

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION ★★

**RESOLUTION E-3539
SEPTEMBER 17, 1998**

RESOLUTION

RESOLUTION E-3539. SOUTHERN CALIFORNIA EDISON COMPANY (EDISON) TRANSMITS ITS AFFILIATE TRANSACTIONS COMPLIANCE PLAN IN ACCORDANCE WITH ORDERING PARAGRAPH (OP) 2 OF DECISION 97-12-088. EDISON'S COMPLIANCE PLANS WERE EFFECTIVE UPON FILING. THIS RESOLUTION REJECTS PORTIONS OF EDISON FILINGS AND APPROVES OTHER PORTIONS. EDISON IS ORDERED TO FILE A NEW ADVICE LETTER TO COMPLY WITH OP 2 OF THE DECISION.

**BY ADVICE LETTER 1278-E FILED ON DECEMBER 31, 1997
BY ADVICE LETTER 1278-E-A FILED ON JANUARY 30, 1998.**

SUMMARY

1. By Advice Letter 1278-E-A Southern California Edison (Edison) requests the Commission approve its compliance plan filed in response to Ordering Paragraph (OP) 2 in Decision 97-12-088 (Decision).
2. This Resolution rejects the advice letter, and thus accepts in part the protests filed by the Joint Petitioners Coalition (JPC)¹ and the Office of Ratepayer

¹ During that portion of this proceeding leading up to D.97-12-088, the Joint Petitioners Coalition (JPC) consisted of Enron; New Energy Ventures, Inc.; The School Project for Utility Rate Reduction and the Regional Energy Management Coalition; The Utility Reform Network (TURN); Utility Coalition Action Network (UCAN); XENERGY, Inc.; Amoco Energy Trading Corporation; the Southern California Utility Power Pool (SCUPP), whose members include the Los Angeles Department of Water and Power and the Cities of Burbank, Glendale and Pasadena, California; the Imperial Irrigation District; the Alliance for Fair Energy Competition and Trading (AFFECT), whose members include the California Association of Sheet Metal and Air Conditioning Contractors National Association, Calpine Corporation, the Institute of Heating and Air Conditioning Industries, the Electric & Gas Industries Association, H2O Plumbing & Heating, Inc., Mock Energy Services, NorAm Energy Services, Inc., and the Plumbing, Heating & Cooling Contractors of California; the City of San Diego; Pan-Alberta Gas Ltd.; and the City of Vernon. When the JPC filed its protest to this Advice Letter its members included Enron; New Energy Ventures, Inc.; The School Project for Utility Rate Reduction and the Regional Energy Management Coalition; TURN; UCAN; SCUPP; the Imperial Irrigation District; and AFFECT.

Advocates (ORA), for not complying with several of the Rules in the Decision (Appendix A). Generally, Edison fails to specify adequate mechanisms or procedures to show how it will comply with several of these Rules. Further, Edison interprets several of the Rules incorrectly.

3. Edison shall file a new advice letter to comply with OP 2 in the Decision, and to reflect the changes implemented by D.98-08-035, no later than 30 days from the effective date of this Resolution. Edison shall also take the immediate actions specified in the Ordering Paragraphs herein.

BACKGROUND

1. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII) 97-04-011/97-04-012 to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services.
2. In the OIR/OII, the Commission recognized that the fundamental changes underway in the California electric and gas markets create a need for these rules.

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

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

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

"No later than December 31, 1997, Respondent utilities Kirkwood Gas and Electric Company, PacifiCorp, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Sierra Pacific Company, Southern California Edison Company (Edison), Southern California Gas Company (SoCalGas), Southern California Water Company (SCWC), Southwest Gas Company, and Washington Water and Power Company shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place implementing the rules we adopt today. The utilities shall file these compliance plans as an advice letter with the Commission's Energy Division and serve them on the service list of this proceeding. The utilities' compliance plans will be in effect between their filing and a Commission decision on the advice letter. A utility shall file a compliance plan annually thereafter using the same advice letter process when there is some change in the compliance plan (i.e., a new affiliate has been created, or the utility has changed the compliance plan for any other reason). Also, no later than 60 days after the creation of a new affiliate, the utility shall file an advice letter with the Energy Division of the Commission, which should also be served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these rules with respect to the new entity. Any Respondent utility which applies for an exemption under Rule 2G does not have to comply with this Ordering Paragraph unless further ordered by the Commission or required by Rule 2G."

² Parties who filed proposals or comments in that portion of this proceeding leading up to the Decision included the Joint Utility Respondents, which included Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison), and Southern California Gas Company (SoCalGas); the JPC; the National Association of Energy Service Companies (NAESCO); the ORA; Texaco Inc. and Texaco Natural Gas Inc. (Texaco). Additionally, Pacific Enterprises, Enova Corporation, SDG&E and SoCalGas jointly (SDG&E and SoCalGas) and Edison submitted comments.

5. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until January 30, 1998. Edison filed a preliminary compliance plan by Advice Letter 1278-E on December 31, 1997, followed by a "Supplemental" Compliance Plan (Plan), AL 1278-E-A, on January 30, 1998, which "both supplements and replaces" the preliminary plan. Protests to the Plan were filed by the JPC on March 19, 1998, and by the ORA on March 23, 1998. A Response to these Protests was filed by Edison on March 30, 1998. We incorporate this Response into Edison's compliance plan as it includes several additions and clarifications lacking in their January 30 Advice Letter.
6. On August 6, 1998, in response to certain petitions for modification of D.97-12-088, the Commission issued D.98-08-035, which changed some of the Commission's Affiliate Transaction Rules established by D.97-12-088. These changes are reflected in this Resolution.
7. Rule V.F.1, regarding the use of the utility name and logo, is the subject of a pending Petition for Modification of D.97-12-088 filed by SDG&E and SoCalGas. This Resolution does not address compliance with Rule V.F.1, but defers this issue to a separate resolution which will follow the issuance of a decision on the Petition for Modification. Edison shall file a revised compliance plan regarding Rule V.F.1 no later than 30 days after the Commission acts on the Petition for Modification of SDG&E and SoCalGas.
8. We recognize that there are other petitions for modification and applications for rehearing regarding D.97-12-088 as well as various new applications, motions, and complaints arising from our adopted affiliate rules. This resolution does not address or prejudice these filings.

NOTICE

Notice of Advice Letters 1275-E and 1275-E-A was made by publication in the Commission's calendar and by mailing copies of the filings to parties in OIR/OII 97-04-011/97-04-012 and interested parties in accordance with Section III of General Order 96A.

PROTESTS

Protests to this Advice Letter were filed by the JPC on March 19, 1998, and by the ORA on March 23, 1998.

DISCUSSION

1. In Section II of its Plan, Edison describes what it calls "Global Compliance Tools" which the company will use "to ensure and promote compliance" with the Rules. (Plan, p. A-2) These Tools include a high-level affiliate compliance oversight team led by an Affiliates Officer. The "team is responsible for ensuring that SCE and its affiliates comply with affiliate transaction guidelines adopted by the Commission and other agencies." It is reasonable to have specific officers and individuals responsible for the enforcement of these rules, although this should be a functional responsibility for management in every unit of the company. The issue will be addressed more thoroughly in the upcoming Rulemaking 98-04-009 which will investigate enforcement measures for these Rules.
2. Another Tool is its effort to educate its employees about these new Rules. The company describes several ways it uses, or will use, to educate its employees about the Rules, including newsletters, letters on specific issues, presentations, internal manuals and procedures, a letter sent to employees outlining the new Rules (All-Employee Affiliate Implementation Package (AEAI)), answers to specific questions via an "affiliate hotline," a web page on the company intranet, and inclusion in the manual entitled *Policies and Guidelines for Affiliated Company Transactions Manual (PRACT)* (Plan, p. A-3). However, the only specific examples of these education efforts provided by Edison are its AEAI package (Appendix C) and a "Representative Example of Training Material," (Appendix D). No newsletter articles or other examples were submitted.

The AEAI package consists of a cover letter and a five-page attachment giving short summaries of the new Rules. This package is an incomplete treatment of this subject and needs to be expanded. The cover letter says ". . .the attachment to this letter only focuses on those rules of greatest importance to the largest number of employees. . . ." We point out that all of the Affiliate Transactions Rules are meant to address the actions of all of Edison's employees, not just the majority. The package itself must be rewritten and redistributed in order to conform to the findings of this Resolution. While summaries of the subject areas are useful, they must be reviewed for accuracy. For instance, the package's summary of the rules governing a utility's joint purchasing with an affiliate says that ". . .SCE may not jointly purchase marketing services, gas or electricity for resale, electric transmission, gas transportation or storage, or system operations." (AEAI

package, p. 4) This is not an exhaustive list, and these categories were given in Rule V.D as examples of prohibited activities. To help prevent such confusion, when the AEAI package is reissued, it should include verbatim quotes from the Commission's Rules and instructions on how the employee can obtain copies of the Rules. The company should include these Rules in its training and PRACT manuals, other appropriate manuals, and post them on the company's intranet and internal e-mail systems.

EDISON COMPLIANCE WITH SPECIFIC RULES

a. Definitions

Rule I.A defines the term "affiliate:"

"Affiliate" means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

Edison states that its parent company, Edison International (EIX), does not engage in the provision of a product that uses electricity or the provision of a service that relates to the use of electricity, and is therefore not a covered Edison affiliate under the Rules. (Plan, p. A-6) This is not contradicted by either protestant. Edison describes the procedure and mechanism it has in place to help prevent the use of EIX to circumvent the Rules governing the transfer of employees. The procedure and mechanism described by Edison are reasonable. The JPC Protest (p. A-2) objects to Edison's language that the JPC claims implies that Edison does not consider its regulated affiliates to be governed by these Rules. In its Response (p. A-1), Edison clarifies that it does indeed recognize that its regulated affiliates are covered by these rules. Thus this issue raised by the JPC is moot.

Rules I.B through I.G define additional terms:

- B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
- D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
- E. "FERC" means the Federal Energy Regulatory Commission.
- F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
- G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

Edison points out that these terms duplicate those already defined under existing Commission rules and offer no additional interpretation. (Plan, p. A-7) We agree with the company.

b. Applicability

Rules II.A and II.B state:

- A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.
- B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

Edison asserts that it will apply these Rules to all "covered" affiliates. The company then lists several affiliates which it says are covered by the Rules as they offer a product that uses electricity or they offer services that relate to the use of electricity. Edison then lists several affiliates who the company says are not covered because their products or services do not use or are unrelated to electricity. (Plan, pp. A-8 and A-9) The JPC in its protest (Protest, p. A-2) objects to this listing as incomplete as there is no rationale given by the company for this particular bifurcation. In its Response to the Protest, Edison says that "no further explanation is necessary" and that the Rule does not require a detailed list of these companies' products and services.

Edison must satisfy the Commission in this compliance plan that it understands the new Rules and that adequate procedures and mechanisms are in place to reasonably ensure compliance on a continuing basis. A thorough explanation for the inclusion of affiliates in these lists is required. If Edison considers an affiliate to be "non-covered" it must specify why its products do not provide electric services or why its services are unrelated to energy. On this issue, the Protest of the JPC is granted.

Rules II.C through II.I state:

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

related to regulated services.

- D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.
- E. **Existing Rules:** Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.
- F. **Civil Relief:** These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.
- G. **Exemption (Advice Letter):** A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:
1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
 2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
 - a) Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a letter to the Executive Director, served on all parties to this proceeding; and
 - b) Agree in this notice to comply with the Rules in their entirety.
- H. **Limited Exemption (Application):** A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.
- I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

Edison asserts that Rules II.C through II.I are either not applicable to Edison, require no action, or continues existing compliance actions by the company. (Plan, pp. A-9 and A-10) Based upon the information presented in the advice letter, these assertions are accepted as correct.

c. Nondiscrimination

Rules III.A and B state:

- A. No Preferential Treatment Regarding Services Provided by the Utility:** Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:
1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
 2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.
- B. Affiliate Transactions:** Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

Edison states that it has communicated the restrictions contained in these Rules in its AEAI package. (Plan, p. A-11) As previously discussed, Edison's AEAI package in its current form is inadequate, so it must be revised and copies of these Rules must be made available to Edison's employees as discussed previously.

Rule III.B.1 states:

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

Edison believes that this Rule covers only its transmission, distribution, and remaining generation functions. (Plan, p. A-12) The JPC (Protest, p. A-3) argues that this is an unwarranted limitation of the application of this rule. The JPC's argument has merit. This rule was intended to cover all activities of the utility, except as provided for in Rules V.D, V.E, and VII. Edison also attempts to expand the exemption contained in Rule V.E on Corporate Support, saying that this exemption allows the utility to offer to its affiliates, on an exclusive basis, vacant space in buildings, surplus furniture and equipment, vehicle maintenance services, and aircraft services. This clearly goes beyond the legitimate sharing of corporate support, which we allowed in an effort to allow the companies to realize certain economies of scope. We agree with the JPC that Edison's interpretation is overly broad. Edison must change its compliance plan so that if the utility has surplus facilities, equipment, supplies, or services, it may share these with its affiliates, on a compensated basis, only if it makes such surplus available to third parties on the same terms and conditions. The availability of any surplus will be advertised by the utility in relevant industry publications and posted on its Affiliate Transaction web site (discussed below). On this issue, JPC's Protest is granted.

Edison argues that "notice given to the *market* in which an affiliate operates" satisfies the Rule's requirement that it makes contemporaneous offerings to its affiliates' competitors. (Plan, p. A-12, Edison's emphasis) The mechanism for implementing this proposed notice is not explained, however. For instance, how will the company determine the relevant market for each of its affiliates? The JPC objects that an affiliate which is "similarly situated" could also be outside the relevant market, but is equally silent about how this market is to be specified. (Protest, p. A-3) Further, once this specification is made, will notice be made in trade publications or mass media? We agree with Edison that it would be unreasonable to require it to investigate each of its affiliates' markets to identify current and potential competitors, and a mass media campaign would be unnecessarily costly and unfocused. Therefore, we instruct Edison to give notice of the availability of excess supply, capacity, services, or information in industry publications that are targeted to the market(s) in which its affiliates are serving.

In addition, this information should be posted on Edison's web site at the same time the offering is made to its affiliates. Edison mentions in its Plan (p. A-12) its development of web pages for the notice of affiliate transactions, but we note that these pages are not linked to the Edison sites. The EIX web site at <http://www.edisonx.com/> contains a link entitled NEW SCE/ AFFILIATE TRANSACTION BULLETIN BOARD which connects to <http://www.sceaffiliatebb.com/> which in turn links to pages which the company says will list capacity, surplus, discounts, and non-customer specific information made available to affiliates, once such offerings are made. While we approve of the development of these web pages, they should be accessible directly via links from the Edison home page (currently <http://www.sce.com/>) as well. Furthermore, to emphasize the separation between the utility and its affiliates, the Notice of New Affiliates should not be linked to the Edison web pages but should be linked to the EIX web pages only.

Edison argues that this Rule is inapplicable to tariffed services, "which are known to be available on a non-discriminatory basis." (Plan, p. A-12) The JPC disagrees, saying that there is no exemption found in the Rule. We agree with Edison. This Rule is designed to help prevent discrimination in favor of the affiliates. A tariff by its very nature aims to prevent one customer from being favored over another through differential pricing and/or information. The JPC's argument on this issue is rejected.

Rule III.B.2 states:

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

Edison claims that it currently provides discounts on a nonpreferential basis. It refers to its *Policies and Guidelines for Affiliated Company Transactions Manual* (PGACT) which states, in relevant part in the section entitled **General Corporate Policies:**

“There shall be no preferential treatment by Utility Subsidiaries in favor of Nonutility Subsidiaries, Nonutility Investees, or Nonutility Third Parties in business activities that Utility Subsidiaries also conduct with unrelated or disinterested third parties, and such business activities shall be conducted on an arm’s length basis. An arm’s length basis of conducting business is one where a party seeks to satisfy its separate best interests in dealing with another party.” (PGACT Manual, p. I-5)

This is an inadequate statement of how Edison intends to ensure its compliance with this rule. The company should specify the procedures, mechanisms, and responsible individuals which prevent discounts or waivers from being offered on a discriminatory basis.

Edison wants to be able to offer nondiscriminatory “percentage-based discounts to competitors in a particular market.” (Plan, p. A-13) Edison’s explanation of their proposal is vague, as pointed out by the JPC. (Protest, p. A-4) In Edison’s Response (p. A-3) it clarifies that the company does not seek an exemption from this Rule, but is simply pointing out that a discount could be based on percentages as well as absolute amounts. We agree that either methodology, as well as others, if offered in a nondiscriminatory manner, complies with this Rule. However, Edison goes on to say that the Rule does “not require evaluation of all discount or marketing plans. Rather, it only requires reporting of discounts offered to affiliates.” This is clearly incorrect, as we require that competitors “should be offered the same discount as the discount received by the affiliates.” This will often require at least some analysis to verify that the discounts are in fact the same. The mere reporting of the discounts may be insufficient unless the discounting methodologies are transparent. We grant the Protest of the JPC on this issue.

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

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

Edison notes that these Rules have been implemented previously by the utility, and that they are closely related to other Nondiscrimination Rules. We agree, and thus Edison's plan is in compliance with these particular Rules.

Rule III.C states:

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

Edison asserts that it already complies with this Rule, it is covered in its AEAI package, and is related to other Nondiscrimination Rules. (Plan, p. A-14) The JPC asks for clarification of what Edison means by the word "tying." (Protest, p. A-5) In its Response, Edison fails to provide a definition, but points out that the word is defined in antitrust law. (Response, p. A-3) We do not require Edison to more fully define "tying" in its compliance plan, but we will address this issue on a case by case basis in the future.

Rule III.D states:

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

Edison states that it does not assign customers currently and that it does not plan to do so. This is satisfactory.

Rule III.E states:

E. Business Development and Customer Relations: Except as otherwise provided by these Rules, a utility shall not:

1. provide leads to its affiliates;
2. solicit business on behalf of its affiliates;
3. acquire information on behalf of or to provide to its affiliates;
4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or

strategic reports, with its affiliates;

5. request authorization from its customers to pass on customer information exclusively to its affiliates;
6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
7. give any appearance that the affiliate speaks on behalf of the utility.

This Rule addresses primarily how the utility's employees interact with its customers and potential customers, as well as its affiliates' customers and potential customers. Compliance with this Rule requires extensive training and retraining of the employees, as well as strict oversight by the responsible management unit. We have already pointed out the deficiencies of the AEAI package in our discussion of Edison's Global Compliance Tools in the Introduction to this Resolution. This training package should be expanded and updated to reflect these decisions of the Commission, and copies of the Rules should be made available to Edison employees, as discussed previously.

Edison states that this Rule allows the utility to provide "a covered affiliate's address or telephone number when specifically requested by a customer, or where a customer contacts SCE under the erroneous assumption that the affiliate is part of SCE, or vice versa." The JPC argues that this interpretation is clearly inconsistent with the Rules and the discussion in the Decision.

The interpretation advanced by Edison would violate not only this Rule but would frustrate the efforts to maintain a separation between the utility and its affiliate in the minds of the customers. The utility should not provide links, either through the internet or through the telephone, to its affiliate, however innocent the transaction might seem. The JPC's argument has merit and its Protest is granted on this issue.

Rule III.F states:

Affiliate Discount Reports: If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;
2. the rate charged;

3. the maximum rate;
4. the time period for which the discount or waiver applies;
5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;
10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
11. the duration of the discount or waiver;
12. the maximum rate;
13. the rate or fee actually charged during the billing period; and
14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

Edison refers to the affiliate transaction web site cited above (<http://www.sceaffiliatebb.com/>) in our discussion of Rule III.B.1, and states that "an affiliate discount reporting form has been developed and will be posted, if required," on that web site. We will require the posting of this form on the Edison affiliate transaction web site. It is important to increase the amount of information available to these emerging and protean markets, in an effort to enhance overall market efficiency. The JPC (Protest, p. A-7) expressed concern about some of the language and proposed forms used by Edison when discussing compliance with this Rule, but Edison's response (p. A-5) satisfies us that the company is aware of its reporting responsibilities and has intent to comply.

d. Disclosure and Information

Rule IV.A states:

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

Edison says that policies are already in place which enforce this Rule, and refers us to the PRACT Manual, May 1996 Supplement. We have already touched upon the PRACT Manual in our discussion of Rule III.B.2, above, and repeat that it should be updated and made more specific in light of these new Rules. In particular, the guidelines in the updated manual should specify a particular individual responsible for determining that 1) the customer has given written, affirmative consent to the release of the information, to both the affiliate as well as to the affiliate's competitors, and 2) the information is made available to both affiliates and the affiliates' competitors in a nondiscriminatory fashion. The revised compliance filing should include the language the company will use for the customer's affirmative consent for release of the information.

To ensure that this information is made available on a nondiscriminatory fashion, a notice that the utility intends to release customer information to an affiliate should be posted, prior to the actual transaction, on Edison's Affiliate Transactions web site referenced above in our discussion of Rule III.F. This notice should not include the name of the customer or include the specific data to be distributed, but should have a general description of the type of data to be released. It is important to note that we are not requiring the actual data to be posted on the internet.

Rule IV.B states:

Non-Customer Specific Non-Public Information: A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the

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provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

Edison asserts that this Rule does not require it to make offerings of information "to other service providers individually." (Plan, p. A-18) We will not require this, but reiterate our instruction to post such information on Edison's Affiliate Transaction web site. Edison also does not want to be required to format the information databases to satisfy the requirements of each individual recipient. The JPC fears that the company might use formats that are obscure or expensive to translate. On this issue, we deny the JPC Protest in part and accept it in part as we will not specify the formats to use but require Edison to offer the data in at least two common and easily accessible formats. These should be compatible with the EDI standards being developed in the Commission's Direct Access Proceeding, once they are established.

The JPC objects to Edison's statement that it will make information available at its headquarters in Rosemead, California. (Protest, pp. A-8-9) Edison states in its Response (p. A-6) that the JPC misunderstands Edison's statement, and that the company will make information available for inspection in Rosemead in addition to transferring information pursuant to this Rule. We see no conflict with this section, with the understanding that information transmitted to an affiliate must be offered under the same terms and conditions to the affiliates' competitors. Edison's requirement that it receive written requests to view this information is reasonable. The JPC's objections are without merit.

The JPC also objects to Edison's requirement that, if it charges the affiliate for the costs of providing the information in accordance with Commission pricing rules (see Rule V.H), it will require identical payment and terms from others who request the non-public information. This falls within our concept of "same terms and conditions" and is reasonable. The JPC's Protest regarding this requirement is denied.

Edison asserts that these Rules do not require the utility to charge its affiliate for the costs of transferring data when performing the shared corporate support allowed in Rule V.E. This is in error. Rule V.E states in relevant part: "Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements." To ignore a particular category of cost would encourage cross-subsidy of affiliate operations.

Rule IV.C.1 states:

Service Provider Information:

Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.

Edison says that it has discontinued its practice of distributing lists of service providers and has informed its employees of the Commission Rule in its AEAI package. We have already addressed this package and note that it is unclear and in need of revision and elaboration, and copies of the Rules should be made available to Edison employees. For instance, the section relevant to this Rule, entitled **Customer Communication Restrictions**, page 2, says: "Lists that do not include affiliates may only be provided at a customer's request." This sentence appears to conflict with this Rule. It should be changed to state that any list of suppliers, whether or not they include affiliates, may be provided only at a customer's request.

Edison states that this Rule allows the utility to provide customers, who affirmatively ask for information about Energy Service Providers (ESPs), referral to the Commission's web site which lists ESPs that have registered with the Commission. This is reasonable.

Rule IV.C.2 states:

If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages). The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

Edison refuses to comply with this Rule and states that the creation and provision of lists of service providers is instead the responsibility of the Commission "or a Commission-authorized third party." (Plan. P. A-20) The company states that any list it creates would "be incomplete and would require frequent revision in order to be accurate and current." Edison believes that the requirement to include any service provider in the list "would create an unjustifiable burden for the utility."

Edison's blatant refusal to comply is in violation of the Rules and the Decision.³ Edison is ordered to comply with this Rule and to file an advice letter with the Commission's Energy Division by September 30, 1998, which provides the list required by this Rule, to update this list at least semi-annually, and file each updated list by advice letter with the Energy Division. Edison must post notice in its Affiliate Transactions web site that it is creating and updating this list, and provide the address to which service providers must write to be included on the list. The compiled list shall have the name, address, and telephone number of each service provider operating in Edison's service territory. Consistent with the Rule, Edison may employ a third party, subject to Commission approval, to create and update this list. Until such a list is created and approved by advice letter, Edison "may refer customers to a generally available listing of service providers (e.g., the Yellow Pages)."

Rule IV.D states:

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

Edison says that its Procurement Department has been informed about this rule and will ensure compliance. Edison states that, in order to facilitate the joint purchases allowed under Rule V.D, it should be allowed to share "information regarding suppliers' terms and conditions" that pertain to such purchases. (Plan, p. A-21) This is allowed under Rule IV.D as long as the utility has obtained "written affirmative authorization to do so from the supplier," provided that the

³ Edison is inappropriately attacking Decision 97-12-088 in a compliance filing. If Edison had wished to challenge this Rule, it should have done so in an application for rehearing. A compliance filing is also an inappropriate means for requesting a modification of the Rules adopted in the Decision. It is noted that in Edison's Petition for Modification, dated January 30, 1998, it asks for no such modification.

utility does not actively solicit the release of such information exclusively for its affiliates.

Rule IV.E states:

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

Edison states that it is training its employees to conform to the restrictions of this Rule. Its AEAI package, at page 2, reads: "SCE employees may not give advice or assistance to customers regarding any specific service provider, including affiliates." We approve of this passage in the AEAI materials. However, Edison interprets the term "service provider," as used in this Rule, too narrowly, specifically as "Energy Service Providers registered with the Commission." (Plan, p. A-21) There is no basis for this restriction. "Service providers" are providers of gas-related, electricity-related, or other utility-related goods and services, including the utility affiliates. Edison infers from its misinterpretation of this term that the provisions of this Rule are lifted once a customer has chosen an Energy Service Provider (ESP). This is incorrect and the Rule is in force whether or not the customer has chosen to employ a particular ESP.

Edison believes that this Rule does not restrict the utility from providing advice or assistance that is unrelated to service providers, such as generic information about electric restructuring. Such discussion is allowed under these Rules providing that this discussion is not used to elicit customer requests for service provider information as covered under Rule IV.C.

Edison requests that it be allowed to provide advice or assistance under the terms of existing contracts "to provide energy advisor services," as long as it does not promote its affiliates or participate in joint activities proscribed by these Rules. This is acceptable.

Edison asserts that this Rule does not prevent the utility from providing "advice regarding suppliers of equipment, materials, or services" pursuant to its requirement under AB 1890 (1996) to provide operation and maintenance services to the new owners of its divested generation facilities. We agree with Edison's interpretation of the rule, provided that 1) the transmittal of this information is necessary to promote the safety and reliability of these plants;

2) information regarding suppliers is requested by the facility owners; and 3) Edison additionally provides the owners the list required under the provisions of Rule IV.C.2.

Rules IV.F and IV.G state:

- F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

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

Edison claims that transactions with its affiliates performed under Rule V.E (Corporate Support) are exempted from this Rule. (Plan, p. A-23) This is incorrect. All tariffed and nontariffed transactions with its affiliates must be recorded and made available for third party review. Rule V.E says in part:

"Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements."

Thus Rule V.E reinforces the requirement that the utility record all transactions between utility and affiliate. This requirement shall be specifically included in the company's AEAI package when it is revised and submitted by advice letter, with the revised compliance plan, to the Energy Division.

Edison has a monthly billing cycle for transactions with its affiliates, and thus would like to define "contemporaneous" as once per month for purposes of this Rule. This is reasonable.

The company interprets the 72-hour requirement to mean three business days following the request. It also interprets the 24-hour requirement as within one business day of service. These interpretations are reasonable. Edison believed that it could implement the 72-hour requirement in all of its affected units by March 31, 1998. It should advise this Commission in its revised compliance plan whether all of its units are now in compliance with this 72-hour requirement, and whether there are any requests for records review which take longer than 72-hours to satisfy.

Rule IV.H states:

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

This Rule is not at issue.

e. Separation

Rules V.A and V.B state:

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

Edison points out that these are already Commission Rules with which the company is already in compliance.

Rule V.C states:

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

Edison claims that this Rule does not preclude the use of its "meeting, conference, or recreational facilities" by its affiliates "on an exclusive basis," providing that it is compensated. (Plan, p. A-24) The company claims that this space is not "capacity" as addressed in Rule III.B.1. In our previous discussion of Rule III.B.1, we have already rejected Edison's claim that it may share with its affiliates, on an exclusive basis, its surplus facilities, furniture, equipment, maintenance, and other services. Edison also asserts that the "Rule does not prohibit affiliate employees from visiting or attending functions in utility facilities. . . Rules governing the transfer of information continue to apply." (Plan, p. A-24) Affiliate employees may attend functions at utility facilities if those functions are open to its affiliates' competitors, consistent with our Rules. The Rules do not allow affiliate employees to share utility facilities, except as specified in these Rules (e.g., pursuant to Rule V.F.4.a, or as necessary to perform shared corporate support functions allowed under Rule V.E). The Decision found the position of the Petitioners to be persuasive on this issue:

"Petitioners argue that sharing office space and equipment creates a potential for the unauthorized transfer of information between a utility and affiliate which could be used to unfairly advantage a utility's affiliate in a competitive market." (Decision, slip op. at page 60)

In the OIR/OII initiating these proceedings, we said:

"It is in the public interest to establish rules which ensure utility affiliates do not gain unfair advantage over other market players, and to ensure utility ratepayers are not somehow subsidizing unregulated activities. Within this framework, the rules should foster confidence among market players that competitors have equal opportunities to gain market share." (OIR/OII, slip op. at page 6)

It is important that affiliates are not advantaged relative to their competitors, especially in this new and protean environment. Edison's assertion that this Rule does not "prohibit electronic mail communications and paging" between the utility and its affiliates, "including supporting infrastructure," appears to encourage such an advantage. The JPC protests this interpretation because it allows the utility and its affiliates access to each other's computer and information system. (Protest, p. A-9) Edison does not explain how this degree of access is "necessary to provide services permitted by Rule V.E and for record-keeping and reporting required by Rule IV.F." It is sufficient for each company to keep and maintain its own communications "infrastructure" and to transfer data as two separate companies. Further, while paging services can be considered "telephone services" which is mentioned as a permitted joint purchase in Rule V.D, internal e-mail is part of the computer and information system. The JPC's Protest on this issue has merit, and the sharing of internal e-mail systems and "supporting infrastructure" between Edison and its affiliates is prohibited by the Rules.

Edison attempts to expand Rule V.E to allow shared "desktop computer maintenance and troubleshooting performed as a support function. . . ." (Plan, p. A-25) The company would also allow utility personnel to "temporarily [gain access to] affiliate computer systems for the purposes of reconfiguration necessary to comply with the requirements of this Rule." This interpretation would invite a sharing of maintenance costs that would give utility affiliates an advantage in their competitive markets. This is one of the problems these rules were designed to mitigate.

Edison says that this Rule does not prohibit access to the utility's computer system by affiliates if "similar access is provided on the same terms and conditions for non-affiliates." We agree with Edison on this point.

Edison argues that this Rule does not prohibit shared use of the utility's cafeteria. Edison is correct, but is reminded that the restrictions against sharing information with its affiliates, imposed especially by Rules III.E, IV.A, IV.B, IV.D, V.F.4, and V.G.2, are in force and must be observed by utility employees.

Edison states that it is in compliance with Rule V.C, but in its next sentence admits that it is, in fact, not yet in compliance. Affiliate employees apparently still have access to the utility's system, and "links" between affiliate and utility systems still exist. Edison says that it is "reviewing" this continuing access and linkages, and that "the initial review will continue through March 31, 1998. . . ."

(emphasis added). Edison offers no excuse for its failure to comply in this area. Affiliate and utility employees should be denied access to each other's computer systems immediately, and whatever links exist should be severed. Edison is instructed to bring the system into compliance now, and to inform the Commission of its success by letter to the Energy Division within fifteen days of the effective date of this Resolution.

Rule V.D states:

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

Edison asserts that the mechanisms for reporting and cost allocation are already in place due to existing Commission requirements. The JPC argues that this is unsatisfactory and these mechanisms must be described in more detail by the utility. As these are already being used in periodic reports to the Commission, we will reject the JPC's arguments regarding this matter.

Edison believes this Rule allows the utility and affiliate to share in the costs of procurement and contract management, as well as the cost of the joint purchase itself. The company gives "vendor identification, bid process management, contract negotiation, and contract management" as examples of what they assert are allowable shared costs under this Rule. The JPC disagrees, stating that this interpretation "swallows the Rule" and permits Edison "to do just about everything" related to the purchase. (Protest, p. A-10) We agree with Edison and deny the JPC Protest in this area. While there may be disagreement about what specific activities are appropriately included (e.g., we would not allow the maintenance cost of a jointly-purchased machine), the cost of procurement or contract management is a legitimate part of the cost of the good or service purchased, provided that the respective portions of the utility's and affiliate's costs are clearly priced and reported.

Rule V.E states:

Corporate Support: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

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

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

Edison lists several functions it claims may be shared and may not be shared under this Rule. (Plan, pp. A-27-29) There is no discussion or explanation for any of these designations. Edison states that functions not listed will be reviewed by Edison's Affiliates Officer, who will then decide whether it may or may not be shared under this Rule. The JPC argues that Edison has listed "almost everything" as permitted under this Rule. (Protest, p. A-11) While somewhat overstated, the JPC's point is well taken.

We allowed the utilities and their affiliates to share particular centralized costs in an effort to allow the companies to capture available economies of scope without giving the affiliates a significant cross-subsidy or competitive advantage. As stated in the Decision: "The presence of any particular cost advantage for the affiliates, if derived from their association with the utility and not from their own internal efficiencies, engenders market power and entry barrier concerns." (Slip op., p. 55) Further, "It is unclear that permitting the utilities and affiliates to share corporate support will actually translate into a competitive market.

However, such sharing of centralized functions generates scope economies and as such can increase production efficiency." (Slip op., p. 58) Hence we seek a balance between efficiency gains through the sharing of centralized costs, and the prevention of distortion in the competitive markets when the affiliates can produce at lower total costs than their competitors (due entirely to their affiliation with the regulated utility).

It is important that this Rule not be used to circumvent the other Rules in the Decision. The Rule states:

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. (Emphasis added)

The list of permitted functions provided by Edison includes several activities that may contribute more to the subsidy of affiliate cost than the capture of scope economies. Edison also lists many information technology functions as permitted, including e-mail. We have also addressed the sharing of e-mail services above, but the entire area of information technology, given the restrictions in Rule V.C on access to computer systems by the affiliates, is of concern.

This is not an exhaustive list of our concerns with this list, but the JPC is correct when it says that "Edison should be required to provide a detailed explanation" for its particular listings. In its revised compliance plan Edison should explain what each function does, how it meets the Commission's goals for this Rule as detailed above, and what measures the companies (utility and affiliates) have taken to ensure that the other Rules are not circumvented by this Rule (as described in the second paragraph of this Rule). We grant the JPC Protest on this issue.

Edison lists its "public affairs" and "corporate communications" as sharable functions under this Rule. D. 98-08-035 clarified 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." (D.98-08-035, slip op. at pp. 15-16.)

In the words of this decision, it is important that these functions, if shared, not be used as "a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates." (D.98-08-035, *slip op.* at p. 16) In its revised compliance plan, Edison should elaborate on how these specific functions are sharable under this Rule, as clarified by D.98-08-035, and how the company proposes to prevent the abuses specified in the decision and listed above.

The JPC also objects that Edison has not demonstrated "the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of the rule and does not use joint corporate support services as a conduit to circumvent these rules." The Rule requires a verification in writing by a corporate officer from the utility and the holding company to be included in the compliance plan, which Edison points out in its Response (p. A-8) is included as Appendix B in its Plan. This satisfactorily addresses the concerns raised by the JPC.

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

Rule V.F.2 states:

A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.

Edison states that this is already company policy, as contained in its manual entitled *Policies and Guidelines for Affiliated Company Transactions (PGACT)*. As we observed in our discussion of Edison's compliance plan for Rule III.B.2 above, the policy statements contained in the PGACT Manual are short on specific details and mechanisms to ensure compliance. We need further elaboration of this area before we are satisfied that Edison is taking the necessary steps to satisfactorily comply with this rule. We reiterate that Edison shall update and refine the PGACT Manual to reflect these new rules.

Rule V.F.3 states:

A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

Edison points out that this is not yet an issue, as this is not a service they offer to other companies. They state that if they do decide to offer space in billing envelopes, they will comply with the Rule's requirement for open and nondiscriminatory access. However, they are silent on advertising space provided in other forms of "written communication" and need to clarify that, if they provide this benefit to their affiliates it will be provided to all "on the same terms and conditions."

Rule V.F.4 states:

A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:

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

Edison believes that it should not be required to withdraw joint responses to customer requests that were transmitted before January 1, 1998. We will not require this.

Edison describes a scenario in which an Edison employee attends a "technical meeting," attended also by affiliate representatives and other third parties, during which marketing or sales issues are raised unexpectedly. Edison states that Rule V.F.4 and IV.E require the utility employee to refrain from participation in the discussion, and to perhaps voice a disclaimer similar to that in Rule V.F.1, but the employee may remain in the meeting. The JPC suggests that the utility

employee announce at the beginning of the meeting that he or she cannot be present during marketing or sales discussions and leave if these topics are indeed brought up.

We allowed flexibility under these rules to permit utility employees, affiliate employees, and customers to meet to resolve technical problems. This flexibility must not be abused as a way to allow the affiliates to market their services jointly with the utility. It is reasonable to expect that the covered companies respect these restrictions by refraining from prohibited activities during these technical meetings. We will require utility employees to explain the Commission's prohibition against joint marketing if the prohibited topics arise, and to remove themselves from the discussion.

The steps Edison has taken to comply with Rule V.F.4.c are generally reasonable. The company needs to explain, however, how this information has been explained to Edison employees. There is small treatment of this in the AEAI package, but this is inadequate.

As for the various companies' internet web sites, we agree for the most part with the JPC that "Edison must also not reference any covered affiliate on Edison's site." Outside of the Affiliate Transaction web site, any such references, and certainly links, are tantamount to joint marketing and are prohibited by these rules.

However, Edison claims that "joint authorship of scientific or academic research articles" are allowed by these rules. This would be a clear violation of Rule V.F.5 as it would be a sharing of research and development costs, and Edison's affiliates would gain through their association with the utility. This would be a benefit not available to the affiliates' competitors. Articles which have been submitted to journals for review as of the effective date of this Resolution will be allowed to proceed, but Edison will discontinue any further joint research with its affiliates.

Rule V.F.5 states:

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

Except for joint authorship, which we have just addressed, and the recently-started Technology Commercialization Incentive Procedure (TCIP) (Res. E-3484), Edison agrees that it will comply with this Rule. Once again, the company fails

to provide details of the mechanisms that will prevent such violations. We can find no mention of this Rule in Edison's AEAI package, for example. Edison shall further elaborate on this point in its revised compliance plan, and describe the specific mechanisms the company will implement to ensure that the utility will not subsidize its affiliates' research and development efforts.

Rule V.G.1 states:

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

Edison asserts that this Rule allows its directors and officers to serve both the utility and a covered affiliate as long as they "are limited to those categories that are clearly within the scope of permitted shared activities described in Rule V.E." (Supplementary Compliance Plan, p. A-35) Edison lists these "permitted shared activities" as "legal, financial reporting, planning and analysis, and corporate secretary functions." The company goes on to state that it believes that it would be consistent with "the overall intent of the Rules" for the CEO and Chairman of the Board of the holding company to serve the utility as well as its covered affiliates, and has filed a Petition to Modify D.97-12-088 to confirm this position.

The JPC disputes Edison's claim that these Rules, taken together, allow utilities and their affiliates to share officers and directors. They say that Rule V.E, governing Corporate Support, "applies to certain discrete services." (JPC Protest, p. A-15)

In its response to this protest, Edison states that these services cannot be performed without "the individual employees who perform them." (Edison Response, p. A-10) The company states that the JPC interpretation of these Rules

is strained, and that Rule V.E states that "a utility . . . may share with its affiliates joint corporate oversight, governance, support systems, and *personnel* . . ." (Edison's emphasis)

In D.98-08-035, the Commission agreed in part and disagreed in part with Edison's interpretation of these Rules in this area:

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

Thus, while Edison's CEO and Chairman of the Board cannot be shared with the affiliates, it permissible for other officers to be shared between the utility and its affiliates covered by these Rules provided that their shared duties are limited to those necessary for the performance of corporate support services allowed under Rule V.E. However, the utility should be judicious when allowing such shared functions, as the Commission reminds the parties later in this decision:

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

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

Footnote 7 on page A-34 states that a utility senior vice-president, Mr. Vikram S. Budhraj, who represents the utility on the Independent System Operator (ISO) Governing Board, also assumed the office of President of Edison Technology Solutions, which Edison describes as a covered affiliate. Edison claims that Mr. Budhraj's services are needed at the ISO during the early days of the Direct Access market due to his expertise in the Edison transmission system (Edison Response, page A-11). At the same time, the company argues that it would be

unreasonable to expect Mr. Budhraj to forgo the career opportunity with Edison Technology Solutions.

Both the JPC and ORA point out correctly that this violates Rule V.G.1. However, by its filing of April 29, 1998, Edison advised the Commission that Mr. Budhraj has submitted resignation papers to the ISO and PX Governing Board on April 13, 1998. Edison anticipates that the resignations will become effective at the next meeting of the Electricity Oversight Board on May 19, 1998, where the Board is expected to approve a new representative from Edison. This makes this particular issue of Mr. Budhraj's membership moot.

Rule V.G.2 states:

All employee movement between a utility and its affiliates shall be consistent with the following provisions:

- a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).
- b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.
- c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within

60 days after the end of the O&M contract with the new plant owners. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

- d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.
- e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:
 - i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.
 - ii. Utility needs for utility employees always take priority over any affiliate requests;
 - iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;
 - iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and
 - v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

Edison describes in its compliance plan the procedures its Human Resources Department uses to oversee and subsequently track employees who transfer to its affiliates, including exit interviews wherein employees are informed of the Rules governing such things as information exchange and "residency" requirements. In its Response to the JPC's Protest, Edison provides us with "exit interview material . . . that is presented to, and signed by, utility employees when they transfer to an affiliate." (Response, p. A-12, Appendix C) This procedure appears to be a reasonable way to warn the employee against sharing utility information with the affiliate. However, Edison does not say whether the employee is given copies of the documents listed in Appendix C, or whether he or she is simply asked to sign or initial them. To make it more likely the employee will read these documents, copies of each should be provided to the employee at the exit interview. If this is not current practice, Edison shall adopt this practice and report on this in its revised compliance plan.

Edison interprets "base annual compensation," as used in Rule V.G.2.c to exclude "rewards, benefits, overheads, and non-monetary compensation." The JPC says that this is incorrect, but fails to explain why.

In its proposal filed before the issuance of D.97-12-088, Edison, as part of the Joint Utility Respondents, recommended that the utility pay a transfer fee for employees transferred from the utility to the affiliate based on the employee's "base annual salary." (Decision, mimeo, at p. 64.) However, D.97-12-088 adopted Rule V.G.2.c which bases the transfer fee on an employee's "base annual compensation," because the Commission used this language in both PG&E and SDG&E's holding company decisions. (Decision, mimeo at p. 65.)

In its compliance plan, Edison reargues the position it took prior to the issuance of D.97-12-088 and defines "base annual compensation" as an employee's base annual salary. This is not a correct interpretation of Rule V.G.2.c.

In Edison's test year 1988 rate case, the Commission recognized that employees choose employment opportunities based on total compensation, not just on salary. "Since employees choose employment opportunities on a total compensation basis, we consider it reasonable to judge utility compensation in the same manner." (D.87-12-076, 26 CPUC2d 392, 457.) In Edison's test year 1995 rate case, Edison was directed to prepare and present an exhibit on total employee compensation which, among other things, specified the compensation provided to employees and officers at each occupational level in the form of cash (including wages, salaries, bonuses, commissions, and all other cash compensation) and benefits (including health care packages, pension benefits, stock options and all other non-cash benefits). (D.96-01-011, mimeo at p. 230.)

We grant the Protest of the JPC in part as we agree that the Edison interpretation is too restrictive. In this case, it is reasonable for Edison to compute the base annual compensation of its employees for purposes of a transfer fee on the basis of both cash and non-cash compensation as set forth above, i.e. including wages, salaries, bonuses, commissions, all other cash compensation, health care packages, pension benefits, stock options and all other non-cash benefits.

The changes made by D.98-08-035 to Rule V.G.2.e makes Edison's discussion of temporary employees, as well as the JPC's protest of Edison's statements, moot.

Rule V.H states:

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

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.
2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.
3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.
4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.
5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.
6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

Edison notes that these rules are similar to existing Commission rules which govern the transfer pricing of goods and services, and that a procedure is already

in place in which such transactions are reviewed by the company's Controller. This mechanism appears to be reasonable.

f. Regulatory Oversight

Rule VI.A states:

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

Edison describes its procedures for updating its compliance plans, stating that its Affiliate Compliance Oversight entity will have this continuing responsibility. This procedure is reasonable.

Rule VI.B states:

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

Instead of providing separate immediate notice to the Commission whenever a new affiliate is created, Edison argues that its posting on its web site is sufficient to conform to the requirements of this Rule. (Compliance Plan, p. A-41) Further, Edison says that it will not file an advice letter if it creates an affiliate to perform a single project. The JPC objects to this interpretation of the Rule, saying that these self-declared exemptions "greatly diminish the effectiveness of the Rule." (Protest, p. A-18) In its Response (p. A-12) Edison argues that the Rule does not require a separate notice to the Commission, but concedes to mail a copy of its posted form to the Energy Division.

First, in the plain language of the Rule: "[T]he utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board." These are two separate actions. A web site posting is not sufficient notice to the Commission. To be clear, the utility will notify the Energy Division in writing, within three business days of its creation, of the new affiliate's name, headquarters, primary officers, contact person for the Commission, and its intended function.

Second, the Rule states that an advice letter to the Commission is required for new affiliates. No exemptions are mentioned or implied. To quote our Decision, Conclusion of Law 2 states: "No later than 60 days after the creation of a new affiliate, the utility should file an advice letter demonstrating how the utility will implement these rules with respect to the new entity." The Protest of the JPC regarding the notice and filing requirements for a new utility affiliate is granted here.

Rule VI.C states:

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

Edison describes a procedure and timetable for compliance with this Rule before it was changed by D.98-08-035, which appeared to be reasonable. The company should update this timetable in its revised compliance plan.

Rule VI.D states:

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

Edison asserts that this Rule duplicates an existing Commission requirement, and that further compliance action is unnecessary. We will assume that this is an indication of Edison's willingness to comply, and we place the company on notice that we expect full compliance with this Rule.

Rules VII A-F (Utility Products and Services) are addressed in Edison's Advice Letter 1286-E filed on January 30, 1998. We will rule on this filing separately.

Rule VII G-I address continued adherence to Public Utilities Code Section 851 compliance, periodic reporting of nontariffed products and services, and the offering of these products and services to affiliates. Edison indicates that it intends to comply with the provisions of these Rules, which we find satisfactory.

FINDINGS OF FACT:

1. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII) 97-04-011/97-04-012 to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services.
2. Decision 97-12-088 established Rules in accordance with the OIR/OII. These Rules address, among other things, nondiscrimination, disclosure and handling of information, and separation standards. The utilities were required to submit compliance plans in accordance with OP 2.
3. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until January 30, 1998.
4. Edison filed a preliminary compliance plan by Advice Letter 1278-E on December 31, 1997, followed by a "Supplemental" Compliance Plan,
5. AL 1278-E-A, on January 30, 1998, which "both supplements and replaces" the preliminary plan.
6. Protests to the Plan were filed by the JPC on March 19, 1998, and by the ORA on March 23, 1998.
7. A Response to these Protests was filed by Edison on March 30, 1998. This Response is incorporated into Edison's compliance plan as it includes several additions and clarifications lacking in the January 30 Advice Letter.
8. On August 6, 1998, in response to certain petitions for modification of D.97-12-088, the Commission issued D.98-08-035, which changed some of the Commission's Affiliate Transaction Rules established by D.97-12-088. These changes are reflected in this Resolution.

9. Edison should file a new compliance plan by advice letter to comply with OP 2 in the Decision, incorporating the changes implemented by D.98-08-035 as well as the corrections discussed in this Resolution, no later than 30 days from the effective date of this Resolution.
10. Rule V.F.1, regarding the use of the utility name and logo, is the subject of a pending Petition for Modification of D.97-12-088 filed by SDG&E and SoCalGas. This Resolution does not address compliance with Rule V.F.1, but defers this issue to a separate resolution which will follow the issuance of a decision on the Petition for Modification. Edison shall file a revised compliance plan regarding Rule V.F.1 no later than 30 days after the Commission acts on the Petition for Modification of SDG&E and SoCalGas.
11. Edison fails to specify adequate mechanisms or procedures to show how it will comply with several of these Rules.
12. Edison employs what it calls "Global Compliance Tools" to ensure compliance with these Rules. These Tools include a high level affiliate compliance oversight team led by an Affiliates Officer.
13. Another Tool is its effort to educate its employees about these new Rules. This effort includes newsletters, letters, presentations, internal manuals and procedures, a description of the new Rules sent to employees called the All-Employee Affiliate Implementation Package (AEAI), an "affiliate hotline," a web page on the company intranet, and inclusion in the manual entitled *Policies and Guidelines for Affiliated Company Transactions Manual (PGACT)*.
14. Only the AEA I package (Appendix C) and a "Representative Example of Training Material," (Appendix D) were included as examples of these Tools in the advice letter filing.
15. The AEA I package consists of a cover letter and a five-page attachment giving short summaries of the new Rules.
16. The AEA I package in its current form is unclear, confusing, and incorrect in some of its sections.
17. The AEA I package gives an incomplete treatment of the Commission Rules and needs to be expanded and rewritten, and should include verbatim quotes from the Rules as well as instructions which explain how employees can obtain copies of the Rules. The updated package should be distributed to all Edison employees and filed with Edison's revised compliance plan.

18. To make these Rules more accessible to employees they should be available in company training manuals, its PRACT manual, other appropriate manuals, and on the company's intranet or internal e-mail system.
19. Based upon Edison's representations here, its parent company, Edison International (EIX), is not an Edison affiliate as defined in these Rules.
20. Edison's procedure and mechanism that help prevent the use of EIX to circumvent the Rules governing the transfer of employees are reasonable.
21. Edison's list of "covered" and "non-covered" affiliates lacks foundation or sufficient explanation.
22. It is reasonable to require Edison to include in its revised compliance plan a complete explanation of why each of its affiliates are either covered or not covered under the ambit of these Rules. If Edison claims that a particular affiliate is not covered by the Rules, it should explain thoroughly why the affiliate's products do not provide electric services or why its services are unrelated to energy.
23. Based on the information presented in the advice letter, Edison's assertion that Rules II.C through II.I are either not applicable to Edison, require no action, or continues existing compliance actions by the company is reasonable.
24. Rule III.B is intended to cover all activities of the utility, except as provided for in Rules V.D, V.E, and VII.
25. If the utility has surplus facilities, equipment, supplies, or services, it may share these with its affiliates, on a compensated basis, only if it makes such surplus available to third parties on the same terms and conditions.
26. It is reasonable to require Edison to give notice of the availability of excess supply, capacity, services, or information in industry publications that are targeted to the market(s) in which its affiliates are serving, and post this information on Edison's web site at the same time the offering is made to its affiliates.
27. It would be unreasonable to require Edison to investigate each of its affiliates' markets to identify both current and potential competitors, and a mass media campaign would be unnecessarily costly and unfocused.

28. The EIX web site at <http://www.edisonx.com/> contains a link entitled NEW SCE/AFFILIATE TRANSACTION BULLETIN BOARD which connects to <http://www.sceaffiliatebb.com/> which in turn links to pages which the company says will list capacity, surplus, discounts, and non-customer specific information made available to affiliates, once such offerings are made. These web pages should be accessible directly via links from the Edison home page (currently <http://www.sce.com/>) as well as from the EIX web site.
29. To emphasize the separation between the utility and its affiliates, the Notice of New Affiliates should not be linked to the Edison web pages but should be linked to the EIX web pages only.
30. It is reasonable to require Edison to maintain its Affiliate Transaction web site and post appropriate information there immediately.
31. Rule III.B, which is designed to help prevent discrimination in favor of the affiliates, is inapplicable to tariffed services. A tariff by its very nature aims to prevent one customer from being favored over another through differential pricing and/or information.
32. Edison's *Policies and Guidelines for Affiliated Company Transactions* (PGACT) Manual is an inadequate statement of how Edison intends to ensure its compliance with Rule III.B.2. The company should specify the procedures, mechanisms, and individuals responsible for the prevention of discounts or waivers from being offered on a discriminatory basis.
33. The PGACT Manual should be updated to reflect these new Rules.
34. The offering of "percentage-based discounts" or discounts based on absolute amounts, if offered in a nondiscriminatory manner, complies with Rule III.B.2.
35. Some analysis is required to verify that the competitors are in fact being offered the same discount as received by the affiliates. The mere reporting of the discounts may be insufficient unless the discounting methodologies are transparent.
36. Rules III.B.3 through III.B.5 have been implemented previously by Edison, and they are closely related to other Nondiscrimination Rules.

37. We do not require Edison to more fully define "tying" in its compliance plan, but we will address this issue on a case by case basis in the future.
38. Edison does not assign customers currently and does not plan to do so.
39. Compliance with Rule III.E requires extensive training and retraining of the employees, as well as strict oversight by the responsible management unit.
40. Providing a customer a covered affiliate's address or telephone number when specifically requested by a customer, or where a customer contacts the utility under the erroneous assumption that the affiliate is part of the utility, or vice versa, would frustrate the Commission's efforts to maintain a separation between the utility and its affiliate in the minds of the customers, and is a violation of Rule III.E.
41. Edison should not provide links, either through the internet or through the telephone, to its affiliate, however innocent the transaction might seem.
42. The posting of affiliate transactions, including an affiliate discount reporting form, on the Edison web site increases information available in these emerging and protean markets, which will increase in turn overall market efficiency. Edison should be required to maintain such a web site and to post relevant information there immediately.
43. The updated PRACT Manual should specify a particular individual responsible for determining that 1) the customer has given written, affirmative consent to the release of its information, to both the affiliate as well as to the affiliate's competitors, and 2) the information is made available to both affiliates and the affiliates' competitors in a nondiscriminatory fashion.
44. The release by Edison of customer information to its affiliate(s), after Edison first obtains the customer's affirmative written consent, should be noticed on Edison's Affiliate Transactions web site. This notice should not include the name of the customer or include the specific data to be distributed, but should have a general description of the type of data to be released.
45. When Edison releases data to its affiliates and third parties, it should be required to offer this data in at least two common and easily accessible formats. These should be compatible with the EDI standards being developed in the Commission's Direct Access Proceeding, once they are established.

46. It is reasonable for Edison to make information available at its headquarters in Rosemead, California, and to require that it receive written requests to view this information.
47. It is reasonable for Edison to require that, if it charges the affiliate for the costs of providing the information in accordance with Commission pricing rules, it will require identical payment and terms from others who request the non-public information, as clarified in the text of this Resolution.
48. These Rules require the utility to charge its affiliate for the costs of transferring data when performing the shared corporate support allowed in Rule V.E. To ignore a particular category of cost would encourage cross-subsidy of affiliate operations.
49. Edison is allowed under these Rules to provide customers, who affirmatively ask for information about Energy Service Providers (ESPs), referral to the Commission's web site which lists ESPs that have registered with the Commission.
50. It is reasonable to require Edison to comply with Rule IV.C.2 and file an advice letter with the Commission's Energy Division by September 30, 1998, which provides the list required by this Rule, update this list at least semi-annually, and file each updated list by advice letter with the Energy Division. It is also reasonable to require Edison to post notice in its Affiliate Transactions web site that it is creating and updating this list, and provide the address to which service providers must write to be included on the list. Such a list should have the name, address, and telephone number of each service provider operating in Edison's service territory. Consistent with the Rule, Edison may employ a third party, subject to Commission approval, to create and update this list.
51. It is reasonable to require Edison to post notice in its Affiliate Transactions web site that it is creating and updating the list required by Rule IV.C.2, and to provide the address to which service providers must write to be included on the list.
52. Until such a list is created and approved by advice letter, Edison "may refer customers to a generally available listing of service providers (e.g., the Yellow Pages)."
53. "Service providers" are providers of gas-related, electricity-related, or other utility-related goods and services, including the utility affiliates.

54. Advice or assistance that is unrelated to service providers, such as generic information about electric restructuring, is allowed under these Rules providing that this discussion is not used to elicit customer requests for service provider information as covered under Rule IV.C.
55. It is reasonable for Edison to continue to provide advice or assistance under the terms of existing contracts "to provide energy advisor services," as long as it does not promote its affiliates or participate in joint activities proscribed by these Rules.
56. Edison should be permitted to provide advice regarding particular suppliers of equipment, materials, or services pursuant to its requirement, under AB 1890 (1996), to provide operation and maintenance services to the new owners of its divested generation facilities, provided that 1) the transmittal of this information is necessary to promote the safety and reliability of these plants; 2) information regarding suppliers is requested by the facility owners; and 3) Edison additionally provides the owners the list required under the provisions of Rule IV.C.2.
57. Rule V.E reinforces the requirement that all tariffed and nontariffed transactions with utility affiliates must be recorded and made available for third party review.
58. It is reasonable to require Edison to specify in its revised compliance plan and AEAI package that the record-keeping requirements of Rule IV.F apply to all transactions between the utility and its affiliates.
59. It is reasonable to define "contemporaneous" to mean once per month for purposes of Rule IV.F.
60. It is reasonable to interpret the 72-hour requirement of Rule IV.F to mean three business days following the request, and to interpret the 24-hour requirement as within one business day of service.
61. Edison should advise this Commission in its revised compliance plan whether all of its units are now in compliance with the 72-hour requirement in Rule IV.F, and whether there are any requests for records review which take longer than 72-hours to satisfy.
62. Edison should bring its computer and information systems into compliance with Rule V.C now, and inform the Commission of its success by letter to

the Energy Division within fifteen days of the effective date of this Resolution.

63. It is inconsistent with these Rules for Edison to share with its affiliates, on an exclusive basis, its surplus facilities, furniture, equipment, maintenance, and other services.
64. The Rules do not allow affiliate employees to share utility facilities, except as specified in these Rules.
65. The sharing of e-mail services, including supporting infrastructure, provides a market advantage to utility affiliates.
66. It is sufficient for each company to keep and maintain its own communications "infrastructure" and to transfer data as two separate companies.
67. To allow utility personnel to access affiliate computer systems for the purposes of troubleshooting or reconfiguration would invite a sharing of maintenance costs, giving utility affiliates an advantage in their competitive markets. This is one of the problems these rules were designed to mitigate.
68. It is reasonable to allow access to the utility's computer system by affiliates if "similar access is provided on the same terms and conditions for non-affiliates."
69. Rule V.C allows shared use of the utility's cafeteria, provided that the Rules prohibiting the transfer of information to affiliates are strictly enforced.
70. Affiliate employees apparently still have access to Edison's computer system, and "links" between affiliate and utility systems still exist.
71. Affiliate and utility employees must be denied access to each other's computer systems immediately, and whatever links exist between the utility and affiliate must be severed.
72. Edison should be ordered to bring the computer system into compliance now, and to inform the Commission of its success by letter to the Energy Division within fifteen days of the effective date of this Resolution.

73. It is reasonable to allow the utility and affiliate to share in the costs of procurement and contract management, as well as the cost of the joint purchase itself.
74. The presence of any particular cost advantage for the affiliates, if derived from their association with the utility and not from their own internal efficiencies, engenders market power and entry barrier concerns.
75. The utilities and their affiliates are permitted to share particular centralized costs under Rule V.E in an effort to allow the companies to capture available economies of scope without giving the affiliates a significant cross-subsidy or competitive advantage.
76. Edison's listing of permissible shared functions under Rule V.E lacks foundation or sufficient explanation. It is reasonable to require Edison to include in its revised compliance plan an explanation of what each function does, how it meets the Commission's goals for this Rule, and what measures the companies (utility and affiliates) have taken to ensure that the other Rules are not circumvented by this Rule (as described in the second paragraph of this Rule).
77. Rule V.E should not be used to circumvent the other Rules.
78. Edison should not be required to withdraw joint responses to customer requests transmitted before January 1, 1998.
79. There is flexibility under these rules to permit utility employees, affiliate employees, and customers to meet to resolve technical problems. This flexibility must not be abused as a way to allow the affiliates to market their services jointly with the utility.
80. Utility employees should be required to explain the prohibition against joint marketing if a prohibited topic arises during a joint technical meeting, and the utility employees should refrain from participation in the discussion.
81. Outside of the Affiliate Transactions web site, references in Edison's web site to its affiliates, and certainly links to affiliate web sites, are tantamount to joint marketing and are prohibited by these rules.

82. Joint authorship of scientific or academic research articles would be a clear violation of Rule V.F.5 as it would be a sharing of research and development costs, and Edison's affiliates would gain through their association with the utility.
83. It is reasonable to require Edison to describe in its revised compliance plan the specific mechanisms the company will implement to ensure that the utility will not subsidize its affiliates' research and development efforts.
84. clarified that these Rules allow some sharing of corporate officers or board members, limited to those duties necessary for the performance of corporate support services allowed under Rule V.E.
85. further clarifies that these Rules do not allow the utility's CEO and Chairman of the Board to be shared with the utility's affiliates.
86. The utility is required to list all shared directors and officers in its compliance plan. Edison should provide this list in its revised compliance plan filing.
87. Mr. Vikram S. Budhraj, who represented the utility on the Independent System Operator (ISO) and Power Exchange (PX) Governing Boards, has also assumed the office of President of Edison Technology Solutions, which Edison describes as a covered affiliate. Edison claims that Mr. Budhraj's services were needed at the ISO during the early days of the Direct Access market due to his expertise in the Edison transmission system. While this was in violation of the Rules, Mr. Budhraj has submitted resignation papers to the ISO and PX Governing Boards on April 13, 1998, making this issue moot.
88. Edison's exit interview procedure for employees who leave for an affiliate are reasonable, but employees should be given copies of the exit interview materials, represented in Appendix C of Edison's Response filing, to emphasize the restrictions against sharing unauthorized information with the affiliate. Edison should report to the Commission regarding this issue in its revised compliance plan.
89. It is reasonable to define the base annual compensation of utility employees for purposes of a transfer fee on the basis of both cash and non-cash compensation, i.e. including wages, salaries, bonuses, commissions, all other cash compensation, health care packages, pension benefits, stock options and all other non-cash benefits.

90. The changes made by D.98-08-035 to Rule V.G.2.e makes Edison's discussion of temporary employees, as well as the JPC's protest of Edison's statements, moot.
91. Edison's procedures for updating its compliance plans, under which its Affiliate Compliance Oversight entity will have continuing responsibility, are reasonable.
92. An internet web site announcement of the creation of a new affiliate is not, by itself, sufficient to comply with these Rules.
93. Rule VI.B requires that the utility will file an advice letter with the Energy Division within 60 days of the creation of a new affiliate. There are no exceptions to this rule.
94. It is reasonable to require Edison to notify the Energy Division in writing, within three business days of its creation, of any new affiliate's name, headquarters, primary officers, contact person for the Commission, and a description of its intended products and functions. No later than 60 days after the creation of this affiliate, the utility should file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter should include the above information and demonstrate fully how the utility will implement these Rules with respect to the new affiliate.
95. Edison's procedure and timetable for preparation of the annual affiliate audit required under Rule VI.C are reasonable, but this timetable should be updated in light of the changes implemented by D.98-08-035, and included in the company's revised compliance plan.
96. Rules VII A-F (Utility Products and Services) are addressed in Edison's Advice Letter 1286-E filed on January 30, 1998, which will be considered separately.

THEREFORE IT IS ORDERED THAT:

1. Edison shall file a new compliance plan by advice letter to comply with OP 2 in the Decision, for the Commission's approval and incorporating the changes

implemented by D.98-08-035 and corrections discussed in this Resolution, no later than 30 days from the effective date of this Resolution.

2. Edison shall file a revised compliance plan regarding Rule V.F.1 no later than 30 days after the Commission acts on the Petition for Modification of SDG&E and SoCalGas.
3. Edison shall expand and rewrite its AEAI package, and include verbatim quotes from these Rules. The updated package shall be distributed to all Edison employees and filed with Edison's corrected compliance plan.
4. Edison shall make these Rules easily available to employees in training manuals, the PGACT Manual, and other appropriate manuals, as well as on the company's intranet and internal e-mail system.
5. Edison shall include in its revised compliance plan a complete explanation of why each of its affiliates are either covered or not covered under the ambit of these Rules. If Edison claims that a particular affiliate is not covered by the Rules, it shall explain thoroughly why the affiliate's products do not provide electric services or why its services are unrelated to energy.
6. Edison shall stop providing a customer a covered affiliate's address or telephone number when specifically requested by a customer, or where a customer contacts the utility under the erroneous assumption that the affiliate is part of the utility, or vice versa. This is a violation of Rule III.E.
7. Edison shall not provide links, either through the internet or through the telephone, to its affiliates.
8. Edison shall give notice of the availability of excess supply, capacity, services, or information in industry publications that are targeted to the market(s) in which its affiliates are serving, and post this information on Edison's web site at the same time the offering is made to its affiliates.
9. Edison shall maintain its Affiliate Transaction web site and post appropriate information there immediately.
10. Edison shall include in its revised compliance filing include the language the company will use for the customer's affirmative consent for release of its information.

11. Edison shall post notice that the utility intends to release customer information to an affiliate, prior to the actual transaction, on Edison's Affiliate Transactions web site referenced above in our discussion of Rule III.F. This notice should not include the name of the customer or include the specific data to be distributed, but should have a general description of the type of data to be released.
12. When Edison releases data to its affiliates and third parties, Edison shall offer this data in at least two common and easily accessible formats. These shall be compatible with the EDI standards being developed in the Commission's Direct Access Proceeding, once they are established.
13. Edison shall comply with Rule IV.C.2 and file a separate advice letter with the Commission's Energy Division by September 30, 1998, which provides the list required by this Rule, update this list at least semi-annually, and file each updated list by advice letter with the Energy Division. Edison shall post notice in its Affiliate Transactions web site that it is creating and updating this list, and provide the address to which service providers must write to be included on the list. The compiled list shall have the name, address, and telephone number of each service provider operating in Edison's service territory. Consistent with the Rule, Edison may employ a third party, subject to Commission approval, to create and update this list.
14. Edison shall specify in its revised compliance plan and AEAI package that the record-keeping requirements of Rule IV.F apply to all transactions between the utility and its affiliates.
15. Edison shall advise this Commission in its revised compliance plan whether all of its units are now in compliance with the 72-hour requirement in Rule IV.F, and whether there are any requests for records review which take longer than 72-hours to satisfy.
16. Edison shall bring its computer and information systems into compliance with Rule V.C now, and inform the Commission of its success by letter to the Energy Division within fifteen days of the effective date of this Resolution.
17. Edison shall not share e-mail systems and "supporting infrastructure" with any of its affiliates.
18. Edison shall not share desktop computer maintenance or troubleshooting with any of its affiliates, or allow its personnel to "temporarily [access] affiliate computer systems for the purposes of reconfiguration." If Edison

allows an affiliate access to its computer system, Edison must allow similar access to non-affiliates on the same terms and conditions.

19. While Edison's cafeteria may be shared with affiliate employees, Edison must allow similar access to non-affiliates on the same terms and conditions.
20. Edison shall not use Rule V.E to circumvent the other Rules.
21. Edison shall include in its revised compliance plan information sufficient to justify its listing of permissible shared functions under Rule V.E., including an explanation of what each function does, how it meets the Commission's goals for this Rule, and what measures the companies (utility and affiliates) have taken to ensure that the other Rules are not circumvented by this Rule (as described in the second paragraph of this Rule).
22. Utility employees shall be required to explain the prohibition against joint marketing if a prohibited topic arises during a joint technical meeting, and the utility employees shall refrain from participation in the discussion.
23. Edison shall describe in its revised compliance plan the specific mechanisms the company will implement to ensure that the utility will not subsidize its affiliates' research and development efforts.
24. Edison shall provide its list of all shared directors and officers in its revised compliance plan.
25. If it is not already current practice, Edison shall start giving copies of the documents represented in Appendix C of Edison's Response filing to transferring employees, and report on this in the revised compliance plan.
26. Edison shall notify the Energy Division in writing, within three business days of its creation, of any new affiliate's name, headquarters, primary officers, contact person for the Commission, and a description of its intended products and functions. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall include the above information and demonstrate fully how the utility will implement these Rules with respect to the new affiliate.
27. Edison shall remove from its internet web site references and links to its affiliates, except for its Affiliate Transactions web site.

28. Edison shall update its timetable for preparation of the annual affiliate audit required under Rule IV.C in light of the changes implemented by D.98-08-035, and include this update in the company's revised compliance plan.
29. The Protests filed by the JPC and the ORA are granted in part and denied in part in accordance with the discussion herein.
30. This Resolution is effective today.

September 17, 1998

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on September 17, 1998. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

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