Service Agreement." This proposed joint agreement was attached to the joint submittal of the Alliance and SDG&E dated September 19, 1997. The proposed joint agreement formed the basis of the revised ESP service agreements that were separately filed by PG&E and Edison on October 15, 1997, along with their revised tariffs.

Appendix B of this decision contains the Commission-approved ESP service agreement. In this section, we analyze the differences between the three proposed service agreements. Since the joint ESP service agreement served as the platform for the revised service agreements proposed by PG&E and Edison, we have also used the September 19 joint agreement as the platform, with the changes shown in strikeout and underlining. To the extent that the same sections in the three service agreements used the same wording, we have not made any substantive changes to those sections that appear in Appendix B.

b) Effect Of Possible Legislative And Regulatory Changes

The first difference appears in Section 1.3 of the proposed service agreements. The UDCs propose to insert language which conditions the validity of the service agreement to the continued effectiveness of certain PU Code sections that provide for the recovery of transition costs and other charges.[25] If the applicable sections are modified in ways which "substantially diminish the UDC's ability to recover those costs in the time period and manner specified in those sections," the clause provides that the service agreement would become void.

The Alliance and some of the other parties oppose the proposed language. They contend such language is unnecessary and presumptive, and that it is nothing more than an attempt by the UDCs to hold the Commission, the Legislature and consumers hostage to a threat to disrupt the state's electric industry reform efforts. The Alliance argues that if this language is included in the service agreement, and subsequent events alter the sections to cause a triggering of this clause, the electricity market would be thrown into disarray and there would be an immediate interruption of direct access service for thousands of California consumers.

The proposed language in Section 1.3 should not be adopted as part of the ESP service agreement. The inclusion of such a clause would cause more problems than it solves. If we adopt the clause and subsequent events diminish the UDCs' ability to recover certain costs, the entire electric restructuring endeavor would come to a halt. Since ESPs and UDCs would no longer be bound by the service agreement, the direct access market would be in shambles. We cannot afford to put consumers and market participants at risk through the adoption of such a clause. Therefore, we conclude that it is against the public's interest to adopt such a clause.

c) Inclusion Of Other Charges On The Bill

The next major difference occurs in Section 5.3 of Edison's proposed service agreement. Edison seeks to include a clause which may require an

[25] The proposal of SDG&E varies somewhat from the proposals of the other two UDCs.

ESP to include charges other than UDC charges on a consolidated ESP bill, and to allow the ESP the same right when consolidated UDC billing is used.

The idea of a single bill for various kinds of charges is attractive. However, we do not believe that such a clause should be included in the service agreement at this time. The billing of other charges should be brought up as a tariff-related issue, rather than as a contract term in the service agreement. However, at this time, such a billing practice, at least for the UDC, raises issues about how much should be charged for this kind of billing service, and whether other services are subsidizing this kind of activity. We decline to adopt the language in Section 5.3 of Edison's service agreement.

d) Limitation Of Liability

The language in Section 6 of the service agreement varies from what was presented in Section B.(17) of the proposed tariffs of PG&E and Edison, which was discussed earlier in this decision. The service agreement language seeks to limit only the liability of the UDC and the ESP with respect to each other. In Section B.(17) we addressed the issue of limiting the liability of the UDC and the ESP with respect to end-use customers. Although we permit the Section 6 limitation of liability language to be included in the service agreement, the issue that confronted us in the tariff is distinguishable.

e) Dispute Resolution

The proposed service agreements contain three different approaches to dispute resolution. The Alliance proposes that if a dispute arises over the ESP service agreement, within ten days after either party gives written notice of a dispute, a meeting must be held to negotiate a resolution of the dispute in good faith. If no agreement is reached within five days, a mutually acceptable mediator is to be appointed. If no mediator can be agreed to, the parties agree to seek assistance from the American Arbitration Association (AAA) to have a mediator appointed. The mediation is to proceed in accordance with the AAA's commercial mediation rules, or other procedures that the parties may agree upon. If the mediation does not resolve the

dispute within 30 days after the notice of the dispute, then either party may suggest another form of alternative dispute resolution. The Alliance's proposal would also permit either party to pursue any provisional remedies, including injunctive relief, prior to the commencement of any ADR procedure.

SDG&E's approach would defer the following kinds of issues to the Commission before the parties could pursue any other remedies at law or in equity: disputes regarding the interpretation of the service agreement or any of the UDC's tariffs, or that relate to the UDC's performance of the Commission's rules, orders, or other requirements. If the dispute is over the payment of the UDC's fees under the service agreement, or it concerns other applicable tariffs, the dispute is subject to the UDC's tariffs governing disputes over customer bills. If the dispute relates to the payment of the CTCs, the dispute is subject to the provisions of the UDC's applicable tariffs and the Commission's jurisdiction. If the dispute is about the unauthorized use of electricity, the UDC may pursue its remedies in a court of competent jurisdiction. SDG&E also proposes that before the dispute is brought before the Commission or the court, the party seeking resolution of a dispute must first provide the other party with written notice of the dispute, and that a meeting to negotiate the resolution of the dispute occur within ten days of the receipt of such a notice.

The proposal of PG&E and Edison is somewhat similar to SDG&E's proposal with the addition of a more detailed arbitration provision. For disputes about the interpretation of the service agreement, or the obligations to perform under the service agreement, the parties are to go through a notification process, and then attempt to resolve the matter. If the parties fail to reach an agreement, the matter is to be submitted to the Commission in accordance with the Commission's rules, regulations and procedures. If the dispute involves an award of direct damages, or if the Commission chooses not to resolve the dispute for any reason, the dispute will go to arbitration using the commercial arbitration rules of the AAA or other agreed upon arbitration rules. The proposal would require the arbitrator to be bound by the Commission's interpretation of the terms of the UDC's Rule 22 and the service

agreement. If an interpretation of any term in Rule 22 or of the service agreement is needed to resolve the matter, the parties would jointly petition the Commission for such an interpretation.

The proposal of PG&E and Edison also provides that if the dispute concerns the payment of the utility's fees under the service agreement, or the UDC charges by the ESP, the provisions of the utility's applicable tariffs are to apply to that dispute. If the dispute is about the payment of the CTCs, the dispute is subject to the provisions of the utility's applicable tariffs. The service agreement proposal of PG&E and Edison also allows the utility to pursue available remedies for unauthorized electrical use by the ESP in a court of competent jurisdiction.

The comments of the various parties reflect the proposals. Some of the parties prefer the Alliance's proposal because it allows the allows the ESP and the UDC to select an appropriate forum for the resolution of the dispute. Some of those parties also contend that the proposal of PG&E and Edison to leave the resolution of disputes related to the tariff and service agreement solely to the jurisdiction of the Commission is inefficient and burdensome to the Commission because of the possibility there will be hundreds or thousands of disputes. Rather than relying on Commission resources to resolve the dispute, the parties should be free to work out their own solutions through the use of dispute resolution.

As discussed earlier, we adopted as part of Section B.(17)(c) of Appendix A, a provision which states:

> "The CPUC shall have initial jurisdiction to interpret, add, delete or modify any provision of this tariff or the ESP-UDC Service Agreement, and to resolve disputes regarding the UDC's performance of its obligations under the UDC's electric rules and tariffs, the ESP-UDC Service Agreement and requirements related to Direct Access service, including any disputes regarding delays in the implementation of Direct Access."

Our assertion of initial jurisdiction is proper because the subject matter of these disputes concerns the direct access tariffs and other related tariff

provisions. In addition, PU Code Section 1702 specifically provides that a complaint may be filed with the Commission against a public utility for "any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." When an administrative remedy is provided for by statute, such as PU Code Section 1702, relief must be sought from the administrative body. (See *McLeod* v. *City of Los Angeles* (1967) 256 Cal.App.2d 693.) The filing of complaints relating to direct access will also allow the Commission to evaluate potential problem areas, and provide the Commission with an opportunity to remedy those problems.

To reduce the number of disputes that may come before the Commission, a meet-and-confer obligation should be imposed as part of the ESP service agreement. Such a requirement will help ensure that the UDC and the ESP have attempted to resolve the dispute before coming before the Commission. We will leave it up to the ESP and the UDC to decide whether the services of a mediator should be retained, and what, if any, mediation or arbitration rules should apply as part of this meet-and-confer obligation.

The proposed service agreement of PG&E and Edison served as the starting point for our revisions to Section 15 of the ESP service agreement. We have altered the language proposed by PG&E and Edison to reflect the fact that we lack jurisdiction over the operations of the ESP[26]. An ESP's operations could still be considered by the Commission if, as a result of a cut-off or threatened cut-off of services provided to the ESP by the UDC for alleged violations of the direct access tariffs or of the service agreement, the ESP decides to file a complaint with the Commission. Section 15 of Appendix B reflects the above discussion, and shall be included in the ESP service agreements filed in connection with the direct access tariffs.

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[26] See PU Code Sections 394.25, 216(i).

f) Billing Options

The next difference appears in Section 22 of PG&E's proposed ESP service agreement. PG&E proposes that the only method for PG&E to transfer billing data to or from the ESP is through the electronic data interchange (EDI) format. The reference to the EDI format is found in Section D.(4)(c) of Appendix A. As noted in footnote 19, to the extent that we approve the tariffs containing electronic data exchange requirements, we do so on an interim basis. A final determination of whether EDI is the proper format will be addressed in the decision regarding the workshop on meter and data communications standards. Should we ultimately adopt a different standard, the UDCs will need to revise their systems to accommodate the new standard. Until then, we will permit PG&E's service agreement to deviate from Appendix B. The others shall use what is contained in Section 22 of Appendix B.

In Section 22 for "Consolidated Billing by UDC," PG&E shall use the following language instead of what is in its proposed service agreement:

> "(if ESP is selecting this billing option, the only method for notifying UDC of ESP charges will be EDI.)"

Similarly, for "Consolidated Billing by the ESP," PG&E shall substitute the following language:

> "If ESP is selecting this billing option, (a) ESP must submit a credit application on the form supplied by UDC; and (b) the only method for notifying ESP of UDC charges will be EDI."

The words within the brackets in Section 22 of PG&E's service agreement are to be deleted.

g) Audits

The service agreements of PG&E and Edison favor the audit provision suggested by SDG&E in Section 24 of the proposed service agreement. The Alliance favors its own language.

There are three principal differences between the two proposals. The Alliance version proposes that the parties may request the production of documents to verify the accuracy of metering data when either party believes that error related to metering or billing activity may have occurred. SDG&E's version would permit the parties to "audit the other party's records related to charges billed to Direct Access Customers." The second difference is that the Alliance favors the hiring of an independent auditor to audit the records. SDG&E proposes that the parties' own employees or their contracted representatives conduct the audit. The third difference is the amount of interest to be paid. The Alliance would set the interest at:

> "a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California."

SDG&E's proposal would set the interest rate at 10% per annum.

EPUC/CAC state that SDG&E's proposal would give the utility too broad of an assumption of authority to conduct an audit. Also, SDG&E's proposal does not suggest any condition that the audit be undertaken only when there is reason to believe that the ESP has made a metering or billing error. EPUC/CAC argue that it is unreasonable to give businesses in competition with each other an unlimited right to examine each other's books and records. EPUC/CAC believe that the Alliance takes a more reasonable approach to audits. An audit may be requested only when either party reasonably believes that errors related to metering or billing activity may have occurred.

SDG&E contends that in the normal course of business, business relationships involve routine audits as a means of protecting all the parties. SDG&E argues that the Commission should reject the Alliance's audit clause as incongruent with normal business practices.

The Alliance's provision, which limits an audit to only when there is a belief by either party that an error related to metering or billing activity has

occurred, should be adopted. In a competitive market, an open-ended opportunity to "audit the other party's records related to charges billed to Direct Access Customers" should not be permitted. This will prevent the UDC or the ESP from examining information whenever they want. Section 24.1 of Appendix B reflects the adoption of the Alliance's provision.

We do not believe that it is necessary to hire an independent auditor to conduct the audit. The employees of the UDC and the ESP should be able to designate their own employee representatives or their own contracted representative to conduct the audit. Accordingly, we adopt the UDCs' position on who can conduct the audits. This is reflected in Sections 24.1, 24.2 and 24.3.

Regarding the interest rate to be applied, the Alliance's proposal of the prime rate plus two percent should be adopted. The Alliance's proposal reflects an interest provision that is more realistic than the fixed interest provision favored by the UDCs. Section 24.4 of Appendix B reflects this.

19. Other Issues

a) *Third-Party Auditor*

Due to the assertions by the UDCs of certain system limitations, Enron recommends that the Commission should order independent, neutral inspections and audits of the utilities' systems. The audits should document both the existing capabilities of the systems and the time and resources required to alter the systems to permit compliance with Commission deadlines. Enron asserts that only by independently determining the utility's true capabilities with respect to its various computer, billing, printing, data management and other systems, can anyone have confidence in the utility's claim of system limitations.

As noted earlier, we recognize that it will take some time before the systems of the utilities can be reprogrammed to accommodate this new competitive electric market. There is no need to bring in an independent auditor at this time to tell us what limitations the utilities have. We are concerned, however, that system limitations can lead to delays in implementing direct access or can be used to

frustrate our direct access efforts. In order to ensure that does not occur, we will permit a motion to be filed in this proceeding to appoint a third-party auditor should there be a delay in excess of 30 days to process a DASR.[27] The assigned Commissioners are delegated the authority to rule on this motion and to determine whether such an audit is needed and the manner in which the audit should be conducted.

Enron also asserts that absent an incentive, some of the utilities will not make an adequate effort to comply with Commission orders. Enron contends that the best incentive is to prohibit the utility affiliates from conducting business within their affiliated utility's service territory until there has been full compliance with all Commission deadlines and direct access orders. We decline to adopt Enron's recommendation. This issue was raised and addressed in D.97-05-040 at pages 65 and 66. Furthermore, the participation of affiliates is an issue that is addressed in our affiliate transactions rulemaking, R.97-04-011.

b) BART Issue

The Bay Area Rapid Transit District (BART) filed comments to the DAIP, as well as to the pro-forma tariffs and service agreement of PG&E. BART provides regional transit in the San Francisco Bay Area, and 85% of its power is purchased under contracts with the Western Area Power Administration and the Bonneville Power Administration. BART contends that PG&E's DAIP and its pro-forma tariffs and service agreement is in conflict with PU Code Sections 701.8 and 374(b). BART states that it has been informed by PG&E that BART will be subject to the direct access requirements. BART recommends that the Commission exempt its federal power purchases from PG&E's direct access tariffs.

PG&E contends that there is nothing in PU Code Section 701.8(b) that states BART should not be subject to the direct access rules. PG&E

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[27] Such a motion should describe the circumstances giving rise to such a motion, the method in which the third-party auditor is to be hired and paid for, and what the audit should investigate.

asserts that once direct access begins, BART will receive delivery of its preference power purchases under the same direct access service terms and conditions as other retail customers.

Normally, the Commission does not issue decisions in response to requests for declaratory relief. BART's comments essentially ask the Commission to decide that the rules regarding direct access do not apply to BART. Since the start of direct access is only two months away, it is important that BART receive some indication of what is likely to happen to its preference power purchases on January 1, 1998 so that it can take the appropriate steps.

From our review of PU Code Sections 701.8 and 374(b), as well as a review of other provisions of AB 1890, it is apparent that the Legislature did not intend to exempt BART from the applicable direct access rules. PU Code Section 701.8 became effective on January 1, 1996. That section does not contain any exemptions from direct access. Instead, PU Section 701.8(b) imposes an obligation on the electric utility to use its transmission and distribution facilities to deliver BART's federal preference power. When the Legislature enacted the provisions of AB 1890, the Legislature obviously knew of the existence of PU Code Section 701.8 because PU Code Section 374 was one of AB 1890's provisions. PU Code Section 374(b) specifically addressed PU Code Section 701.8 when it exempted BART from having to pay the transition costs found in PU Code Sections 367, 368, 375, and 376. There are no other provisions in AB 1890 which exempt BART from the direct access rules. Accordingly, we refuse to adopt BART's recommendation that we exclude it from PG&E's direct access rules.

We sympathize with the points that BART has raised about minimizing its electricity costs, and that no ESP or scheduling coordinator should be required. If BART can effectuate a change in legislation, or find some federal authority for exempting its federal preference power from this state's direct access rules, then we might be in a position to reconsider our position. However, given the wording of PU Code Section 374(b) we cannot reach any other conclusion today but to state that the direct access rules shall apply to BART.

c) Line Extension Tariffs

The California Farm Bureau Federation (Farm Bureau) expressed concern over the proposed line extension rules found in Rule 15 and 16 of the proposed tariffs. All three UDCs seek to change what is to be included in net revenue. The net revenue figure impacts the overall cost that a customer must pay to obtain a new service extension. The proposed changes would exclude specific costs from the overall net revenue amount, which in turn reduces the allowance. They are concerned about the appropriateness of this forum to address revisions to the line extension rules.

This issue was discussed in D.97-08-056. The Commission stated:

> "We agree that we do not have adequate information here to undertake any changes to line extension rules or the way rates are designed to accommodate rule changes. We will defer consideration of this issue to R.92-03-050 and revisit the issue as it affects revenue requirements in the utilities' PBR and general rate cases, if necessary."

We agree with the Farm Bureau that the issue regarding the calculation of net revenue in Rule 15 of the three pro-forma tariffs should be deferred to R.92-03-050. With the exception of the proposed changes to net revenue, the other changes to Rule 15 and Rule 16 should be considered in this proceeding. A review of the remaining changes to Rule 15 and Rule 16 appear to be appropriate in light of our adoption of the other direct access rules.

20. Related Tariffs

Many changes have occurred to the proposed tariffs, the proposed service agreements, and the proposed rate schedules, since these items were first filed by PG&E, SDG&E, and Edison on July 15, 1997. This section explains which other tariff provisions are approved as a result of the adoption of Appendix A and B.

The primary direct access tariff is attached as Appendix A. As discussed above, the UDCs will be able to vary somewhat from Appendix A. Unless permission has been granted allowing the UDC to vary from Appendix A as discussed

earlier, Appendix A shall serve as the direct access tariff for PG&E, SDG&E, and Edison. Appendix A replaces all of the individual direct access rules that the UDCs had originally proposed be inserted as part of the other tariff rules.

The adoption of the primary direct access rule, Appendix A, impacts other tariff provisions such as the preliminary statement of the utility and other tariff rules and schedules. The proposed changes and additions to the preliminary statements and to the other utility rules, as filed by PG&E, SDG&E, and Edison on July 15, 1997, and in other subsequent filings, to the extent that they are consistent with our discussion in this decision and with Appendix A and B, are approved. If inconsistent provisions appear in the preliminary statements or in other affected utility rules, the UDCs shall make an advice letter filing as described below to conform those provisions to this decision. With regard to the rate schedules pertaining to direct access shown in Table 1, the rate elements for discretionary services are approved only on an interim basis. The non-discretionary rate elements which appear in the rate schedules shown on Table 1 are not approved. The elements making up the DASR, as shown in the October 1, 1997 filings of PG&E and Edison, are approved on an interim basis.

The service agreement shown in Appendix B is approved, and shall be used in its entirety by PG&E, SDG&E, and Edison, unless permission has been granted in this decision to allow the UDC to vary certain provisions of the service agreement. Appendix B replaces all other proposed service agreements and any attachments to those service agreements filed by the UDCs in this proceeding.

To the extent that Edison's "Catalog of Customer Choices" and its "Directory of Products and Services for the Electric Service Provider," filed on October 1, 1997, are consistent with the discussion in this decision and with Appendix A and B, those two items are approved on an interim basis. Any provisions in these two items which are inconsistent with this decision shall be deleted, or conformed to the requirements of this decision in the advice letter process described below. A review of the catalog and directory shall take place in the same proceeding where the proposed fees and charges for discretionary and non-discretionary services are to occur.

PG&E, SDG&E, and Edison are directed to make an advice letter filing which conforms all of their tariff provisions, tariff attachments, and rate schedules to this decision. That advice letter filing shall be made with the Energy Division within 30 days from today's date. Protests to the advice letter shall be filed with the Energy Division within 20 days of the filing of the advice letter.[28] The effective date of the advice letter shall be the fortieth day after the filing of the advice letter if the filing complies with this order. Appendix A and B, and all the other tariff provisions, tariff attachments and rate schedules, as discussed and approved in this decision, shall take effect immediately so that direct access can proceed in an orderly manner. These provisions will continue in effect until the effective date of the advice letter.

We decline to adopt ORA's recommendation that all direct access rules and service agreements sunset as of December 31, 1999. Such a recommendation, if adopted, could lead to a similar exercise which we have just gone through with the DAIPs and the associated tariff proposals. The working group process that we adopt below, as well as existing Commission processes and procedures, gives us the flexibility to make any needed changes to the direct access tariffs as we go along.

C. PacifiCorp, Sierra Pacific And SCWC

The DAIPs of PacifiCorp, Sierra Pacific, and SCWC are based in large part on the DAIP that was jointly filed by PG&E, SDG&E and Edison. However, as described below, these three utilities have sought exemptions from certain provisions of AB 1890.

PacifiCorp is seeking to be excluded from having to turn the operations of its transmission facilities to the California ISO, and from participating in the rate reduction bonds. PacifiCorp's DAIP also differs from the DAIP of the large UDCs in the area of billing and metering requirements.

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[28] Any protests should focus on the filing's compliance with this decision, and shall not raise issues that have been addressed in this decision or other related Commission decisions.

The major differences between the DAIP of Sierra Pacific and that of the three large utilities are:

- Load profiling will be applicable to all of its customers with consumption levels at 50 kW or less.
- Sierra Pacific plans to offer only the separate UDC/ESP billing arrangement.
- Sierra Pacific's DAIP has no references to CTCs because it is not seeking CTC recovery during the transition period.
- It does not plan to place its transmission system under the control of the California ISO.

The DAIP of SCWC, which does business as Bear Valley Electric Service, also differs from the DAIP of PG&E, SDG&E and Edison as follows:

- SCWC plans to seek an exemption from the requirement that it must purchase its power from the PX.
- Since SCWC owns no transmission lines in its Bear Valley service area, it is seeking an exemption from having to interface with the ISO.
- SCWC does not plan to seek transition cost recovery during the transition period.
- SCWC will seek an exemption from the rate freeze and rate reduction imposed by AB 1890.
- SCWC is exempt from offering the three billing options provided for in D.97-05-039, and therefore plans to offer only the separate UDC/ESP billing arrangement.
- SCWC plans to seek exemption from developing new or additional customer load profiles.
- SCWC plans to permit only one ESP to serve each meter service account.
- SCWC does not contemplate developing credit-worthiness checks on ESPs, nor does it plan to share customer credit information with the ESPs.

The only comment that was received came from the Residential Energy Services Companies United Effort (Rescue) and SESCO, Inc.[29] Rescue and SESCO assert that the DAIP of SCWC is inconsistent with AB 1890 and contrary to past Commission orders, because the DAIP and related tariffs of SCWC have no surcharge in place to support statewide funding of public purpose programs. Rescue and SESCO acknowledge that the specific amounts to be collected from SCWC and the other smaller utilities was never determined in D.97-02-014. Rescue and SESCO recommend that the Commission require SCWC to provide for a nonbypassable volumetric surcharge to provide funding for the Commission's public purpose programs.

We decline to adopt the recommendation of Rescue and SESCO in this decision. The issue of whether the small electric utilities should have to pay for a share of the public purpose programs is more properly addressed by way of a petition for modification of D.97-02-014. The record in that proceeding should address that issue.

No other comments to the DAIPs of these three companies were received.

Since PacifiCorp, Sierra Pacific, and SCWC have all filed to be excluded from certain provisions of AB 1890, it would be unfair at this time to force them to adopt the direct access tariff and service agreement contained in Appendix A and B. Also, it appears that due to certain constraints particular to each of these three smaller utilities, certain billing and metering provisions may need to be different from what we adopted for PG&E, SDG&E and Edison. In addition, the direct access tariff provisions that the three smaller utilities relied on to formulate their DAIPs and proposed tariffs have changed substantially from the time their DAIPs were first filed in July.

Based on the reasons above, we will approve on an interim basis the tariffs, rate schedules, and service agreements that were attached to respective DAIP filings of PacifiCorp, Sierra Pacific, and SCWC. Our interim approval shall be effective immediately, and remain in effect until the Commission acts on the advice letter

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[29] The comments of Rescue and SESCO came in the form of a "Protest to the Application of SCWC" for approval of its DAIP.

described in the following sentences. Once the Commission has issued decisions with respect to their applications regarding their transition plans, PacifiCorp, Sierra Pacific, and SCWC shall have 45 days in which to file advice letters containing their final direct access tariffs, related rate schedules, other affected rate provisions, and service agreements. The advice letter filing shall submit tariffs that conform to this decision and the decision in A.97-05-011 et al. addressing their respective transition plans. Should system, personnel, or other limitations prevent the utility from conforming to these decisions, the advice letter filing shall note the differences and the reasons for such non-conformance. Protests to the advice letter may be filed within 20 days of the filing of the advice letter. The advice letter shall become effective 90 days after its filing unless the advice letter is acted upon by the Commission.

D. Rule 22 Tariff Review Group

The restructuring effort will not end because of the actions we have taken today. Instead, there will be additional changes and refinements to the process as direct access gains acceptance among consumers, and the market participants adjust to this new competitive environment. As mentioned above, a working group should be established to review the direct access tariffs and other tariffs and rate schedules that are affected by the direct access tariffs. We envision this working group to be made up of market participants who have the common goal of ensuring that direct access succeeds.[30] The working group is in a position to see how the adopted direct access tariff provisions are working, and to make recommendations as to how the tariffs should be changed. This working group process will provide us with an opportunity to fine-tune the direct access tariffs, and to eventually have all the UDCs in this state using a uniform direct access tariff. It is our intent to open a new proceeding to address these kinds of changes.

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[30] None of the members of the working group shall be compensated for their participation or reimbursed for their out-of-pocket expenses.

In addition to reviewing the tariffs and making recommendations, this working group should look into the feasibility of allowing new customers, when they initiate service, to call the UDC directly and have the UDC arrange to have the ESP of the customer's choice provide direct access service on the start date. As mentioned earlier, new telephone customers go through this process when they select their IEC when they initiate telephone service.

The Energy Division shall convene a meeting within 90 days from today's date to solicit persons who are interested in serving on such a working group. It shall be left to the working group to decide how often they should meet, and what types of direct access issues should be addressed. The working group should develop a report with the group's recommendations. The report shall be filed with the Commission in the new proceeding at least once every six months, and more frequently if needed. PG&E, SDG&E, and Edison shall undertake the responsibility of copying, filing and serving the report on the service list. Comments to such reports may be filed with the Docket Office within 25 days from the date of service. This working group shall be referred to as the Rule 22 Tariff Review Group and shall terminate on December 31, 1999, unless extended by a Commission order.

Findings of Fact

1. D.97-05-040 adopted a series of direct access policies and rules.
2. D.97-05-040 ordered the UDCs to file their DAIPs, along with their pro forma tariffs.
3. The joint DAIP of PG&E, SDG&E and Edison was filed on July 1, 1997.
4. Separate DAIPs were filed by PacifiCorp, Sierra Pacific and SCWC.
5. Separate pro forma tariffs and service agreements were filed by PG&E, SDG&E and Edison on July 15, 1997.
6. Interested parties were provided with the opportunity to comment on the DAIPs and the pro forma tariffs and service agreements.
7. A workshop was held on August 7 and 8, 1997, to address the pro forma tariffs and service agreements.

8. On August 22, 1997, the Workshop Report was submitted and served on the workshop participants.

9. The Alliance's proposed statewide tariff and service agreement, and a draft of proposed direct access tariff and service agreement for PG&E and Edison, were attached to the Workshop Report.

10. In their joint comments to the Workshop Report, the Alliance and SDG&E agreed to a set of proposed direct access tariffs.

11. In their separate comments to the Workshop Report, PG&E and Edison attached their respective revised direct access tariffs.

12. As a result of the ongoing discussions between the UDCs and the Alliance, PG&E and Edison filed separate revised direct access tariffs and service agreements on October 15, 1997.

13. The proposed direct access tariffs and service agreements describe the specific terms and conditions by which market participants will be allowed to participate in direct access.

14. The Workshop Report described the outstanding issues, and the areas in which the parties were able to reach consensus.

15. Even though the UDCs were made aware that changes to the electric industry were going to occur, the UDCs did not know to what extent their existing customer information systems would have to be revised.

16. Changes of the kind contemplated by the electric restructuring decisions cannot be accomplished over several days or months.

17. Since the revised tariffs of PG&E and Edison use the joint tariff of SDG&E and the Alliance as their foundation, the joint tariff proposal is the point of reference for all the tariff changes adopted in this decision.

18. PG&E and Edison now refer to the FTA as the TTA.

19. The affiliate transaction guideline pertaining to non-discrimination in the treatment of affiliated and non-affiliated ESPs is expressed in the joint tariffs in Sections B.(2)(a) and B.(2)(b).

20. No affiliate transaction rules have been adopted yet in R.97-04-011.

21. D.97-05-039 permits competition for metering and billing services.

22. Non-discretionary services are those services for which the Commission determines that there are insufficient providers to ensure customer choice.

23. Incremental costs include both non-recurring and recurring costs.

24. Service fees should be based on recurring costs.

25. The proposed fees for discretionary and non-discretionary services are contained in the rate schedules that appear in Table 1.

26. PG&E and Edison have adopted the position taken by SDG&E that PU Code Section 370 requires a written agreement only when the consumer is not using the utility's facilities for direct access.

27. The annual fee imposed upon the utilities pursuant to PU Code Sections 401, 404, and 431 is to be collected by the utility from its customers and subscribers.

28. The decisions of the Commission are subject to appellate review.

29. PU Code Section 394.2(b) permits residential and small commercial customers to proceed with a complaint against an ESP in either a civil action or by filing a complaint with the Commission.

30. PU Code Section 394.2(b) provides that the Commission's authority shall not be expanded to include an award of any damages other than reparations.

31. SDG&E may use the DASR form of PG&E or Edison, or it may file a motion to adopt its own DASR form.

32. A customer should be provided with as much advance notice as possible of a DASR filed on its behalf.

33. PU Code Section 395 provides for a three-day cooling-off period in which residential and small commercial customers have a right to cancel a contract for electric service.

34. The verification procedures sets forth in PU Code Section 366.5 ensure that residential and small commercial customers act knowingly and willingly when they switch providers.

35. A DASR for a residential or small commercial customer should not be submitted to the UDC until three days after the verification required by PU Code Section 366.5 is performed.

36. A DASR should not be submitted if the customer has canceled its agreement in accordance with PU Code Section 395.

37. If a DASR has been submitted and the customer cancels its agreement, immediate steps should be taken by the ESP and the UDC to cancel the DASR.

38. PU Code Section 391(d) states that larger commercial and industrial customers are sophisticated energy consumers that have adequate civil remedies and are adequately protected by existing commercial law.

39. Larger customers are likely to enter into some type of contractual arrangement with the ESP for direct access.

40. If a larger customer wants to switch to another provider, the customer just needs to arrange to have a valid DASR submitted in the next DASR processing period.

41. A 10-day wait before essential electric service can begin at a customer's new location is unreasonable.

42. To implement direct access, interim decisions regarding metering are needed until the Commission can issue its decision on those underlying issues.

43. Customers should be entitled to their own meter data.

44. Ordering paragraph 1 of D.97-05-039 specifically stated that PG&E, SDG&E, and Edison shall provide three billing options to competing retail energy services companies.

45. D.97-05-039 does not require ESPs to offer more than one billing service option to their customers.

46. An ESP may offer its customers the choice of one or more billing options.

47. The full consolidated ESP billing option is a means of allowing qualified ESPs to calculate the UDC charges instead of having the UDC calculate those charges.

48. The issue of full consolidated ESP billing was never raised or discussed in the unbundling of revenue cycle services.

49. D.97-05-039 recognized that energy suppliers could provide consolidated electric bills.

50. Full consolidated ESP billing shall be permitted for all three UDCs.

51. Bill-ready billing is when the ESP's charges are provided to the UDC in a bill-ready format that requires no computation by the utility.

52. Rate-ready billing requires the ESP to supply rate schedules to the UDC, which the UDC then applies to the customer's usage to compute the ESP's charges for the consolidated bill.

53. Billing adjustment rules should be in place before direct access begins.

54. PG&E's purchasing of accounts receivable may dissuade ESPs from using the UDC's consolidated billing service, and force the ESP to provide its own billing system.

55. Appendix B contains the Commission-approved ESP service agreement.

56. PU Code Section 1702 specifically provides for a complaint process against a public utility.

57. A final determination as to whether EDI is the proper format for transferring billing data information will be addressed in the decision regarding the workshop on meter and data communication standards.

58. System limitations can lead to delays in implementing direct access or can be used to frustrate the Commission's direct access efforts.

59. The proposed change in Rule 15 to the net revenue figure impacts the overall cost that a customer must pay to obtain a new service extension.

60. D.97-08-056 stated that there was inadequate information to undertake any changes to the line extension rules, and that such a change should be deferred to R.92-03-050.

61. Since PacifiCorp, Sierra Pacific, and SCWC have sought exemptions from certain provisions of AB 1890, it would be unfair to have them adopt the direct access tariff and service agreement contained in Appendix A and B.

62. Due to certain constraints that are particular to the three smaller utilities, certain billing and metering tariff provisions may need to be different.

63. The direct access tariff provisions which the three smaller utilities relied on to formulate their DAIPs and proposed tariffs have changed substantially from the time the DAIPs were first filed.

Conclusions of Law

1. Enron's motion to file its comments on the Workshop Report one day out of time should be granted.

2. This decision does not specifically adopt the DAIP because the revisions to the proposed direct access tariffs would alter the wording of the DAIP as well.

3. The Commission should analyze each of the proposed tariffs, and decide which of the tariff provisions should be adopted, rather than revising the wording of the DAIP.

4. Some existing system constraints limit the ability of the UDCs to comply with all of the direct access rules.

5. Due to these constraints, the UDCs should be allowed to use differing tariffs on a limited basis.

6. Any customer who returns to default UDC service during the transition period will be returned to the customer's previous rate schedule at the frozen rate level.

7. The imposition of an interim fee for discretionary services ("competitive services"), and the booking of non-discretionary services ("non-competitive services") to a memorandum account is not unlawful.

8. The rate freeze provision of AB 1890 does not prevent the recovery of costs to accommodate the implementation of direct access.

9. The issue of whether non-discretionary services should be permitted to be recovered under PU Code Section 376 will be deferred until the Commission examines the costs of providing those kinds of services.

10. The UDCs should be permitted to charge for discretionary services on an interim basis, and to book the interim fees and incremental costs to a one-way memorandum account.

11. Permitting the UDCs to collect interim fees for discretionary services should not be construed as a decision on the merits of the October 1, 1997 filings of SDG&E and Edison, nor as approval of the fees charged by the UDCs for discretionary services.

12. The proposal to book the incremental costs of the non-discretionary services to a memorandum account, and then seek to recover the amount from the customer in the future presents a retroactive billing issue.

13. The UDCs should be permitted to book the incremental costs of non-discretionary services to a memorandum account pending a Commission decision regarding the appropriateness of such costs and possible recovery under PU Code Section 376.

14. If the non-discretionary fees are approved, the Commission should consider waiving the DASR switching charge in certain situations.

15. The fees for discretionary services that are contained in the rate schedules in Table 1 are approved for use on an interim basis.

16. The rate elements for non-discretionary services that are reflected in the rate schedules shown in Table 1 will be examined in a future proceeding.

17. Although the Preferred Policy Decision stated that direct access customers must sign an agreement to pay their share of the transition costs, PU Code Section 370 should control.

18. Since the Commission imposed fee pursuant to PU Code Sections 401, 404, and 431 is to be collected from the utility's subscribers and customers, the UDC should bill the ESPs for this fee.

19. The Commission should not be the body to decide whether the UDC or an ESP should be shielded from liability.

20. The Commission should adopt the compliance testing tariff wording on an interim basis.

21. The standards for compliance testing shall be reasonable, completed in a timely manner, and shall not be used by the UDCs in an anti-competitive fashion to restrict the entry of any competitors.

22. Processing the DASRs shall be by electronic means, although each UDC shall have the discretion to decide whether the ESPs can submit their DASRs in some other format as well.

23. The DASR forms of PG&E and Edison, as shown in the October 1, 1997 filings, are approved for use on an interim basis.

24. Due to the existing statutory protections, additional cancellation rights for residential and small commercial customers are not needed.

25. The ESP shall ensure that the requests of small business and residential customers to cancel service in accordance with PU Code Section 395 are honored.

26. Failure to honor a cancellation under PU Code Section 395 could be considered an unauthorized transfer of the customer.

27. Allowing a larger customer the right to cancel a DASR would defeat the purpose of having the ESP and the customer enter into a contract for direct access.

28. Before a DASR can be submitted by an ESP on behalf of a residential or small commercial customer, the independent verification pursuant to PU Code Section 366.5 has to occur.

29. If an interval meter cannot record in 15-minute intervals, hourly data with reporting in a 15-minute interval format will be permitted.

30. The tariff provisions in Sections H and M of Appendix A that relate to issues addressed in the metering and data communications standards workshop will be adopted on an interim basis.

31. The inability to offer bill-ready billing is a constraint.

32. PG&E shall be permitted to deviate from the bill-ready tariff provision, from the payment and collection terms under consolidated UDC billing, and from the late or partial payment provisions in Section P.(1) of Appendix A.

33. A DASR request to transfer a service account back to bundled UDC service because of non-payment should not be given a priority if there is a DASR processing backlog.

34. The Commission has reviewed and considered the differences between the proposed direct access tariffs, and should adopt the tariff provisions shown in Appendix A.

35. The Commission should not adopt the language of Section 1.3 of the service agreements that have been proposed by the UDCs because such a clause could cause the entire electric restructuring endeavor to come to a halt if subsequent events diminish the UDCs' ability to recover certain costs.

36. It is against the public's interest to adopt Section 1.3 as proposed by the UDCs in their service agreements.

37. The Commission's assertion of initial jurisdiction is proper because the subject matter of these disputes concern the direct access tariffs and other related tariff provisions.

38. When an administrative remedy is provided for by statute, relief must be sought from the administrative body.

39. In order to reduce the number of ESP and UDC disputes, the Commission should impose a meet-and-confer obligation as part of the ESP service agreement.

40. The Commission lacks jurisdiction over the operations of the ESP.

41. PG&E shall be permitted to deviate from the method in which billing data can be transferred.

42. The Commission should adopt the UDCs' position on who can conduct the audits, and the Alliance's proposal for the interest rate to be applied.

43. The Commission has reviewed and considered the differences between the proposed service agreements, and should adopt the service agreement shown in Appendix B.

44. Should there be a delay in excess of 30 days to process a DASR, any interested party may file a motion to appoint a third-party auditor to examine a UDC's system capabilities.

45. A review of AB 1890 and other pertinent code sections does not indicate any legislative intent to exempt BART from the applicable direct access rules.

46. The Legislature knew of the existence of PU Code Section 701.8 when AB 1890 was enacted.

47. Unless this decision provides otherwise, the direct access tariffs shown in Appendix A should be adopted by PG&E, SDG&E, and Edison.

48. The proposed change to the calculation of net revenue in Rule 15 should be deferred to R.92-03-050.

49. The issue of whether the small electric utilities should have to pay for a share of the public purpose programs is more properly addressed by way of a petition for modification of D.97-02-014.

50. The Commission should approve on an interim basis the tariffs, rate schedules, and service agreements that were attached to the respective DAIP filings of PacifiCorp, Sierra Pacific, and SCWC.

O R D E R

IT IS ORDERED that:

1. The Energy Division shall file the "Direct Access Pro Forma Tariffs And Service Agreements Workshop Report" (Workshop Report) with the Docket Office. The Docket Office is directed to file the Workshop Report as of the date the Energy Division submits it for filing.

2. Enron's September 17, 1997 motion for leave to file its comments to the Workshop Report one day out of time is granted. The Docket Office is directed to file the comments that were attached to Enron's motion as of September 17, 1997.

3. Appendix A and Appendix B are approved as the primary direct access tariff and electric service provider (ESP) service agreement, respectively, and shall be effective immediately. Unless permission to deviate from a tariff provision in Appendix A or from a specific provision in Appendix B has been granted in this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (Edison) shall adopt Appendix A and Appendix B for their direct access service offerings.

a. The proposed changes and additions to the preliminary statements and other tariff rules, as filed by PG&E, SDG&E and Edison on July 15, 1997, and as amended in subsequent filings, are approved to the extent that they are consistent with our discussion in this decision and with Appendix A and B. To the extent inconsistent provisions appear in these preliminary statements or in the other tariff rules, the utilities are directed to conform those provisions to this decision or to delete those provisions. The consistent provisions shall be effective immediately.

b. The rate elements for discretionary services that appear in the rate schedules listed in Table 1 are approved on an interim basis, and shall take effect immediately.

c. The elements making up the direct access service request (DASR) as shown in the October 1, 1997 filings of PG&E and Edison are approved on an interim basis, and shall take effect immediately.

   (1) SDG&E may use the DASR form of PG&E or Edison, or it may file a motion to adopt its own DASR form.

d. To the extent that Edison's "Catalog of Customer Choices" and its "Directory of Products and Services for the Electric Service Provider," filed on October 1, 1997, are consistent with the discussion in this decision and with Appendix A and B, those two items are approved on an interim basis, and shall be effective immediately. Any provisions in those two items that are inconsistent with this decision shall be deleted, or conformed to this decision.

e. PG&E, SDG&E, and Edison are directed to make an advice letter filing which conforms all of the above-mentioned tariff provisions, tariff attachments, and rate schedules to this decision.

   (1) The advice letter shall be filed with the Energy Division within 30 days from today's date.

   (2) Protests to the advice letter shall be filed with the Energy Division within 20 days of the filing of the advice letter.

   (3) The effective date of the advice letter shall be the 40th day after the filing of the advice letter unless the Commission acts upon the advice letter filing.

4. To the extent PG&E, SDG&E, or Edison has been allowed to deviate from the tariff requirements of Appendix A or from the provisions in Appendix B, PG&E, SDG&E, or Edison shall abide by the conditions set forth in the decision permitting such deviation, and shall adhere to any deadlines specified in this decision for terminating such deviations.

5. The tariffs, rate schedules, and service agreements that were attached to the respective direct access implementation plan filings of PacifiCorp, Sierra Pacific Power Company (Sierra Pacific), and Southern California Water Company (SCWC) are approved on an interim basis, and shall be effective immediately.

a. Once the Commission has issued decisions with respect to their transition plan applications, PacifiCorp, Sierra Pacific, and SCWC shall make their advice letter filings which conform their respective direct access tariffs, related rate schedules, other affected provisions, and service agreements to this decision, and the decision on their transition plan.

b. Should system or personnel or other limitations prevent any of these utilities from conforming their tariffs to this decision, the advice letter filing shall note the differences and the reasons for such non-conformance.

c. The advice letter shall be filed with the Energy Division within 45 days from the effective date of the decision on the utility's respective transition plan application.

d. Protests to the advice letter shall be filed with the Energy Division within 20 days of the filing of the advice letter.

e. The effective date of the advice letter shall be the 90th day after the filing of the advice letter unless the Commission acts upon the advice letter filing.

6. The six utilities are permitted to begin accepting DASRs starting on November 1, 1997, and they shall be required to begin accepting DASRs no later than November 9, 1997.

7. The six utilities named above are authorized to collect the interim fees for discretionary metering and billing services that are shown in their respective rate schedules, subject to refund in a Commission decision regarding the appropriateness of such fees.

a. The utilities shall book the interim fees and the incremental costs to a one-way memorandum account.

b. Should additional memorandum subaccounts be needed, the utility shall file with the Energy Division, within 21 days of the effective date of this decision, an advice letter requesting the establishment of such subaccounts. Interested parties will have 20 days in which to protest the advice letter filing.

8. The six utilities are authorized to book the incremental costs of providing non-discretionary services to a memorandum account pending a Commission decision

regarding the appropriateness of such costs and possible recovery under Public Utilities Code Section 376.

a. Should additional memorandum subaccounts be needed, the utility shall file within 21 days of the effective date of this decision an advice letter requesting the establishment of such subaccounts. Interested parties shall have 20 days in which to protest the advice letter filing.

9. Within 90 days from today, a decision or a ruling will issue which will state where the issues regarding the fees and charges for discretionary and non-discretionary services will be addressed.

10. All six of the above-named utilities shall inform all new customers who have contacted the utility to initiate the process of obtaining electric service of the following: the customer's ability to choose an electric provider, that a customer information packet explaining this choice is available to the customer, and that the Electric Education Call Center may be called if the customer has any questions regarding direct access.

a. The six utilities shall prepare a uniform, written script that the utility's customer service representatives can use to inform customers about their right to choose an electric provider.

b. The script shall be submitted to the Energy Division by each of the utilities within 21 days from today's date.

c. The Energy Division is directed to review such scripts to ensure that this message is unbiased.

11. The Energy Division shall convene a meeting within 90 days from today to solicit persons who are interested in serving on the Rule 22 Tariff Review Group. It is the Commission's intent to establish a new proceeding to address possible changes to the direct access rules and tariffs. Once that proceeding is opened:

a. This group shall file a report with the group's recommendations at least once every six months.

b. PG&E, SDG&E and Edison shall undertake the administrative responsibility of copying, filing and serving the report (or a notice of availability of such report) on the service list. Comments to such reports may be filed with the Docket Office within 25 days from the date of service.

c. This group shall terminate on December 31, 1999 unless extended by a Commission order.

This order is effective today.

Dated October 30, 1997, at San Francisco, California.

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

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