Decision **DRAFT DECISION (Mailed 7/31/98)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

OPINION ON CERTAIN PETITIONS FOR MODIFICATION OF DECISION 97-12-088

I. Summary

This decision grants in part and denies in part several outstanding petitions for modification to our Affiliate Transaction Rules (Rules), which we adopted in Decision (D.) 97-12-088. The specific petitions for modification we address are listed in Section III below. The major changes to our Rules as a result of today's decision include the following:

- We carve a narrow exception to our Rules, which do not currently permit a utility to temporarily assign its employees to affiliates. We will now permit the utility to make temporary or intermittent assignments or rotations of utility employees, except those employees involved in marketing, to its affiliates covered by these Rules, except to the utility's energy marketing affiliates, under specific conditions set forth in today's decision;

- We modify our Rules to provide the utility an opportunity to demonstrate that no fee, or a lesser percentage than 15%, is appropriate for rank-and-file (non-executive) employees whose positions are impacted as a result of electric industry restructuring, under the specific conditions set forth in today's decision;

- We clarify existing Rules regarding corporate oversight and governance;

- We modify our Rule addressing utility products and services; and

- We modify our Rules addressing the timing of the compliance audit and regarding service provider information.

Appendix A contains a copy of the Rules, as modified by this decision, with the modifications clearly delineated. Appendix B contains a copy of the Rules as modified by this decision.

II. The Affiliate Transaction Rules

In D.97-12-088, we adopted rules governing the relationship between California's energy utilities and certain of their affiliates. Our adopted Rules are comprehensive, and address nondiscrimination, disclosure and information, and separation standards. They also address to what extent a utility should be required to have its nonregulated or potentially competitive activities conducted by its affiliate.

III. The Petitions

Since the Commission issued D.97-12-088, many parties have filed petitions for modification of this decision. This decision addresses the following Petitions for Modification:

- San Diego Gas & Electric Company's (SDG&E) January 15, 1998, petition seeking modification of Affiliate Transaction Rule V.G regarding the temporary use of utility employees by affiliates;
- Southern California Gas Company's (SoCalGas) January 15, 1998, petition seeking modification of Rule V.G regarding the temporary use of utility employees by affiliates;
- Southern California Edison Company's (Edison) January 30, 1998, petition seeking modification of many of the Rules on various issues discussed below;
- Edison and SoCalGas' January 30, 1998, petition seeking modification of Rule VII regarding utility products and services; and
- SoCalGas and SDG&E's March 16, 1998, petition seeking various modifications of Rule VI.C regarding the affiliate audit, and Rule IV.C regarding service provider information.

We recognize that there are also outstanding applications for rehearing, as well as various new applications, motions, complaints, and compliance filings

arising from our adopted Rules. This decision does not address or prejudge these filings. Nor does this decision address two other outstanding petitions for modification filed on February 4, 1998, by Western Gas Resources, Inc. and on June 30, 1998, by SDG&E and SoCalGas. Western Gas Resources, Inc.'s petition is tied to a related application for rehearing, and we anticipate addressing the issues raised by both the petition and application shortly. Because SDG&E and SoCalGas served their petition for modification addressing the application of the Rules' disclaimer requirement on June 30, 1998, the matter is not yet ripe for decision.

IV. SDG&E's and SoCalGas' January 15, 1998 Petitions/Edison's January 30, 1998 Petition

SDG&E's and SoCalGas' January 15 petitions address the same issue, namely, whether the portion of Rule V.G addressing the temporary use of utility employees by affiliates should be modified.[1] Edison's petition addresses a similar issue, although it recommends a different modification. Therefore, we address the issues raised by all three utilities below. In this section, we also address the remaining issues raised by Edison's January 30 petition.

The SDG&E and SoCalGas petitions were opposed by the Office of Ratepayer Advocates (ORA); the City of San Diego; and jointly by Enron Capital and Trade Resources (Enron), Southern California Utility Power Pool and Imperial Irrigation District (SCUPP and IID), The Utility Reform Network (TURN), and Utility Consumers Action Network (UCAN) (Joint Opposition).

[1] By letter dated July 17, 1998, SoCalGas requests permission to withdraw eight pages of what SoCalGas has stamped as "Privileged and Confidential" information attached to Appendix A of its Petition from the record. This request is granted.

SoCalGas and SDG&E filed a response to Edison's petition, which response concurs with Edison's request, except on the issue of joint marketing, where SoCalGas and SDG&E do not take a position. Edison's petition was opposed by the California Association of Plumbing, Heating, Cooling Contractors (CAPHCC), City of San Diego, Enron, ORA, TURN, UtiliSys Corp., and UCAN, who all filed a joint opposition (Joint Opposition).

Temporary Use of Employees

As indicated above, SDG&E, SoCalGas, and Edison all raise this issue in some form in their petitions for modification. SDG&E and SoCalGas seek "clarification" on whether the Commission should permit utility employees who are not providing shared corporate support services to be used by affiliates on out-of-state or out-of-country projects that involve no marketing of products or services in California. SDG&E does not propose specific changes to our Rules in its petition. However, SoCalGas recommends the Commission add the following language to the end of Rule V.G.1: "Nothing in these Rules prohibits the temporary use of utility employees by affiliates of the utility on projects entirely outside California."

Petitioners argue that this proposal raises no market power concerns because the utility's business is not pursued outside of its service territory. They further argue that any cross-subsidization concerns are addressed by Rule V.H governing transfer pricing, which is pricing at fully loaded cost plus 5% of direct labor costs. Petitioners emphasize that this results in revenue to the utility, and, in turn, a benefit to the ratepayers. For example, in 1997, utility employees

working on out-of-state projects generated over $1.5 million of revenue for SoCalGas.[2]

Petitioners emphasize that concerns regarding inappropriate transfer of information do not apply when the utility employee is working for an affiliate on an out-of-state project, since a utility does not have a monopoly position outside of California. Petitioners also state that this proposed modification will result in a more diverse scope of employment for utility employees, which will enable the utility to continue to attract high-quality-employees. Petitioners do not believe the utility is overstaffed, but is staffed to meet normal and peak demand periods, and there are inevitably periods when part of the utility workforce is not utilized.

Petitioners state that this proposed modification will also help affiliates compete outside the state nationally and internationally, and that the current rule disadvantages them in this regard. Petitioners state that they will adopt procedures consistent with current practice to ensure that an employee's duties to the utility always have priority.

Edison's petition also addresses the temporary use of employees, but Edison proposes a different modification. Edison proposes to modify Rule V.G.2, which does not permit a utility to make temporary or intermittent assignments or rotation to affiliates governed by these Rules, so that the prohibition against temporary assignments extends only to energy marketing affiliates. Edison believes that this modification will provide direct and indirect

---

[2] SoCalGas also states that the Commission established its rates in its performance-based rate (PBR) application on the forecast that SoCalGas would generate $0.833 million in revenue from work performed on projects outside California, and it would be unfair to now deny SoCalGas an opportunity to generate this revenue.

ratepayer benefits, with no negative impact on fair competition. Edison argues that the proposed modification will benefit ratepayers, since over the last five years, Edison ratepayers have received about $11 million in reimbursement for affiliate use of utility employees. Edison proposes that revenues accruing from such use during the rate freeze flow directly back to ratepayers through the Streamlining Residual Memorandum Account, so that ratepayers can receive benefits that would not accrue without the requested modification.

Edison also believes that its proposal will lead to enhanced productivity of a more highly motivated and skilled workforce. Edison does not believe this modification will cause the utility to retain unneeded labor to support affiliates, because under PBR, Edison has the incentive to increase productivity by 1.6% per year. In its reply, Edison also states that it would be amenable to a rule that did not permit affiliates to temporarily employ any utility employee involved in marketing.

These petitions were opposed by parties sponsoring the Joint Oppositions discussed above, as well as by ORA and the City of San Diego. The parties in opposition argue that the utility should be staffed at levels designed to meet its needs, not the needs of its affiliates. For example, ORA states that SoCalGas' filing indicates that some employees may have on average two months to devote to affiliate projects, which, according to ORA, is too much time. The parties believe that these proposals could compromise service quality. Moreover, they state that the utility is not adequately compensated for these employees, and the compensation also does not reflect the risk of additional ratepayer harm posed by the affiliate's temporary use of utility employees.

These parties also argue that there is no indication that the amounts of money the utility receives as compensation for these employees will go to ratepayers, as opposed to shareholders, under PBR. They also stress that the

proposals may be anticompetitive in that they create the potential to distort the electric and gas markets within California. In addition, these parties also raise concerns that the proposed modifications will make it more difficult to enforce the Rules.

The current Rules do not permit a utility to temporarily assign its employees to affiliates. We believe in general that our Rules, as a package and as modified by this decision, strike an appropriate balance to achieve our goals articulated in this rulemaking. Nevertheless, we are concerned that Rule V.G.2.e, as it currently stands, may disadvantage utilities and their affiliates in other competitive markets, especially internationally. Therefore, we create a narrow exception to this Rule, and grant the Edison, SDG&E, and SoCalGas petitions on this issue on the following terms.

We will permit the utility to make temporary or intermittent assignments or rotations of utility employees, except those employees involved in marketing, to certain of the utility's affiliates, on the following conditions and as specifically delineated in Appendix A. Temporary assignment of certain utility employees can be made to the utility's affiliates except its energy marketing affiliates. Energy marketing affiliates include but are not limited to Energy Service Providers. We define temporary as less than 30% of an employee's chargeable time in any calendar year. This is consistent with Edison's recommendation in its comments to the draft decision issued this past November in this proceeding. Also, in order to address the concerns that a utility's quality of service might be compromised by the modification, we direct that no more than 5% of full time equivalent utility employees may be on loan at a given time, and that utility needs for utility employees always take priority over any affiliate requests. In order to guard against the possibility of inappropriate information transfer, we require that utility employees agree in

writing to abide by the Rules before affiliates use their services on a temporary basis. Any breach will be taken as a serious event.

We view this modification as a narrow exception, the effects of which are, in part, mitigated because the utility employees will still be subject to the Rules, and because of the limitation between which employees and which affiliates the transfer may take place. We also adopt a provision recommended by Edison in its comments to the November draft decision that affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

When we adopted the Rules' provision on transfer pricing (Rule V.H), we did so with the understanding that the utility should not make temporary or intermittent assignment or rotations of its employees. We do not believe that the pricing guidelines set forth in Rule V.H would adequately compensate the utility for the temporary employee use authorized by this decision, nor would they adequately reflect the risk of additional ratepayer harm posed by the narrow exception we adopt today. For example, the utilities state that they would have to search for, hire, and utilize consultants if we did not grant this modification. We also agree with ORA that utility employees, with their skills, training, familiarity, and loyalty, are more desirable for the affiliates' projects than outside consultants. We also wish to ensure that the staffing needs of the utility come first.

Therefore, for non-executive employees, we believe it is reasonable to require a minimum compensation percentage of twice that set forth in Rule V.H, or fully loaded cost plus 10% of direct labor cost. For executive employees, we require compensation percentage of three times that set forth in Rule V.H, or fully loaded cost plus 15%. Only with this increase in transfer pricing for this limited situation do we believe the proper balance between all

competing interests is struck. Consistent with this discussion, we therefore modify Rule V.G.2.e and Rule V.H, as set forth in Appendix A.

We also adopt Edison's proposal that revenues accruing from the use of employees authorized by Rule V.G.2.e during the rate freeze should flow back to ratepayers as a credit to the Streamlining Residual Memorandum Account.

Use of Joint Call Centers

Edison requests a modification of Rule V.F.4.a, which states in part, "A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers." Edison states that the Rule's reference to joint call centers is unclear. Edison uses its utility phone center facilities and employees to make solicitations for affiliate products and services not related to the competitive energy marketplace. Edison believes that, if Rule V.F.4.a is interpreted to prevent this activity, the Rule is inconsistent with Rule V.F.3, which permits the utility to provide its affiliates access to the utility billing envelope or other form of utility customer written communication, if it provides access to all other unaffiliated service providers on the same terms and conditions. Edison requests that the rule addressing its call center be treated in the same way as the billing envelope, i.e., to permit the affiliates to use the call centers if the utility provides access to all other unaffiliated service providers on the same terms and conditions. Although it is not part of its preferred recommendation, Edison would agree to a limitation on the use of the call centers by its energy-marketing affiliates.

The Joint Opposition opposes this recommendation. It states that the call center is different from the billing envelope in that the call center is the

primary point of contact between the utility and the customer for all service needs other than routine billing. It believes that the utility should have no incentive to compromise call center service in order to provide access to affiliates or anyone else. The Joint Opposition argues that the utility already has the incentive not to compromise the integrity of the billing envelope since the utility has a strong incentive to get the bill to customers. The Joint Opposition also believes that permitting call center sharing blurs the separation between the utility and the affiliate, and increases the opportunity for the violation of other rules, such as improper sharing of information and other assets.

We deny Edison's requested modification as vague. It is unclear exactly how Edison envisions this call center activity would operate; how such operation would promote competition; how such operation would prevent cross-subsidization; and how call center activity would provide access to all competitors on the same terms and conditions. It is equally unclear how the call center activity would not serve as a vehicle for violating these Rules and for disrupting the primary purpose of the call center, which is to provide a point of contact between the utility and customer for service needs (other than monthly billing). This list of concerns is merely illustrative, not inclusive.

However, Edison may apply for an exemption from these Rules and seek authority for a more detailed proposal concerning its call center if it wishes. Because we anticipate a detailed and specific filing, such request should be in the form of a new application, which should be served on, at a minimum, the service list of this proceeding. Edison's application should clearly indicate it seeks a modification of these Rules, and should also clearly set forth its detailed proposal.

Joint Marketing

Edison requests that we modify Rule V.F.4.b to permit a utility to jointly market with its affiliate to customers outside of the utility's service territory and to utility customers "above the AB 1890 firewall" (i.e., large, sophisticated utility customers). According to Edison's proposed modification of this Rule, a utility would be precluded from participating with its affiliates in "joint activities"[3] involving residential or small commercial customers within the utility's service territory. Edison believes that no legitimate concerns exist to prohibit joint marketing to large, sophisticated utility customers or to customers outside the utility's service territory. Edison believes that this requested modification is consistent with AB 1890, which provides for a number of protective mechanisms for residential and small commercial users and excludes all others from the scope of these protections.

The Joint Opposition objects to this proposed modification, which it believes should be rejected because it is a new proposal raised for the first time in this petition. It also believes that Edison's proposal should be rejected for the reasons set forth in D.97-12-088 adopting our joint marketing rules, because of cross-subsidization concerns, and because of the difficulty of enforcing the proposed rule.

We discussed the reasons for adopting our joint marketing rules at length in D.97-12-088, *slip op.* at pp. 47-52, and do not repeat that discussion in full here. However, we stated that we believed our joint marketing rule strikes an appropriate balance by allowing utilities to respond to customer inquiries

[3] Rule V.F.4.b defines "joint activities" as including, but not limited to, "advertising, sales, marketing, communications and correspondence with any existing or potential customer."

without allowing the utilities to provide preferential treatment to their affiliates, especially in light of our resolution of the joint use of the name and logo. We adopted our joint marketing rules to promote competition and to prevent cross-subsidization. Edison's new proposal does not allay the concerns we articulated in D.97-12-088. We therefore deny Edison's petition with respect to this issue.

We note that under our adopted Rules, Edison's affiliates are permitted to market any product to customers of any size in any location. However, they may not do so jointly with the utility. The adopted Rules further permit the utility and its affiliates to jointly participate in trade shows, conferences, or other marketing events outside of California. (D.97-12-088, *slip op.* at p. 51.) Thus, the adopted Rules do not prevent Edison affiliates from marketing their products and services.

Corporate Oversight

Edison requests that the Commission clarify the rules addressing joint corporate officers, and particularly requests that the Commission clarify that the Chief Executive Officer (CEO) and Chairman of the Board of the utility are able to serve as a director and Board Chairman of affiliates covered by these Rules.

Edison believes this change is appropriate in light of the interplay of both Rule V.G.1 and Rule V.E. Rule V.G.1 states, for a utility such as Edison which is not a multi-state utility, that, except as permitted in Rule V.E addressing corporate support, a utility and its affiliate shall not jointly employ the same employees. This Rule also applies to Board Directors and corporate officers, except when the Rules are applicable to holding companies. In that instance, a board member or corporate officer may serve on the holding company and with either the utility or affiliate but not both.

Rule V.E begins with the language that, "as a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems, and personnel."

Edison argues that the above two Rules clearly contemplate and allow that certain individuals fulfilling functions that are critical to corporate governance and oversight may serve as both officers of the utility and directors of the nonutility affiliates. Edison explains that, in making governance structure changes to comply with the Rules, the utility and affiliates have limited the officers and directors who serve both the utility and the affiliates covered by these Rules to those categories which are clearly within the scope of permitted shared activities described in Rule V: financial reporting, planning and analysis, legal and corporate secretary functions. For example, Edison explains that the Executive Vice-President and Chief Financial Officer of the holding company and utility will also serve as a director of the affiliates in order to provide the financial oversight necessary to the fulfillment of fiduciary responsibilities. Edison applies the same logic to the Executive Vice-President and General Counsel.

Edison also believes that it is appropriate under the overall intent of the Rules for the CEO and Chairman of the Board of the utility to serve as a director and Board Chairman of all affiliates covered by these Rules. Edison explains that the Chairman of the Board and CEO of Edison International (EIX) has the highest level of governance and oversight responsibility for all EIX subsidiaries. However, Edison explains that until it receives Commission confirmation on this issue, it has not implemented this proposal in its compliance plan.

The Joint Opposition states that there is no ambiguity in the Rule regarding corporate oversight. Rule V.G.1 states that the chairman or CEO may serve on the board of the holding company and either the utility or affiliate, but not both. The Joint Opposition also states that Rule V.E. on shared corporate support does not create any exception to the rule on sharing employees.

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

We also point out that this Rule addressing the sharing of officers and directors applies only to the sharing of officers and directors between the utility and affiliates that are covered by our Rules. Nothing in our Rules precludes the holding company and all affiliates from sharing the same officers and directors, provided they are not also directors of the utility. Similarly, the Rules do not address the sharing of officers and directors between the utility and affiliates not covered by our Rules.

We also clarify that corporate communications and public relations functions are permitted corporate support services which may be shared, provided that these activities are not used to engage in joint marketing or

advertising by the utility and any affiliate covered by these Rules. We make this clarification so that the corporation can prepare such publications as its annual report. Such shared corporate support services should not include any activity that would violate the Federal Energy Regulatory Commission's rules concerning marketing affiliates.

As stated in Rule V.E, as a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. Again, as stated in Rule V.E, in the compliance plan, a corporate officer from the utility and holding company should verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates set forth above, and to ensure that the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

We also require that in the compliance plan required in Rule VI, the utility should list all shared directors and officers between the utility and an affiliate. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and parties to the service list of R.97-04-011/I.97-04-012 of any change to this list. We modify Rule V.G.1 accordingly.

Employee Transfer Fee

Rule V.G.2.c provides for a 25% transfer fee when utility nonclerical personnel transfer from the utility to the affiliate, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee involved. Edison wants to eliminate the 15% floor for

employee transfers and give the utility the opportunity to demonstrate that no fee, or a lower fee, is appropriate. Edison believes this modification is necessary as a result of electric industry restructuring, which might eliminate certain utility jobs. Edison believes that if employees are eliminated as a result of restructuring, a 15% transfer fee is punitive, because the utility does not have to hire replacement employees, and ratepayers would not receive that fee if employees retire or work for companies other than the utility's affiliate.

The Joint Opposition states that the Joint Utility Respondents proposed the 15% floor prior to the Commission's adoption of D.97-12-088, that there has been no change in circumstances warranting a modification to that decision, and that the Commission still has discretion to propose a lower or higher transfer fee if conditions warrant.[4]

Although we recognized in D.97-12-088 that a transfer of utility personnel can result in advantages for the affiliate, we grant Edison's requested modification, in part, because we do not want to disadvantage certain employees whose positions are impacted by electric industry restructuring from obtaining other employment. Therefore, we modify Rule V.G.2.c to provide a limited exception to the higher transfer fee. We provide the opportunity for the utility to demonstrate that no fee, or a lesser percentage than 15% is appropriate for rank-and-file (nonexecutive) employees whose positions are impacted as a result

---

[4] In its reply, Edison claims that D.97-12-088 is ambiguous, because Rule V.G.e states the transfer fee shall be capped at "equal to at least 15%" of an employee's base annual compensation, and the text of the decision speaks of "up to 15%" fee. D.97-12-088, *slip op.*, at p. 65 referenced Pacific Gas and Electric Company's (PG&E) and SDG&E's holding company cases, where the utility was permitted to demonstrate that some lesser percentage of the 25% transfer fee, equal to at least 15%, is appropriate. We therefore correct the text of D.97-12-088, *slip op.* at p. 65, to state that the parenthetical in the last line of the first full paragraph should read "(equal to at least 15%)."

of electric industry restructuring. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 1, 1998.

V. Edison and SoCalGas January 30, 1998 Petition Regarding Rule VII (Utility Products and Services)

PG&E, ORA, and TURN filed responses to this petition. The following parties filed a Joint Opposition: Enron, New Energy Ventures, Inc., the School Project for Utility Rate Reduction and the Regional Management Coalition, UCAN, the City of San Diego, and CAPHCC.

Petitioners request modification of Rule VII which addresses utility products and services. They request that the Rule be modified to: (1) explicitly permit activities that involve additional shareholder capital investment, assumption of business risk or management control; (2) eliminate the 1% limit on nontariffed new product and service offerings; and (3) eliminate the language that the utility must demonstrate that it has not received recovery in the Transition Cost Proceeding or other applicable proceeding for the portion of the utility asset dedicated to the non-utility venture. In their reply, Petitioners state they are amenable to adoption of clarifying language to Rule VII, as suggested in the Joint Opposition, to limit the provision to the stranded cost proceeding, or other related competition transition charge (CTC) proceeding, rather than to eliminate this provision.

Petitioners believe that these modifications are necessary because the Rule, as currently adopted, limits or eliminates opportunities for additional revenues for utility ratepayers in situations where there seems no possibility of competitive harm. Petitioners state that these modifications will make Rule VII more consistent with the October 23, 1997, joint proposal of many parties to this

proceeding, which proposal the Commission adopted only in part in D.97-12-088.[5]

PG&E agrees with Petitioners and notes the similarity between the proposed modifications and the Commission's treatment of Category III products and services in D.89-10-031. ORA generally agrees with Petitioners, but proposes some additional modifications if the Commission adopts the proposal. Although TURN joined in the joint proposal last October, TURN agrees with Petitioners that only a minor modification is appropriate to address the third issue which Petitioners raise. Otherwise, TURN opposes this petition on the grounds that the Commission should turn its attention to enforcing, and not modifying, the adopted rules.

The Joint Opposition opposes the petition. It believes that the proposed modifications significantly change Rule VII to create a more favorable environment for the utilities at the expense of the safeguards designed to protect the competitive market, and that ultimately, the ratepayers will be more harmed than benefited by these proposals.

Additional Shareholder Capital Investment, Assumption of Business Risk, or Management Control

Petitioners believe that a modification expressly permitting activities involving additional shareholder capital investment, assumption of business risk or management control is appropriate, and that the Commission may have inadvertently eliminated the possibility of many new and existing nontariffed products or services. This is so, Petitioners contend, because to optimize the use

---

[5] The parties to this joint proposal were ORA, TURN, SCUPP and IID, SDG&E, SoCalGas, Edison, and PG&E.

of utility assets that have temporarily available capacity or compatible secondary uses, shareholders must almost always make some incremental investment in the underlying utility assets, or assume new business risks.

ORA agrees with Petitioners' first proposal, but requests Rule VII.C.4.d be further modified to require that the Commission has adopted a revenue-sharing mechanism before the utility makes an offering.

The Joint Opposition believes there is no ambiguity in this language, and that the Commission adopted this rule to preserve the development of a competitive market. It states that if shareholders seek to make investments in nontariffed products and services, the option remains of making such investments through an affiliate.

In its comments, ORA agrees that ratepayers stand to benefit from the revenue generated by shareholder investments in nontariffed products and services, provided that a revenue-sharing mechanism is in place for the utility. Based on this recommendation, we believe it is reasonable to adopt Petitioners' requested modification here, as more fully set forth in Appendix A. We do not adopt ORA's requested modification to Rule VII.C.4.d specifying that the Commission will adopt a revenue-sharing mechanism before the utility makes an offering, because Rule VII.D.2. requires, as a condition precedent to a utility's offering new products and services, that the Commission has adopted and the utility has established a reasonable mechanism for treatment of benefits and revenues derived from offering such products and services. According to Rule VII.F, a utility must request by advice letter filing continued authorization to provide existing product and services offerings, and must demonstrate that the continued provision of this product or service complies with the criteria set forth in Rule VII. Therefore, ORA's proposed modification appears unnecessary.

We also note that Rule VII requires the utility's advice letter to show both that the provision of a given product or service does not threaten the provision of utility service, and that the new product or service will not degrade the cost, quality, or reliability of tariffed goods and services.

The "1% Limitation"

Petitioners also propose that Rule VII.C.4.e, which limits each nontariffed product and service offering to "less than 1% of the number of customers in its customer base," is unnecessary and does not support any interest, such as to minimize competitive market concerns. Petitioners point out many other aspects of Rule VII which ensure that the nontariffed utility product and service offerings will not negatively impact competition, including: (1) the restriction on offering natural gas or electricity commodity service on a nontariffed basis; (2) the requirement that mechanisms be established to prevent cross-subsidies and for treatment of benefits and costs; (3) periodic reporting and auditing requirements; and (4) the advice letter process.

ORA agrees to eliminate the "1% limitation" discussed above, but suggests that the number of customers offered and receiving nontariffed products and services be reported under the requirements, so that nontariffed utility product and service offerings do not swell to an inappropriate magnitude. Petitioners do not object to this proposal, but believe that it would be difficult to implement, because they anticipate many offerings to be made via the internet where it would be quite difficult to estimate to whom the offerings were made.

The Joint Opposition opposes eliminating the "1% limitation." It believes that this provision is appropriate as a regulatory tool to ensure that when the utilities offer nontariffed products and services, they do not use their monopoly position in the energy and energy services market to hinder the

growth of the competitive market. They also believe that the existing rule permits the utilities to offer the types of products and services described by the utilities during this proceeding.

We adopted the "1% limitation," in part, because of our concerns regarding competition, and our concerns that nontariffed utility products and services do not increase to an inappropriate magnitude. However, we believe that we can address these concerns by adopting in part the modifications proposed by Petitioners and supported by ORA.

We will now permit the utilities to offer new products and services without the "1% limitation," provided the utilities meet the other criteria in Rule VII, which criteria, in part, address competitive concerns. (See, e.g., Rule VII.E.1.d, where the utility advice letter should address the potential impact of the new product or service on competition in the relevant market.) We also modify Rule VII to include further elaboration in Section E regarding the type of showing on competition in the relevant market the utility should make. We also modify Rule VII.C.4 to include an additional condition necessary for the utility to offer new products and services, namely, that the utility's offering of such nontariffed products or services does not violate any law, regulation, or Commission policy regarding anticompetitive practices. Both these provisions were in the joint proposal filed before the Commission last October.

We also modify Rule VII to provide that utility may not commence offering the new products or services which are targeted and offered[6] to 1% or

---

[6] We change the word from "offered" to "targeted and offered" to indicate that we are interested in offerings aimed at a large portion of the customer base, rather than, for example, an offering to lease a certain parcel of land which might be place on the internet but in fact is targeted to a small group of customers.

more of the number of customers in a utility's customer base 30 days after submission of an advice letter if there are no objections to the advice letter. In this instance, the utility must wait to commence such offering until the Commission issues a resolution approving the advice letter. Finally, we provide that the utility shall serve any advice letter filed pursuant to Rule VII on all parties to this proceeding, as well as on any other party appropriately designated by the rules governing our advice letter process. Our specific modifications are set forth in Appendix A.

Utility Showing in Advice Letter

Petitioners propose to eliminate Rule VII.E.1.c, which states that the utility's advice letter should, among other things, demonstrate that the utility has not received recovery in the Transition Cost Proceeding, or in other applicable proceedings, for the portion of the utility asset dedicated to the non-utility venture. Petitioners specifically object to the words "other applicable proceeding," because if read literally, this provision could prohibit all new utility asset utilization opportunities. This is so, they argue, because under Rule VII, all nontariffed utility products and service offerings must be based upon the use of necessary and useful utility assets or capacity. The costs of these utility assets are by definition recoverable in utility rates.

The Joint Opposition suggests modifying language to state that the utility must demonstrate that it has not received CTC recovery in the Transition Cost Proceeding or other related CTC Commission proceeding. TURN offers a similar, but not identical, proposal. Edison agrees with the Joint Opposition's proposed modification.

Our intent in adopting Rule VII.E.1.c was to limit the provision to transition cost proceedings, not all Commission proceedings. We believe the

modification suggested by the Joint Opposition, and agreed to by all parties, reflects our intent, and we will modify Rule VII.E.1.c accordingly, as more fully set forth in Appendix A.

VI. SoCalGas and SDG&E March 16, 1998 Petition

SoCalGas and SDG&E jointly request three further modifications of the Rules. PG&E and Edison have filed responses agreeing in whole or in part with this request. There is no opposition to this request.

Timing of Audit

SoCalGas and SDG&E request that the Commission conform the time period for the annual utility compliance audit required by Rule VI.C with the time period for the annual Affiliate Transaction Report, so that the Rule VI.C compliance audit includes the entire 1998 calendar year, and is filed on May 1, at the same time as the annual Affiliate Transaction Report. No party opposes this request. We believe this requested modification is appropriate and modify Rule V.C as set forth in Appendix A, because it will make comparisons between the two reports easier and will provide for uniform reporting periods for all utilities.

SoCalGas and SDG&E also request minor modifications of Rule VI.C to clarify that an audit report is "prepared" by an independent auditor and that an audit "report" is produced thereby. We adopt similar, but not identical, clarifying language as that proposed by Petitioners, to clarify our intent that the independent auditors perform the audit and prepare the audit report.

Lists Approved By Other Governmental Agencies

SoCalGas and SDG&E also request that Rule IV.C.1 be modified to permit the utilities to provide customers with lists approved by other governmental agencies. Rule IV.C.1 provides that, except upon request by a

customer or as otherwise authorized by the Commission, a utility shall not provide its customers with any list of service providers that includes or identifies a utility's affiliates. The Rule also establishes a procedure for the utility to submit semi-annual advice letter filings for the submission and approval of lists.

SoCalGas and SDG&E state that these requirements are appropriate in the context of certain lists, such as those of Commission-authorized direct access electricity service providers, but are too broad with respect to other lists that involve providers approved by other governmental bodies. Petitioners argue that in such circumstances, the utility should be permitted to provide the list to customers immediately and then simply notify the Commission that such lists were provided in the semi-annual advice letter filing. They further clarify that if the name of the utility's affiliate is on this list, it would not receive special treatment, such as bold typeface or graphics. SoCalGas and SDG&E's requested modification, which is not opposed, is reasonable and we adopt it, as set forth in Appendix A.

Yellow Pages Referral

SoCalGas and SDG&E seek modification to Rule IV.C.2 to clarify that the utilities are permitted to refer a customer to the Yellow Pages in any situation where a Commission-approved or authorized list is not available. Petitioners explain that the Commission has not yet approved lists pursuant to the first semi-annual advice letter filing, and there will always be a six-month lag period between Commission approval of such lists, since they are filed semi-annually. Petitioners explain there is no competitive harm or advantage to a utility affiliate in referring customers to the Yellow Pages when customers inquire about product or service providers. We find SoCalGas and SDG&E's clarification reasonable and modify Rule IV.C.2 as set forth in Appendix A,

because this modification will permit the utility to respond appropriately to a customer's requests if the utility does not have a Commission-approved list in a given area, or the Commission has not yet acted on the advice letter filing.

VII. Findings of Fact

1. The current Affiliate Transaction Rules do not permit a utility to temporarily assign its employees to affiliates covered by these Rules. Rule V.G.2.e, as it currently stands, may disadvantage utilities and their affiliates in other competitive markets, especially internationally.

2. Our modification concerning the temporary use of employees is a narrow exception, the effects of which are, in part, mitigated because the utility employees will still be subject to the Affiliate Transaction Rules, and because of the limitation on the employees and affiliates between which the transfer may take place.

3. The pricing guidelines set forth in Rule V.H prior to today's decision will not adequately compensate the utility for the temporary employee use authorized by today's decision, nor will they adequately reflect the risk of additional ratepayer harm posed by the narrow exception adopted today.

4. Edison's requested modification concerning joint call centers is vague.

5. Edison's requested modification concerning joint marketing does not allay the concerns we articulated in D.97-12-088 which led to the promulgation of Rules concerning joint marketing.

6. We clarify that Rules V.E and V.G.1, when read together, can provide for limited sharing of directors and officers not only as explicitly set forth in Rule V.G.1, but also to perform the limited corporate support functions set forth in Rule V.E, and as set forth in the examples which Edison cited, namely, the Chief Financial Officer or General Counsel. However, the exception in Rule V.E is a

limited exception which would not encompass Edison's proposal for the CEO and Chairman of the Board of the utility to be able to serve as a director and Board Chairman of affiliates covered by these Rules.

7. Corporate communications and public relations functions are permitted corporate support services which may be shared, provided that these activities are not used to engage in joint marketing or advertising by the utility and any affiliate.

8. We do not want to disadvantage certain employees whose positions are impacted by electric industry restructuring from obtaining other employment.

9. In agreeing to modify Rule VII, we are influenced by the fact that ORA agrees that ratepayers stand to benefit from the revenue generated by shareholder investments in nontariffed products and services, provided that a revenue-sharing mechanism is in place for the utility.

10. We adopted the "1% limitation," in part, because of our concerns regarding competition, and our concerns that nontariffed utility products and services do not increase to an inappropriate magnitude. However, we can address these concerns by adopting, in part, the modifications proposed by Petitioners and supported by ORA.

11. Our intent in adopting Rule VII.E.1.c was to limit the provision to transition cost proceedings, not all Commission proceedings.

12. The requested modifications of Rule VI.C concerning the timing of the affiliate audit, as set forth in Appendix A, are reasonable because they will make comparison between the compliance audit and the Affiliate Transaction Report easier and will provide for uniform reporting periods for all utilities. The requested modifications of Rule IV.C regarding service provider information, issues raised by SoCalGas and SDG&E's March 16, 1998 petition for modification, are also reasonable as clarified in this decision and Appendix A.

VIII. Conclusions of Law

1. The modifications to the Affiliate Transaction Rules, attached to this order as Appendix A and B, are reasonable and should be adopted.

2. SoCalGas' July 17, 1998 letter request to withdraw eight pages of what SoCalGas has stamped as "Privileged and Confidential" information attached to Appendix A of its Petition from the record should be granted.

3. SDG&E's and SoCalGas' January 15, 1998, petitions seeking modification of Rule V.G regarding the temporary use of utility employees by affiliates should be granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision.

4. Edison's January 30, 1998, petition seeking modification of many of the Rules on various issues should be granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision.

5. Edison and SoCalGas' January 30, 1998, petition seeking modification of Rule VII regarding utility products and services should be granted in part, as more specifically set forth in the discussion and findings of this decision.

6. SoCalGas and SDG&E's March 16, 1998, petition seeking various modifications of the Rule VI.C regarding the affiliate audit and Rule IV.C regarding service provider information should be granted in part, as more specifically set forth in the discussion and findings of this decision.

7. Revenues accruing from the use of employees authorized by Rule V.G.2.e during the rate freeze should flow back to ratepayers as a credit to the Streamlining Residual Memorandum Account.

8. Because we wish to implement these modifications to the Affiliate Transaction Rules immediately, this order should be effective today.

O R D E R

IT IS ORDERED that:

1. The modifications to the Affiliate Transaction Rules (Rules) attached to this order as Appendices A and B are adopted.

2. San Diego Gas & Electric Company's (SDG&E) and Southern California Gas Company's (SoCalGas) respective January 15, 1998, petitions seeking modification of Rule V.G regarding the temporary use of utility employees by affiliates are granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

3. Southern California Edison Company's (Edison) January 30, 1998, petition seeking modification of many of the Rules on various issues is granted in part and denied in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

4. Edison and SoCalGas' January 30, 1998, petition seeking modification of Rule VII regarding utility products and services is granted in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

5. SoCalGas and SDG&E's March 16, 1998, petition seeking various modifications of the Rule VI.C regarding the affiliate audit and Rule IV.C regarding service provider information is granted in part, as more specifically set forth in the discussion and findings of this decision, and as reflected in Appendices A and B.

6. Revenues accruing from the use of employees authorized by Rule V.G.2.e during the rate freeze shall flow back to ratepayers as a credit to the Streamlining Residual Memorandum Account.

7. The text of Decision 97-12-088, *slip op.* at 65, is corrected so that the parenthetical in the last line of the first paragraph should read "(equal to at least 15%)."

8. SoCalGas' July 17, 1998 letter request to withdraw eight pages of what SoCalGas has stamped as "Privileged and Confidential" information attached to Appendix A of its Petition from the record is granted.

This order is effective today.

Dated ____________________________, at San Francisco, California.

TABLE OF CONTENTS

Page

OPINION ON CERTAIN PETITIONS FOR MODIFICATION OF DECISION 97-12-088 1
I. Summary 2
II. The Affiliate Transaction Rules 3
III. The Petitions 3
IV. SDG&E's and SoCalGas' January 15, 1998 Petitions/Edison's January 30, 1998 Petition 4
Temporary Use of Employees 5
Use of Joint Call Centers 10
Joint Marketing 12
Corporate Oversight 13
Employee Transfer Fee 16
V. Edison and SoCalGas January 30, 1998 Petition Regarding Rule VII (Utility Products and Services) 18
Additional Shareholder Capital Investment, Assumption of Business Risk, or Management Control 19
The "1% Limitation" 21
Utility Showing in Advice Letter 23
VI. SoCalGas and SDG&E March 16, 1998 Petition 24
Timing of Audit 24
Lists Approved By Other Governmental Agencies 24
Yellow Pages Referral 25
VII. Findings of Fact 26
VIII. Conclusions of Law 28
ORDER 29
APPENDIX A
APPENDIX B