

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

**ENERGY DIVISION\*\***

**RESOLUTION E-3540  
SEPTEMBER 17, 1998**

**RESOLUTION**

**RESOLUTION E-3540. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) TRANSMITS ITS AFFILIATE TRANSACTIONS COMPLIANCE PLAN IN ACCORDANCE WITH ORDERING PARAGRAPH (OP) 2 OF DECISION 97-12-088. PG&E'S COMPLIANCE PLANS WERE EFFECTIVE UPON FILING. THIS RESOLUTION REJECTS PORTIONS OF PG&E'S FILINGS AND APPROVES OTHER PORTIONS. PG&E IS ORDERED TO FILE A NEW ADVICE LETTER TO COMPLY WITH OP 2 OF THE DECISION.**

**BY ADVICE LETTER 2058-G/1725-E FILED ON DECEMBER 31, 1997.**

**BY ADVICE LETTER 2058-G-A/1725-E-A FILED ON JANUARY 30, 1998.**

**BY ADVICE LETTER 2058-G-B/1725-E-B FILED ON APRIL 20, 1998.**

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**SUMMARY**

1. By Advice Letter (AL) 2058-G/1725-E, Pacific Gas and Electric Company (PG&E) 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)<sup>1</sup> and the Office of Ratepayer Advocates (ORA), for not

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<sup>1</sup>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.

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complying with several of the Rules in the Decision. Generally, PG&E fails to specify adequate mechanisms or procedures to show how it will comply with several of these Rules, fails to provide sufficient information, and interprets several of the Rules incorrectly.

3. PG&E shall file a new advice letter to comply with OP 2 in the Decision, no later than 30 days from the effective date of this Resolution. PG&E shall also take the immediate actions specified in the Ordering Paragraphs herein.

## BACKGROUND

1. In Order Instituting Investigation (OII) I.97-04-012 and Rulemaking (OIR) R.97-04-011, the Commission recognized that the fundamental changes underway in the California gas and electric markets created 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 gas and electric utilities and their affiliates may market services and interact in a marketplace now characterized by increasing competition. . . . The standard of conduct or rules should (1) protect consumer interests, and (2) foster competition.” (OII/OIR, p.2).

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

3. In Decision 97-12-088, the Commission adopted Rules for utility-affiliate transactions. 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, PacificCorp, 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."

4. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until, at most, January 30, 1998. PG&E filed AL 2058-G/1725-E as its compliance plan on December 31, 1997. On January 20, SCUPP/IID filed a Protest, saying that PG&E, along with other utilities, failed to comply with the requirements of the December 23 letter of the Executive Director, pointing out that the December 31 filing was insufficient. On January 29, 1998, PG&E filed AL 2058-G-A/1725-E-A as an addendum to its compliance plan, stating that the two filings comprised its Plan. This moots the Protest of SCUPP/IID.
5. On April 20, 1998, PG&E filed AL 2058-G-B/1725-E-B, amending its compliance plan.
6. On June 16, 1998, PG&E filed AL 2058-G-C/1725-E-C requesting amendment of its compliance plan. However, due to the late filing of this amendment, it will be reviewed separately.
7. 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.

8. 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. PG&E 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.

9. We recognize that there are other petitions for modifications 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 AL 2058-G/1725-E, 2058-G-A/1725-E-A, 2058-G-B/1725-E-B, and 2058-G-C/1725-E0C were made by mailing copies of both filings to the utilities and interested parties as set forth in D.97-12-088, Ordering Paragraph 2, and to all interested parties in R.97-04-011/I.97-04-012. Public notice of this filing has been made in the Commission's calendar.

#### **PROTESTS**

Protests to these advice letters were filed by JPC on January 19, 1998, SCUPP/IID and ORA on January 20, 1998, and by JPC on March 19, 1998.

#### **DISCUSSION**

In its January 30, 1998 addendum to its compliance plan, PG&E set forth its training program created to implement D.97-12-088. This training program included a videotaped training session summarizing the Rules and introducing the use of a daily transaction record as a new requirement for all utility employees who participate in dealings between the utility and the affiliate. The company says that the videotape has been circulated to the utility, holding company, and each affiliate together with supporting handouts and directions to ensure that it is seen by as many employees as possible. PG&E says that more detailed training has been and will be provided to targeted groups of employees.

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In its March 19, 1998 Protest, JPC states that PG&E does not provide sufficient information about its training program. JPC cites gaps in the program that need to be filled. First, a copy of the training video should be provided to the Commission and any party who requests a copy. Second, copies of company newsletter articles covering these Rules should be provided. Third, JPC argues that PG&E's compliance plan lacks specifics about its ongoing training and special training designed for targeted groups of employees. JPC believes PG&E needs to say how often it plans to provide review sessions for employees and provide details about its targeted and intensive training. JPC also wants PG&E to provide information on how it will gauge the effectiveness of its training efforts. JPC argues that asking employees annually whether they have personally complied with the Rules would be ineffective because employees, fearing potential disciplinary actions, would be unlikely to admit a violation. Moreover, an employee's own assessment may be wrong given the complexity of the Rules. JPC thinks PG&E should be required to devise a better system for testing employees' understanding of the Rules, and to provide additional training in areas of low comprehension. JPC wants PG&E to provide more details about its corporate discipline policies, and to explain whether the company has effective "whistleblower" protections for employees who report violations of these Rules.

In its March 27, 1998 Response to the JPC Protest, PG&E says that copies of PG&E's training video were provided to the Commission and TURN, and that additional copies of the training video are available to any party upon request. Second, copies of PG&E's newsletter article on "Keeping Track of Affiliates" and the company's supply neutrality policy were also provided to the Commission. Third, PG&E provided copies of several memoranda it produced regarding new affiliate transaction guidelines and revised affiliate company transaction procedures. Fourth, PG&E provided its guidelines and policies on discipline, PG&E's compliance and ethics hotline, tariff compliance, and third party inquiries regarding individual customers. PG&E also provided its guidelines on joint purchasing for utility employees.

Despite the numerous measures PG&E has undertaken to address the concerns raised in JPC's Protest, we believe PG&E is still lacking in detail about its training program. Specifically, in its revised compliance plan PG&E must provide more information about its ongoing training and review sessions, and how it plans to target its special and/or more intensive training to particular employees. The company should provide examples of training materials and manuals that address or explain these Rules to its employees.

It is also true that testing the efficacy of this training, and determining which of these Rules are not well understood, would be helpful, especially to the company as such a system would help

minimize the likelihood of serious and costly violations. Nevertheless, such testing and analysis are not mandated by these Rules. It should be up to PG&E to ensure that its employees are competently and appropriately trained. However, to help avoid confusion and uncertainty, the company should make available verbatim copies, not just summaries, of Rules III, IV and V to all PG&E, affiliate, and holding company employees, as well as make available on the companies' internet, intranet and e-mail systems, as these Rules govern the employees' actions toward the company's affiliates. Therefore, JPC's Protest is granted in part and denied in part on these issues.

## **PG&E'S 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.

PG&E states its parent company, PG&E Corporation, "does not fit within the definition of 'affiliate' because PG&E Corporation's role is to be a strategic manager of the broad enterprise, to be a financial consolidator and to engage in corporate governance functions and is not engaged in the provision of energy-related products and services as described in Rule II.B." (PG&E AL 2058-G/1725-E, Attachment 1, p.2). No protest was received on this matter. Further, in its addendum, PG&E's VP of Regulatory Relations and Senior VP and General Counsel verify that "the specific mechanisms and procedures . . . are adequate to ensure that: (1) Pacific Gas and Electric Company is not utilizing PG&E Corporation or any of its affiliates as a conduit to circumvent any of the Rules, (2) Pacific Gas and Electric Company is following the mandates of Rule V.E., such that any utilization of joint corporate support services will not be utilized as a conduit to circumvent the Rules, and (3) Pacific Gas and Electric Company is not utilizing shared officers or directors as a conduit to circumvent the Rules." (PG&E AL 2058-G-B/1725-E-B, Attachment 1, p. 5). Based on the above, PG&E procedures and mechanisms appear to be reasonable.

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

- A. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- B. "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.
- C. "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.
- D. "FERC" means the Federal Energy Regulatory Commission.
- E. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.

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- F. "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.

PG&E did not comment on these additional terms and submitted them as part of its compliance plan. We find PG&E's plan to be in compliance with this Rule.

**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.

PG&E says that its "affiliates" are "... the other four lines of business: PG&E Energy Services (PG&E ES), PG&E Energy Trading, PG&E Gas Transmission, US Generating Company and their subsidiaries and affiliates. PG&E Corporation is not an 'affiliate,' but is responsible for establishing procedures to ensure that its operations or personnel are not used to violate any of these rules." (PG&E's Affiliate Rules Compliance Key Requirement Attachment to January 30, 1998 Memorandum, p. 5).

PG&E does not list who the subsidiaries and affiliates of these other four entities are. No protest was received on this matter.

PG&E 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 PG&E considers a subsidiary or affiliate to be "non-covered" it must specify why its products do not provide electric services or why its services are unrelated to energy. Therefore, PG&E



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must revise its compliance plan and provide a listing of each and every subsidiary and affiliate of each and every entity listed above, along with their particular products and why they are or are not covered by these Rules. The Company also needs to explain why the parent is not an affiliate covered under these Rules, i.e., explain the parent's functions within the Corporation.

Rules II.C and II.D 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.

The Commission received no protests on this Rule and the utility submitted this Rule as part of its compliance plan, without comments. We find PG&E's plan to be in compliance.

Rule II.E state:

- 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.

In its addendum, PG&E raised the concern that Rule II.E may, in certain instances, be "technically prohibited by these Rules." (PG&E AL 2058-G-B/1725-E-B, Attachment 1, p.5). As an example of its concern, PG&E states: "Most of the overlap occurs around the giving of 'advice or assistance to customer' about service providers or lists of service providers, which is a necessary part of implementing Commission initiatives to educate consumers about new marketplace choices and processes." (PG&E AL 2058-G-B/1725-E-B, Attachment 1, p.6). PG&E interprets the applicability of this Rule as "... intended to address *only prior affiliate transaction rules and guidelines*," and therefore asserts that it "does not interpret D.97-12-088 as overturning or modifying other Commission decisions, and will not stay or modify its implementation of such decisions as a result of these Rules." (PG&E AL 2058-G-B/1725-E-B, Attachment 1, p.6).

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In its Protest, JPC argues that PG&E is creating a "potentially massive loophole ... which does not exist." (JPC Protest, Attachment 1, p. 1). JPC believes "the Rules provide for limited exceptions" and that "PG&E should apply for exemptions where it believes they are necessary. It cannot deal with the problem, to the extent there is one, by simply declaring that the Rules do not apply in certain circumstances." (JPC Protest, Attachment 1, p. 1). With regard to the example cited by PG&E, JPC's response is "the company's compliance must, at least, explain precisely what PG&E believes it must do under the Commission's consumer education decisions, and how those duties conflict with the Rules. Further, the JPC continues "PG&E must provide detail about *every* potential conflict it perceives. It is not particularly helpful to the Commission or other parties to know that 'most of the overlap' regards the customer education plans; it begs the obvious question, where is the other overlap?" (JPC Protest, Attachment 1, p. 2).

In its Response to the Protest, PG&E states that after reviewing both the Gas Accord (D.97-08-055) and consumer education program decisions (D.97-08-064), it has determined that at this time, there appears to be no conflicts with the consumer education decision, and only minimal conflicts with the Gas Accord decision. (March 27, 1998 Response to Protest, Attachment 3, p.3-2). The only conflict PG&E raised between the affiliate Rules and the Gas Accord is the commitment, under the Gas Accord, requiring PG&E to conduct a market test to determine if outreach efforts through affinity groups (e.g., city governments, schools, churches) are effective in increasing program knowledge and participation and reducing aggregators' transaction costs. The company says there is no procedure under the affiliate Rules to seek approval to provide customers with advice and assistance when choosing a core transportation agent (CTA). (March 27, 1998 Response, Attachment 3, p.3-2).

PG&E's outreach efforts should not include advice and assistance on choosing a CTA. Further, PG&E should provide assurance that it will not use exposure from these efforts to offer or provide its audience advice or assistance about its affiliates or other electric service providers.

Moreover, we agree with JPC that the Rules provide for limited exemptions and PG&E should apply for such exemptions where it believes they are necessary. PG&E cannot avoid conflicts by simply declaring that the Rules do not apply in certain circumstances. Rule II.E provides a means for utilities to approach conflicts within the Rules. Therefore, JPC's Protest is granted on this issue.

Rule II.F through II.H states:

- 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:
2. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
  3. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
    - b) 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
    - c) 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.

The Commission received no protests on this Rule and the utility submitted this Rule as part of its compliance plan, without comments. We find PG&E's plan to be in compliance.

Rule II.I states:

- 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.

In its advice letter, PG&E provided no comment on this Rule. However, JPC filed a Protest asserting that PG&E imposes an interpretation of these Rules which is too narrow. For instance, the company asserts that Rule V.F.1 requires a disclaimer when its affiliate uses the name or logo associated with the utility only on marketing, advertising, and promotional materials, even though Rule V.F.1 expressly requires disclaimers on "any material" circulated by an affiliate, or

on any use of the utility name or logo. (JPC Protest, Attachment 1, p. 2). In its Response, PG&E states it has adopted a disclaimer policy aimed at all California customers, even if they are not in California when contacted. Further, PG&E states it is working in good faith to address the Commission's intent of creating a level playing field for those competing for California customers. In its amended filing, PG&E states that it has established an interim preclearance review procedure whereby the manager of Legal Compliance and Business Ethics of PG&E Corporation will review and clear all ads in national, major regional, and California publications, all radio and television advertisements, and marketing materials in California prior to publication or broadcasting. Further, this interim preclearance procedure will apply to each affiliate until the General Counsel of PG&E Corporation gives written approval of the affiliates compliance program. (PG&E AL 2058-G-B/1725-E-B, Attachment 1, p. 37).

As we explained in the Background section, above, the issue of PG&E's compliance with Rule V.F.1 will not be addressed in this Resolution, but will be handled in a separate Resolution following a Commission Decision on the Petition for Modification of this Rule filed by SoCalGas and SDG&E. JPC's Protest will be addressed in this subsequent Resolution as well.

c. **Nondiscrimination**

Rule III.A states:

**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.

In its original advice letter filing, PG&E issued two memoranda which provided guidelines and standards to ensure compliance with regulatory requirements governing affiliate relationships. In its Protest, JPC argued that all memoranda and procedures utilized by PG&E should be incorporated in PG&E's compliance plan. (JPC Protest, Attachment 1, p. 2) In its March 27, 1998 Response to the Protest, PG&E included the referenced memoranda and procedures provided to employees. The company should revise the guidelines and standards to comply with

the findings of this resolution, reissue these to its employees, and include them in its revised compliance plan.

In its original advice letter filing, PG&E also stated that it would "issue periodic reminder notices to relevant utility personnel." (PG&E AL 2058-G/1725-E, Attachment 1, p. 8). JPC's Protest states that PG&E "should specify which employees it believes should receive such reminders, and how often those reminders will be provided." (JPC's Protest, p. 3). In its Response, PG&E states that employees whose job responsibilities include communicating with customers of the utility as a regular feature will receive periodic reminders about compliance. Although it has not developed a specific list of employees, PG&E says that it is working with representatives from each business area to identify work groups that may fall into this category. Additionally, PG&E will incorporate a section on affiliate transaction rules in its new corporate policy handbook. In its revised compliance plan, the company should submit as an attachment a copy of this section of its new corporate policy handbook that addresses these Rules. (PG&E's March 27, 1998 Response to Protest, Attachment 3, p. 3-3).

In its amended filing, PG&E stated that it has begun intensive training effort for all employees of PG&E Corporation in an effort to implement the Rules. Further, all utility officers and managers, and officers of each affiliate and the holding company, were provided a video and summary presentation of the Rules. The company asserts that as of January 26, approximately 900 people had seen the video, and the company had planned to provide more detailed presentations to be aimed at targeted groups of employees. (PG&E AL 2058-G-B/1725-E-B, Attachment 1, p. 1, footnote 1). We have already discussed PG&E's training program in the "Discussion" section above. As we said there, in its revised compliance plan PG&E must provide more information about its ongoing training and review sessions, and how it plans to target its special and/or more intensive training to particular employees. The company should provide examples of training materials and manuals that address or explain these Rules to its employees. Further, the company should make available verbatim copies, not just summaries, of Rules III, IV and V to all PG&E, affiliate, and holding company employees, and place the Rules on the companies' internet, intranet or e-mail systems. Therefore, JPC's Protest is granted in part and denied in part on these issues.

Rules III.B and III.B.1 state:

**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.

1. **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.

PG&E believes it has adequate procedures in place to implement this Rule. For example, information related to interstate natural gas transactions will be posted on the Pacific Gas and Electric Transmission Northwest (PGTNW) electronic bulletin board, information related to interstate electricity transactions will be posted on OASIS, and any required intrastate transaction information will be posted and maintained on PG&E's internet site. (PG&E's AL 2058-G-B/1725-E-B, Attachment 1, p. 7).

In its Protest, JPC argued that PG&E contradicts the plain wording of Rule III.B.1 by interpreting "contemporaneously" to mean within 24 hours. Further, JPC argues that PG&E's static transfer switch agreement with PG&E ES is void unless the services are made contemporaneously available to all other similarly situated market participants.<sup>2</sup> Moreover, JPC believes PG&E's reliance on Rule V.F.4, which permits utilities to attend meetings with their affiliates and customers to address technical and operational issues, is misplaced as it does not authorize the exclusive provision of utility service to an affiliate which PG&E is supposedly requesting. (JPC Protest, Attachment 1, p. 3).

In its Response, PG&E cited Webster's dictionary to define "contemporaneously".<sup>3</sup> PG&E

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<sup>2</sup>The issue of whether "contemporaneously" means 24 hours and PG&E's static transfer switch agreement were raised by JPC and not discussed by PG&E in this section of its advice letter filing.

<sup>3</sup>Webster's dictionary defines contemporaneous as "1) existing or occurring during the same time. 2) originating, arising, or being formed or made at the same time"; contemporaneously is defined as "at or near the same time". (Webster's Third New International Dictionary at p. 491).

argues the Commission intended for the utility to make the offer available as close to the same time when it is offered to the affiliate as possible, and in essence, close enough in time to give the competitors of the utility's affiliate the same business opportunity or advantage the affiliate might gain from the supply, capacity, services or information the utility provided. (PG&E's Response, Attachment 3, p. 3-4).

In its Response to JPC's Protest of PG&E's contract with its affiliate, PG&E ES, PG&E argued that the contract is "exclusive only in that it is site specific and customer specific." (PG&E's Response, Attachment 3, p. 3-4). PG&E further states that no other "energy service provider (ESP)" has asked PG&E for assistance in managing the interconnection of a specific customer's power quality device at a specific site with the utility's system. PG&E has offered that if any other ESP is interested in such an arrangement, PG&E would be willing to negotiate an arrangement depending on varying factors such as characteristic of the device, the customer load, and the site. PG&E says that the company would not and could not favor PG&E ES or its customers in the terms of such a contract. (PG&E's March 27, 1998 Response to Protest, Attachment 3, p. 3-4).

We approve and encourage PG&E's use of electronic bulletin boards and its own internet web pages to communicate information. As for the company's definition of "contemporaneous," PG&E is correct that this Rule attempts to remove one of the market advantages which accrue to affiliates due to their relationship with the utility. The Protest of the JPC is granted on this issue. With regard to PG&E's contract with PG&E ES, as long as PG&E offers the same service and price, i.e., PG&E must make all discounts, fee waivers, or tariff provisions contemporaneously available to all market participants, then PG&E contract is valid. Therefore, JPC's Protest on this issue is denied.

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.

In its filing, PG&E states it “does not offer preferential treatment to customer of its affiliates, but from time to time may offer a discount or waiver of a charge, fee or tariff provision to a PG&E distribution or transmission customer...PG&E does not investigate whether such a customer is also a customer of PG&E ES or other affiliate.” (PG&E AL 2058-G/1725-E, Attachment 1, p. 11). Further, PG&E states that it “does not interpret ‘a transaction in which its affiliates are involved’ as including this type of discount” and it “does not interpret this Rule as applying to vendor discounts passed through pro-rata to affiliates in connection with joint purchases permissible under Rule V.D.” (PG&E AL 2058-G/1725-E, Attachment 1, p. 11).

In its Protest, JPC argues that the Rules require any discount offered by PG&E to an Affiliate must be offered to all other similarly situated market participants. Further, JPC states that “at the very least, PG&E must provide more detail about the kinds of discounts and waivers it plans to provide, and the laws, regulations and ‘sound utility practice’ which permit those discount and waivers. PG&E must also provide further assurances that the commodity provider remains anonymous when such discounts, waivers, etc. are provided. Moreover, “the addendum indicates that discounts which are subject to the Rule will be posted ‘within 24 hours,’ rather than contemporaneously as the Rule expressly requires. PG&E must justify this deviation from the Rule. PG&E should also provide the Commission with a sample form/format to demonstrate how it plans to advise other providers of discounts that are subject to the Rule. (JPC Protest, Attachment 1, p. 4).

In its Response, PG&E states that the type of discount and waivers it plans to provide are authorized by the Commission in either its Rate Design Window proceeding (D.95-10-033 and D.97-09-047) or those permitted within the language of its filed tariffs and electric and gas rules. When such tariff and rules permit, PG&E states it will exercise that discretion in an impartial and nondiscriminatory manner. Further, PG&E does not inquire into the identity of its customer’s ESP. However, when PG&E receives actual notice that PG&E ES is the customer’s ESP, PG&E personnel are instructed to consult with specific departments to assure adherence to the Rules. Finally, PG&E states that when discounts are to be offered to all ESPs, it will be posted on its web site. (PG&E Response, Attachment 3, p. 3-5).

In D.97-12-088, the Commission emphasized that “All competitors service the same market as the utility’s affiliates should be offered the same discount as the discount received by the affiliates.” (D.97-12-088, Findings of Fact 16). It is the Commission’s intent that PG&E must make all discount, fee waiver or tariff provision offers contemporaneously available to all market participants, if PG&E’s affiliate is involved in the transaction. Therefore, JPC’s concern that “PG&E must provide more detail about the kinds of discounts and waivers it plans to provide.



and the laws, regulations and 'sound utility practice' which permit those discount and waivers," is unnecessary if the discount is made to all competitor and affiliates contemporaneously. Similarly, JPC's concern that "PG&E must also provide further assurances that the commodity provider remains anonymous when such discounts, waivers, etc. are provided" is also unnecessary as long as competitors and the affiliates are offered the same opportunity in a nondiscriminatory manner. However, while we find JPC's concerns unnecessary, it may take at least some analysis to verify and determine whether the discounts are in fact the same. Therefore, we grant JPC's Protest in part and require PG&E to maintain an accounting of when, how, and to whom it offered its discount, along with the underlying data and calculations showing that the discounts are in fact the same offered to all parties. This information should be made reasonably available to third parties upon request.

Rules III.B.3 and III.B.4 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.

In its filing, PG&E stated that it complied with the provisions of its filed tariffs and gas related rules, including Rule 22. In addition, PG&E states it has a policy requiring compliance with the tariff. (PG&E AL 2058-G/1725-E, Attachment 1, p. 11-12). In its Protest, JPC stated that PG&E should discuss its usage of discretion and no discretion, giving example of each. In its Response, PG&E provided Rule 12C as an example of a tariff that gives the utility discretion, and Schedule E-19 as an example of one that does not give the utility discretion. (PG&E's Response, Attachment 3, p. 3-6). PG&E has sufficiently addressed the concerns raised by JPC, and thus JPC's Protest is denied on this issue.

Rule III.B.5 states:

**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.

PG&E states it has adequate procedures to implement this Rule through its use of Direct Access Service Request (DASR) reporting process and regular training for all employees with customer

contact. The Commission received no protest on this rule. We find PG&E's plan to be in compliance.

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.

In its advice letter filing, PG&E stated that it has put in adequate procedures to implement this Rule by adopting a no-joint-marketing corporate policy. Further, PG&E employees with customer contact responsibilities receive periodic training and communications on state and federal antitrust law. PG&E emphasized that employees are instructed not to say or imply that the taking of a utility service is contingent upon the taking of service from an affiliate. (PG&E AL 2058-G/1725-E, Attachment 1, p. 12).

JPC's Protest argues that PG&E should include a copy of its "no joint marketing corporate policy" in its filing if is separate from the General Counsel's memorandum; should provide the antitrust training to senior officers as well as employees with customer contact; should specify its meaning of "customer contact responsibilities"; should describe what constitutes an impermissible tying arrangement and how it is convey to its employees; and should provide examples of "Key Requirements" in its addendum which it believes would violate the Rules. (JPC Protest, Attachment 1, p. 5).

PG&E has provided reasonable responses to this Protest. PG&E's "no joint marketing policy" reference was from its General Counsel's memorandum. Its antitrust training includes senior officers. PG&E defined customer contact responsibilities as a regular feature of those employees whose jobs are to communicate with customers of the utility. In presentations to its employees, PG&E says it addresses the prohibition on tying arrangements in the Rule, by providing instructions on what to say and not to say. And although PG&E feels its "Key Requirements" document is nothing more than a short "punch list," it would consider adding examples to other written employee materials and on its Affiliate Rules Compliance Department web site, available to all employees. (PG&E Response, Attachment 3, p. 3-7). Therefore, we deny JPC's Protest on this issue.

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.

PG&E interpreted "assigning customer" to mean unauthorized switching of bundled utility service or virtual direct access/distribution customers to direct access customers of PG&E ES. (PG&E AL 2058-G/1725-E, Attachment 1, p. 13, footnote 1). In its Protest, JPC raised the issue of whether PG&E's interpretation of this rule should only be limited to the issue of "slamming."<sup>4</sup>

We agree with JPC that this Rule should not be limited to just "slamming" as it should apply to all kinds of conduct and/or different types of "assignments of customers" that may arise in the future. Therefore, we grant JPC's Protest on this issue.

Rule III.E.1 states:

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

- I. provide leads to its affiliates;

In its advice letter, PG&E stated that the Rule does not prohibit it from providing its affiliates' telephone number or address when specifically asked for by a third party. Further, PG&E states that upon request, it will provide a third party with the telephone number of any similarly situated energy provider. (PG&E's AL 2058-G/1725-E, Attachment 1, section III.E.1, p. 13). In its Protest, JPC states PG&E must reproduce its reference policies and memoranda it distributed to its employees during summer of 1997. Also, PG&E's provision of producing its affiliates' telephone number and address, upon request from a third party, must be rejected because the Rules expressly set out the type of information utilities may provide to customers about their affiliates. (JPC Protest, Attachment 1, p. 7). In its Response PG&E acknowledges that its referenced policy is not a separate document, that its referenced memoranda have been provided, and that PG&E has not misrepresented its understanding of the parameter of the question, but only seeks an exception to the Rules to allow it "to respond with truthful commercial speech to a customer's direct unsolicited question. (PG&E Response, Attachment 3, p. 3-8).

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<sup>4</sup>"Slamming" is defined as the unauthorized switching of a customer. (D.98-02-108, 1998 Cal.PUC Lexis 232 \*4).

We agree with PG&E that to avoid misleading or confusing a customer, it should be able to provide some sort of response other than silence. We are also aware that allowing PG&E to pass along information or leads to its affiliates may give its affiliate a competitive advantage. However, Rule IV.C.2 states in pertinent part:

If a customer requests information about any affiliate 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 affiliate.

Therefore, if a third party contacts PG&E requesting information about its affiliates' telephone number or address, PG&E, consistent with this Rule, must provide the caller with a list of the names, telephone numbers, and addresses of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliate. If PG&E receives an exemption to the requirement to provide a list, under the specific provisions of Rule IV.C.2, the company can refer the customer to the appropriate telephone listing.

Rule III.E.2 states:

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

2. solicit business on behalf of its affiliates;

PG&E states it has "adopted a widely disseminated supply neutrality policy requiring PG&E to maintain complete neutrality regarding a customer's supply choice. (PG&E AL 2058-/1725-E, Attachment 1, p. 13). JPC protested arguing that PG&E failed to provide copies of its "widely disseminated supply neutrality policy. This concern has been met as PG&E has provided the Commission, JPC and ORA with copies of its articles from its in-house newspaper, *PG&E Week*, and copies of its referenced policy, "Supply Neutrality Policy" that have been provided to all PG&E employees.

Rule III.E.3 states:

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

3. Acquire information on behalf of or to provide to its affiliates;

PG&E states that it “does not interpret this Rule as applying to activities which are permissible under rule V.E, nor to the forwarding of written or oral communications from actual or potential customers or suppliers where the originator of the communication has indicated that the communication was intended for an affiliate. (PG&E AL 2058-G/1725-E, Attachment 1, p. 14). JPC is concerned about PG&E creating a potentially enormous loophole, specifically, “PG&E ... may ‘forward’ written or oral communications from actual or potential customers ‘where the originator of the communication has indicated that the communication was intended for an affiliate.’” (JPC Protest, Attachment 1, p. 7). In its Response, PG&E argued that it provides information about its affiliate where the customer calls or writes to PG&E asking for or addressing written correspondence intended for its affiliate. (PG&E’s Response, Attachment 3, p. 3-8). As we stated above, to avoid misleading or confusing a customer, if a third party contacts PG&E requesting information about its affiliates’ telephone number PG&E should provide the caller with a list of all service providers’ telephone numbers and addresses, including its affiliate. Where a customer addresses communication intended for an affiliate to PG&E, PG&E should return the communication to the customer, informing the customer of the difference in entities and enclose a list of all service providers’ telephone numbers and addresses, including its affiliate.

Rule III.E.4 states:

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

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:

In its advice letter filing, PG&E states it does not interpret this Rule as including any information which a utility employee might otherwise legally disclose to others after termination of employment. Further, PG&E says Corporate governance and corporate support services are expressly permitted under Rule V.E. Further, PG&E does not interpret this rule as applying to activities connected with the preparation of material required to comply with regulatory and governmental reporting requirements. JPC requested PG&E “provide a more in-depth explanation about the types of ‘market analysis reports’ it wants to share with its affiliates for regulatory reporting purposes. (JPC’s Protest, Attachment 1, p. 8). In its Response, PG&E stated that “the type of market analysis reports PG&E had in mind are documents originating in

the holding company or in an affiliate, which must include utility data in order to comply with regulatory reporting requirements on the holding company or affiliate.” One example report provided by PG&E included drafts of periodic disclosure documents required to be filed by the Security Exchange Commission, which must be circulated by the holding company to each subsidiary for review and revision, would contain non-public utility information, and be circulated to affiliates. Another example would be Hart-Scott-Rodino Act filings which require the affiliate to submit information from each entity with which it is affiliated, including the utility. (PG&E’s Response, Attachment 3, p. 3-9). PG&E has not explained why it needs this exemption when we have already provided a limited exemption to the parent holding company to provide corporate support such as financial reporting.

We point out that this Rule prohibits the sharing of “proprietary or non-publicly available reports.” As long as the company makes these reports available contemporaneously to its affiliates’ competitors, it is acting in compliance with these Rules. See Rule IV.B. We further note that employees who leave the utility for an affiliate are governed by Rule V.G, specifically, its restrictions on the transfer of information.

Rules III.E.5 through III.E.7 state:

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

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.

PG&E states it has adequate procedures in place to implement these Rules as information will be released either with the specified customer’s explicit written consent or the use of a Standard Customer Information Release Form; that a memorandum will be issued by the Senior VP and General Counsel to all PG&E Corporation employees and its subsidiaries directing them to comply with the provisions of these Rules; and PG&E Corporation will disseminate a policy to all affiliates requiring compliance. The Commission received no protest on this Rule. We find PG&E’s plan to be in compliance with this Rule.

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.

PG&E states it has adequate procedures in place to implement this Rule as it will post discounts related to interstate natural gas transaction on its PGTNW electronic bulletin board, post discounts related to interstate electricity transaction on OASIS, and post any affiliate discounts on intrastate transactions and maintain all required information on its internet site. The Commission received no protests on this Rule. We find PG&E's plan to be in compliance with this Rule.

**d. Disclosure and Information**

Rule IV.A states:

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

PG&E states that employees who have access to customer information (i.e., rates, account services, and customer revenue transactions) are prohibited from giving this information to any person or entity without the customer's prior written consent. Further, the use of PG&E's Standard Customer Release Information Form or equivalent written consent is mandatory. Moreover, PG&E's corporate policy E.2(3)(a) states that employees may not use or disclose confidential or proprietary information during employment. PG&E also monitor compliance with this policy as to employees who transfer to affiliates by means of a checklist. (PG&E AL 2058-G/1725-E, Attachment 1, p. 18). In response, JPC protested that PG&E should provide a copy of its Standard Customer Release Information Form and make modifications to its "The 12 ARC Commandments;" specifically, number one should be amended to require that PG&E shall not solicit a customer to share information with an affiliate or unaffiliated provider.

PG&E provided the requested policies and form in its Response, and made the change to its "Commandments." (PG&E Response, Attachment 3, pp. 3-9). Rule IV.A also requires that information be made on a nondiscriminatory basis. To comply with this Rule, PG&E should post a notice on its internet site that it intends to release customer information, for which information it has obtained the customer's affirmative written consent, to an affiliate contemporaneous with the actual transaction. Moreover, this notice should generally describe the type of data to be released without releasing the name of the customer or the specific data to be released. We deny the Protest of JPC on this issue.



Rule IV.B states:

- B. Non-Customer Specific Non-Public Information:** A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or 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 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.

In its advice letter, PG&E states it has in place the August 1997 Procedures<sup>5</sup> which implement the pricing and reporting guidelines. Further, the Senior VP and General Counsel issued a memorandum to all employees of PG&E Corporation and its subsidiaries directing them to comply with the provisions of this Rule. However, PG&E does not interpret this Rule to include what information an employee might disclose to others after termination of employment. Moreover, to the extent Rule V.E does not apply, PG&E does not interpret this Rule as applying to "activities connected with the preparation of material required to comply with regulatory and governmental reporting requirements". (PG&E AL 2058-G/1725-E, Attachment 1, p. 19).

In its Protest, JPC argued that PG&E failed to provide "specific sections of its August 1997 procedures referenced in its plans"; that PG&E must explain in more detail what it means by "regulatory and governmental reporting requirements," what kind of information it plans to share to comply with those requirements; and that PG&E should "explain how it plans to make non-customer specific non-public information 'contemporaneously available to all other service providers on the same terms and conditions', as required by the Rule." (JPC Protest, Attachment 1, p. 9). In its Response, PG&E provided copies of its referenced procedures: explained, in

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<sup>5</sup>PG&E's August 1997 procedures are its revised affiliated company transaction procedures issued by the company's vice president and controller. This document was created to provide all PG&E employees with general guidelines on the appropriate business practices to be adhered to when working with or on behalf of an affiliated entity.

section III.E.4 above, what type of regulatory and governmental reporting requirements and information it would share; and will make non-customer specific non-public information available by posting notice of it electronically on OASIS, PGTNW, and on its web site. We have already addressed PG&E's concern about its and its affiliates' regulatory and governmental reporting requirements above. (See Rule III.E.4). To repeat, as long as non-customer specific, non-public information is made available contemporaneously to all service providers on the same terms and conditions, PG&E is in compliance with these Rules.

Rules IV.C.1 and 2 state:

**C. Service Provider Information:**

1. 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 by Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.
2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. 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.

In its advice letter, PG&E states it will refer customers to the Commission's world wide web site for a listing of service providers, or for customers who do not have internet access, PG&E will print the list from the Commission's web site and mail it to the customer. PG&E is seeking Commission approval to refer customers to the Commission's world wide web site. PG&E also

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requested that should PG&E desire to provide customers with a different list of service providers, PG&E will file an advice filing seeking authorization of that list including the required disclaimers as required by the Rule. (PG&E AL 2058-G/1725-E, Attachment 1, p. 20).

As we said in our discussion of Rule III.E.1, service providers addressed by these rules are not limited to the Commission's list of Electric Service Providers (ESPs). Compliance with this rule requires that PG&E file 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. . .", with the Commission by advice letter. PG&E may provide customers with a list of all providers of gas-related, electricity-related; or other utility-related goods and services, approved by the Commission, operating in its service territory, including its affiliates. D.98-08-035 modified this rule so that all utilities may provide customers with a list of service providers approved by other governmental bodies as long as it has filed this list by an advice letter during its first semi-annual advice letter filing and is either approved or pending approval. 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).

Rule IV. D and E state:

- D. **Supplier Information:** A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.
- E. **Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

PG&E states it will have adequate procedures in place to implement these Rules as a memorandum was issued by its Senior VP and General Counsel to all employees of PG&E Corporation and its subsidiaries governed by this Rule directing utility employees not provide non-public information and data received from unaffiliated suppliers to its affiliate or non-affiliate entities without first obtaining the supplier's affirmative written authorization, and direct them not to actively solicit the release of such information. However, PG&E does not interpret Rule IV.E as prohibiting communications with customers to explain bundled utility distribution service, virtual direct access, direct access tariffs or other PG&E tariff, gas or electric rules, or to provide general advice. The Commission received no protest on these Rules. We find PG&E's

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plan to be in compliance with these Rules.

Rule IV.F and 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.

For its record keeping activities, PG&E states it has an electronic database which records all DASRs and related direct access activities conducted between PG&E and its affiliate PG&E ES. Further, PG&E has electronic bulletin boards to maintain records of discounts, policies requiring the mechanism of record keeping for all tariff or contract provisions, and corporate policies for document retention. Moreover, detailed records supporting individual transactions will be made available to third parties for review on the same terms and conditions as they were made available to its affiliate. If an affiliate was charged for a document or information, a third party will also be charged the same amount. (PG&E AL 2058-G/1725-E, Attachment 1, p. 22-23). PG&E also stated that it will issue a policy to all utility officers and managers for dissemination to all utility employees, and to the CEOs of each affiliate for dissemination to all employees of that affiliate which will implement Rule IV.G. (PG&E AL 2058-G/1725-E, Attachment 1, p. 23). The company should submit a copy of this policy statement in its revised compliance plan.

In its Protest, JPC cautions that in judging PG&E's compliance plan, in view of the Overland audit (A.95-10-024), in which JPC acknowledges PG&E has not responded to formally, some of the policies now in place were valid during the audit period. (JPC Protest, Attachment 1, p. 10). PG&E responded that some of the policies have changed and some are the same and under review.

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in that audit. However, both parties agree that the audit should not control the outcome of this proceeding. We agree that the audit should be reviewed in PG&E's Holding Company Application, A.95-10-024. Therefore, the Protest of JPC is denied on this issue.

Rule IV.H states:

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

PG&E states that this Rule does not apply to PG&E Corporation because it is not engaged in the provision of products or services, and thus is not an affiliate under these Rules. This Rule is not at issue. Therefore, we find PG&E's plan to be in compliance with this Rule.

**e. Separation**

Rule V.A through 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.

PG&E states it is in compliance with these Rules as each affiliate maintains its own Board of Directors, officers, and books of accounts. Further, PG&E and its affiliates are separate corporate entities. Moreover, PG&E Corporation's financial statements and PG&E's financial statements and annual FERC reports are audited for compliance with GAAP by independent accountants on an annual basis. Finally, the books and records of PG&E's affiliates are open for examination by Commission staff. This Rule is not at issue. Therefore, we find PG&E to be in compliance with this Rule.

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Rule V.C states:

- C. **Sharing of Plant, Facilities, Equipment or Costs:** A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, 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).

As required by the Rules, PG&E is a separate entity from its affiliates. However, PG&E was supposed to relocate affiliate employees located in its building by March 1, 1998. PG&E should report in its revised compliance plan whether there are any affiliate employees still occupying any of the utility's buildings, and, if so, its plan to rectify this. Until the company reports that a clean physical separation exists between it and its affiliates as required by this Rule, the company will not be in compliance.

Rule V.D state:

- D. **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.

In its advice letter, PG&E states that it will "create, maintain, and circulate a list of permitted joint purchases and will monitor compliance." Further, PG&E promises that any existing contract containing terms permitting prohibited transaction will be amended. Moreover, PG&E in its August 1997 Procedures requires "purchases of materials and services on behalf of an affiliate must be reported to Accounts Payable, and the costs thereof must be charged to the appropriate intercompany order." (PG&E AL 2058-G/1725-E, Attachment 1, p. 26). In its

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Protest, JPC argued that PG&E cites but fails to produce the compliance list and procedures it references. Further, JPC believes PG&E relies on policies and procedures which have been called into question, citing questionable procedures found in the Overland audit. (JPC Protest, Attachment 1, pp. 10-11).

The PG&E response is that it provided its employees two listings of goods and services. One listing is for goods and services that may be purchased jointly by the utility and one or more of its affiliates. The second listing is for goods and services that may not be purchased jointly by the utility and one or more of its affiliates.

We find both lists of goods and services to be in compliance with the Rules. Further, in its Response, PG&E provided JPC with the August 1997 Procedures. (PG&E Response, Attachment 2). PG&E stated that some of the August 1997 Procedures are the same as those in place during the Overland audit period. PG&E emphasized that the issues arising from the audit are being considered in PG&E's Holding Company Application (A.95-10-024), that it is the only utility currently litigating such an audit, and that its compliance with the Rules should not be judged by a different standard than that of the other utilities. In D.97-12-088, the Commission denied without prejudice ORA's motion to consider the Overland audit in the Affiliate Transaction Rulemaking. However, the Commission also noted that nothing in the Affiliate Transaction proceeding prevents the Commission from issuing other utility-specific rules in this area in another proceeding if the Commission finds it is necessary. (See Rule II.E) (D.97-12-088, slip op. at p. 20) Similarly, nothing in this Resolution prevents the Commission from issuing other utility-specific Rules in another proceeding if necessary.

As stated above, PG&E provided JPC a copy of the August 1997 procedures. Moreover, the August 1997 procedures set forth guidelines on the appropriate business practices when company employees interact with an affiliate that all PG&E employees must adhere to. Therefore, we deny the Protest of JPC on this issue.

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.

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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.

In its advice letter, PG&E states it has adequate procedures in place to implement this Rule as it distinguished PG&E Corporation from the utility and its affiliates. First, PG&E transferred 120 employees who previously performed shared corporate services to PG&E Corporation. Second, on a monthly basis, Corporate Accounting charges PG&E Corporation for its allocated share of the costs of corporate services provided by PG&E. Third, PG&E corporate service employees charge time spent directly on holding company or affiliate matters to the appropriate entity, by reporting time spent on these matters. Finally, PG&E Corporation shall charge PG&E for services and support it provides to PG&E. (PG&E AL 2058-G/1725-E, Attachment 1, p. 27).

In its Protest, JPC argued that PG&E needs to "specify whether and how its August 1997 Procedures comply with the Rule adopted over a year later and whether and how they differ from the ones in place during the period of the Overland audit." Further, JPC believes the "Commission should require PG&E to explain in more detail how it intends to share 'corporate communications and public relations' services without violating the Rules pertaining to corporate identification and advertising."

In its Response, PG&E stated that the August 1997 Procedures were revised to comply with the transfer pricing rules adopted in D.97-12-088. (PG&E Response, Attachment 3, p. 3-11). Further, PG&E provided the controller's memorandum that amended the Rules in its attachment. (PG&E Response, Attachment 2). Finally, the Overland audit is being reviewed in another proceeding and any violation will be addressed in that proceeding.



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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, PG&E should elaborate on how these specific functions are shareable 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.

With regard to whether PG&E’s internet web page was operating in violation of the prohibition against joint advertising and joint marketing, PG&E has acknowledged that its “Overview” of PG&E Corporation is in violation of the Rule, and has made the changes suggested. Assuming that PG&E can give cogent demonstration in its revised compliance plan that its parent company is not an “affiliate” as covered by these Rules, then PG&E Corporation can communicate its connection with PG&E. If so, the utility’s web site may contain a “hotlink” to the parent web site, and the parent web site may provide information about the utility on its web site limited to the “facts necessary and important to the financial community, i.e., information conveyed in the corporation’s annual report and other investor communications.”

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

Rules V.F.2 and V.F.3 state:

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.
3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

PG&E states it will have adequate procedures in place to implement these Rules as a memorandum was issued by Senior VP and General Counsel to all PG&E Corporation employees and subsidiaries setting forth the requirements of these Rules. The Commission received no protest on these Rules. We find PG&E's plan to be in compliance with this Rule. However, PG&E should provide a copy of this memorandum in its revised compliance plan.

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.

PG&E referred to this Rule in its discussion of its compliance with Rule III.B.1, saying that Rule V.F.4.a allows interaction with its affiliate on technical and operational issues. While we have said that its contract with PG&E ES, having to do with static transfer switches, is allowed by Rule III.B.1, given its non-discrimination constraints, such interaction with its affiliate is not addressed by Rule V.F.4.a, which allows technical or operational meetings to discuss the provision of transportation service to a third party customer, provided that the meeting is not

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solicited by the utility or affiliate and that it not be used for marketing purposes.

PG&E asserts that attendance at trade shows, conferences or other public marketing events, where PG&E and its affiliate attendance is not jointly planned and coordinated, is not a violation under these Rules. (PG&E AL 2058-G/1725-E, Attachment 1, p. 30). In its Protest, JPC restates the inapplicability of this Rule to PG&E's contract with PG&E ES, arguing that "Rule V.F.4 permits utilities to attend *meetings* with their affiliates and customers to address technical and operational issues; it does not authorize the exclusive provisions of utility services to an affiliate." (JPC Protest, Attachment 1, p. 3). The purpose of this Rule is to allow the utility, its affiliates, and customers the flexibility to resolve technical and operational problems. This flexibility cannot and must not be abused by allowing the utility and its affiliate to jointly market their services. Therefore, we agree with JPC that PG&E should be permitted to attend meetings with their affiliates and customers to address technical and operational issues. We also agree with JPC that the utility employee must refrain from engaging in prohibited activities during these meetings. Therefore, we will grant JPC's Protest on this issue. Further, if a prohibited topic arises, i.e., advertising, sales, marketing or other activity which may be classified as a joint activity, during a meeting, trade show, conference or other public marketing event, then the utility employee must not participate in the discussion.

Rule V.F.5 states:

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

PG&E states that a memorandum will be issue to all employees of PG&E Corporation and its subsidiaries setting forth the requirements of this Rule. The Commission received no protest on this Rule. The company should include a copy of this memorandum in its revised compliance plan filing.

Rule V.G.1 states:

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, 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

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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.

In its advice letter, PG&E stated that this Rule does not apply to PG&E Corporation because it is not an affiliate engaged in the provisions of products and services. Further, because PG&E Corporation is excepted from this Rule, its Boards of Directors and Officers will continue to serve both PG&E and PG&E Corporation. PG&E then provides a detailed listing of these individuals. (PG&E AL 2058-G/1725-E, Attachment 1, pp. 32-33).

In its Protest, JPC stated that PG&E should provide how many corporate support personnel remain utility employees and whether this number will increase. Further, PG&E should also provide assurance that joint employment of support personnel will not be used to circumvent the Rule. JPC requested a list of all job titles with detailed job descriptions for all corporate support personnel. (JPC Protest, Attachment 1, p. 13). In its Response, PG&E argued that this type of data will be available to the independent auditor required by Rule VI.C, that this type of showing is not required in a compliance plan, and adequate assurance has been enumerated in paragraphs 4, 6, and 7 at pages 2-3 of its December 31, 1997 filing. We have already addressed the issue of whether the parent company is an affiliate under the ambit of these Rules in our discussion of Rules II.A and II.B, saying that the Commission needs more information before a final determination can be made. However, we agree here with PG&E that the degree of detail about corporate support personnel requested by the JPC is not necessary for our purposes. We therefore deny the Protest of JPC on this issue.

In the case of shared directors and officers, D.98-08-035 clarified that in addition to the limitations set forth in Rules V.E and V.G.1, the sharing of directors and officers is limited to the performance of their corporate support function. Further, Rule V.G.1 applies only to the sharing of officers and directors between the utility and its affiliates covered by this Rule. Rule V.G.1 does not preclude the holding company and its affiliates from sharing the same officers and directors, provided the officers and directors are not also directors of PG&E. Therefore, D.98-08-035 supports PG&E's interpretation that Rule V.G.1 allows its Board of Directors and Officers to serve both PG&E and its holding company, PG&E Corporation.

D.98-08-035 requires a corporate officer from PG&E and its holding company to verify, in PG&E's compliance plan, that mechanisms and procedures are in place to ensure that the utility

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is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. Further, PG&E's compliance plan shall also list all shared directors and officers between it and the affiliates. No later than 30 days following a change to this list, PG&E 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.

Rule V.G.2.a states:

2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:
  - a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

In its advice letter, PG&E stated that it will have adequate procedures in place to implement this Rule by revising its August 1997 Procedures to require the reporting of employee movement between utility and affiliate be part of its Annual Affiliate Transaction Report. (PG&E AL 2058-G/1725-E, Attachment 1, p. 33). In its Protest, JPC argues that PG&E does not provide a copy of its August 1997 Procedures or describes how it plans can be evaluated. (JPC Protest, Attachment 1, pp. 13-14). PG&E provided the referenced procedures in its Response. (PG&E Response, Attachment 3, pp. 3-13). As this is an established procedure under D.93-02-016, the compliance plan is satisfactory. Therefore, JPC's Protest is denied on this issue.

Rule V.G.2.b states:

- 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.

In its advice letter, PG&E states that when an employee transfers to an affiliate, the employee may not return for a period of one year and if that employee returns to the utility, the employee

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may not return to the same affiliate for a period of two years. (PG&E AL 2058-G/1725-E, Attachment 1, p. 34). JPC filed a Protest arguing that PG&E does not describe how it intends to initiate a policy and practice to avoid using a holding company as a means of circumventing this Rule. (JPC Protest, p. 14). PG&E responded that it has developed human resource procedures to ensure its holding company does not circumvent this Rule. Further, PG&E states that its General Counsel sent each employee in the holding company a letter outlining their responsibilities with respect to confidential utility information. All holding company employees were asked and executed a written acknowledgment that they understood the policy and intended to comply. When the company files its revised compliance plan, it should provide a copy of this written acknowledgment, along with specific examples of the "human resource procedures," such as manuals or training materials, used to inform holding company employees of these new Rules. The Protest of JPC is approved in part and denied in part on this issue.

Rule V.G.2.c states:

- 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 Section 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

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employees at a later time.

In its advice letter, PG&E stated that its August 1997 Procedures are consistent with this Rule. Citing D.96-11-017 and its June 20, 1997 Compliance filing, PG&E stated that the initial staffing phase will extend to July 1, 1998, and the 25% fee will not apply to transfers made from PG&E to PG&E Corporation on or before that date. (PG&E AL 2058-G/1725-E, Attachment 1, pp. 34-35). In its Protest to this Rule, JPC argues that for clarification, PG&E needs to specify that "calendar year" means a 12-month period. The company should also acknowledge that the 25% transfer fee applies to an employee who transfers to any affiliate. Finally, JPC thinks that PG&E should produce copies of D.96-11-017 or its June 20, 1997 compliance filing, pursuant to D.97-05-040. (JPC Protest, p. 14-15). In its Protest, ORA argues that PG&E has not demonstrated why the 25% fee for utility employee transfer should not apply beginning January 1, rather than July 1, 1998. (ORA January 20, 1998 Protest, p.2).

In its Response to JPC, PG&E does acknowledge that "calendar year" means a 12-month period, and that PG&E has always assumed the transfer fee applied to all entities affiliated with the utility. PG&E also produced a copy of the relevant portions of the documents requested, although the company does not believe it was necessary to do so. This is satisfactory and the JPC Protest is denied. Further, the company points out that this Rule allows for an initial implementation period before the transfer fees become effective, and it is reasonable to allow this period to extend to July 1, 1998 for PG&E. The Protests of JPC and ORA are denied on this issue.

D. 98-08-035 clarifies the sharing of "corporate communications" and "public relations functions":

"... 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 reviewed compliance plan, PG&E should elaborate on how these specific functions are shareable 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.

Rules V.G.2.d and V.G.2.e state:

- 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.

PG&E states it has adequate procedures in place to implement these Rules as its corporate policy prohibits employees from using or disclosing confidential or proprietary information acquired during employment; that it monitors compliance of this policy for employees who transfer to affiliates; and that the Senior VP and General Counsel's memorandum to all employees of



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PG&E Corporation and its subsidiaries states PG&E will no longer allow employee assignments to its affiliates on a rotational basis.

This Rule was modified by D.98-08-035 to allow temporary assignment of employees under certain specified conditions. In its revised compliance plan, PG&E should report on how it plans to share its employees with its affiliates, if at all, and how it will satisfy the various conditions listed in this revised Rule.

Rules V.H.1 through V.H.3 state:

Transfer of Goods and Services: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, 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.

In its advice letter, PG&E states that sales to an affiliate of goods and services produced, purchased, or developed for sale on the open market will be priced at their tariff or list price, whichever PG&E determines is the fair market value. Further, transfers from an affiliate of goods and services produced, purchased, or developed for sale on the open market will be priced at the lower of fair market value or tariff/list price. In its Protest, ORA points to PG&E's reliance on D.96-11-017 from A.95-10-024, PG&E's Holding Company Application, as applicable to these Rules. (ORA's January 20, 1998 Protest, p. 2). ORA observed that the proceeding is still open and the rules under consideration in the proceeding are subject to change. However, unless the Commission publishes a new Decision concerning this application which affect the rules, the current rules will remain in force. Therefore, this Protest is denied.

Rules V.H.4 through V.H.6 state:

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.

PG&E states it has adequate procedures to implement these Rules as its Senior VP And General Counsel's memorandum to all employees of PG&E Corporation and its subsidiaries directs them to comply with the provisions of these Rules, require that transfers from the utility 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, and transfers from an affiliate to PG&E 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, except for as provided by Rule V.G.2.e. Further, PG&E interprets Rule V.H.6 as only applying to utility transfers with affiliates engaging in the provision of a product using or relating to the use of gas or electricity and not to transactions with affiliates engaged in other functions such as financial services. (PG&E AL 2058-G/1725-E, Attachment 1, pp. 45-46). The Commission received no protest on these Rules. We find PG&E's plan to be in compliance with this Rule.

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).

PG&E promises to file a compliance plan with the Commission annually if the plan is changed for any reason. No protests were received on this Rule. We find PG&E's plan to be in compliance.

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

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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.

PG&E will notify the Commission of the creation of any new affiliate and will post notice on its electronic bulletin board. No protests were received on this Rule. We find PG&E's plan to be in compliance.

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.

PG&E states it will hire an independent auditor to verify the utility's compliance with these Rules. The audit will be served on all parties to this proceeding and the full costs of these audits will be charged to PG&E's shareholders. No protests were received on this Rule. We find PG&E's plan to be in compliance.

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.

PG&E states it will continue to make all affiliate officers and employees available to testify before the Commission as needed or required. No protests were received on this Rule. We find PG&E's plan to be in compliance.

Rule VII addresses new products and services offered by the utilities. PG&E has filed a separate advice letter on January 30, 1998 describing the existing products and services it offers.

## FINDINGS OF FACT

1. PG&E filed AL 2058-G/1725-E on December 31, 1997 requesting approval of its compliance plan in accordance with D.97-12-088, the Affiliate Transaction OII/OIR, R.97-

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04-011/I.97-04-012.

2. On January 19, 1998, JPC filed a Protest seeking more information and support for PG&E's compliance plan.
3. On January 20, 1998, SCUPP/IID filed Protests that PG&E failed with to comply with the Commission's order.
4. Also on January 20, 1998, ORA filed a Protest regarding PG&E's employee's transfer fees, PG&E's references to its holding company, and the costs for shared compliance plan.
5. On January 30, 1998, PG&E filed an addendum to its December 31, 1997, compliance plan in accordance with D.97-12-088, the Affiliate Transaction OII/OIR, R.97-04-011/I.97-04-012.
6. On March 19, 1998, JPC filed a detailed Protest to PG&E's advice letter arguing that PG&E reads loopholes into a number of the Rules without justification, and fails to provide sufficient detail and supporting documentation in support of a number of its claims.
7. On March 27, 1998, PG&E filed its Response to the Protest of JPC and ORA.
8. On March 30, 1998, JPC filed a supplemental Protest against PG&E for running an advertisement which appeared to violate various rules pertaining to joint advertising, joint marketing, and the use of the utility's name and logo.
9. On April 6, 1998, ORA also filed supplemental Protest supporting JPC. ORA argued that PG&E's ad violated the prohibition against joint marketing and joint advertising, and the requirement to display disclaimer language when the utility's logo is used in non-utility material.
10. On April 6, 1998, PG&E filed a Response to the JPC's March 30, 1998 Protest. In its Response, PG&E argued that JPC was in error as the ad did not violate the prohibition against joint advertising and joint marketing; that the ad did not violate the name and logo disclaimer requirements; and that JPC is rehashing concerns about an earlier withdrawn PG&E ES brochure.
11. On April 20, 1998, PG&E filed AL 2058-G-B/1725-E-B requesting approval of its

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amended compliance plan in accordance with D.98-04-029.

12. On August 6, 1998, in response to certain petition 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.
13. 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. PG&E 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.
14. Although PG&E has taken numerous measures to develop and implement a training program for all employees who participate in dealings between the utility and its affiliates, PG&E still appears to be lacking in detail about its training program.
15. PG&E must provide more information about its ongoing training and review sessions and how it plans to target its special and/or more intensive training to particular employees. PG&E should provide examples of training materials and manuals that address or explain these Rules to its employees.
16. PG&E should distribute verbatim copies, not just summaries of Rules III, IV, and V to all PG&E, affiliate, and holding company employees, as well as make them available on the companies' intranet and e-mail systems, as these Rules govern the employee's actions toward the companies' affiliates.
17. In its revised compliance plan, PG&E must provide a listing of each and every subsidiary and affiliate, along with their particular products and services and why they are or are not covered by these Rules.
18. PG&E also needs to explain why its parent company, PG&E Corporation, is not an affiliate under these Rules, i.e., explain the parent's functions within the Corporation.

19. PG&E's outreach efforts should not include advice and assistance on choosing a core transportation agent.
20. PG&E should provide assurance that it will not use exposure from its outreach efforts through affinity groups (e.g., city governments, schools, churches), to offer or provide its audience advice or assistance about its affiliates or other electric service providers.
21. If PG&E believes an exemption is applicable in a certain instance, it must apply for an exemption when it believes it is necessary. PG&E cannot avoid conflicts simply by declaring that the Rules do not apply in certain circumstances.
22. PG&E must revise its guidelines and standards to comply with the findings of this resolution, ensure compliance with regulatory requirements governing affiliate relationships; reissue the new guidelines and standards to each employee; and include the new guidelines and standards in its revised compliance plan.
23. In its revised compliance plan, PG&E should submit as an attachment, a copy of its section on affiliate transaction rules in its new corporate policy handbook.
24. PG&E's training program appear to be reasonable, assuming that its summaries of the Rules are accurate and complete. PG&E should provide examples of training materials and manuals that address or explain these Rules to its employees. Further, PG&E should make available verbatim copies, not just summaries, of Rules III, IV, and V to all PG&E, affiliate, and holding company employees, and place the Rules on the companies' internet, intranet or email systems.
25. PG&E is encouraged its use of electronic bulletin boards and its own internet web page to communicate information.
26. As it is likely that PG&E knows in advance that it will have surplus supply or capacity, or available information or services, it is not unreasonable to require notice to be posted on the PG&E's affiliate transaction web site contemporaneously with when these resources will be made available. PG&E should do this, and also make these resources available to all similarly situated firms, "which include all competitors serving the same market as the utility's affiliates."
27. PG&E must make all discounts, fee waivers, or tariff provisions contemporaneously

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available to all market participants, if a PG&E affiliate is involved in the transaction.

28. PG&E's contract with its affiliate, PG&E ES is valid as long as PG&E offers the same service and price to all market participants.
29. We accept the definition of "contemporaneously" as "at or near the same time".
30. In order to verify and determine whether the discounts and waivers are equally offered to all market participants, whenever an affiliate is involved in a transaction, PG&E must maintain an accounting of when, how and to whom it offers its discount to.
31. PG&E has adopted a no-joint-marketing corporate policy.
32. PG&E employees, with customer contact responsibilities including senior officers, receive periodic training and communications on state and federal antitrust law. PG&E defines customer contact responsibilities as a regular feature of these employees' jobs as having to communicate with customers of the utility.
33. PG&E's employees are instructed not to say or imply that the taking of a utility service is contingent upon the taking of service from an affiliate.
34. PG&E is willing to consider adding examples to its "Key Requirements" document and other written employee materials and on its Affiliate Rules Compliance Department web site, available to employees.
35. PG&E's definition of "assigning customers" is not limited to just slamming case but must also apply to each and every conduct and/or different types of assignment of customers that may arise in the future.
36. If a third party contacts PG&E requesting information about its affiliates' telephone number or address, PG&E may provide customers with a list of all providers of gas-related, electricity-related, or other utility-related goods and services, approved by the Commission, operating in its service territory, including its affiliates. PG&E may also provide customers with a list of service providers approved by other governmental bodies as long as it has filed this list by an advice letter during its first semi-annual advice letter filing and is either approved or pending approval. If there is no Commission-authorized list available, PG&E may refer customers to a generally available listing of service providers (e.g., the Yellow Pages).

37. Where a customer sends a communication to the utility which is intended for its affiliate, PG&E's employee should return the communication to the customer, informing the customer of the difference in entities and enclose a list of all service providers' telephone numbers and addresses, including its affiliates.
38. PG&E shall not share information with its affiliates which are "proprietary or non-publicly available reports" unless it provides the same information immediately to its affiliates' competitors.
39. Employees who leave PG&E for an affiliate are governed by Rule V.G, which restricts the transfer of information.
40. PG&E will post discounts related to interstate natural gas transaction on its PGTNW electronic bulletin board; post discounts related to interstate electricity transaction on OASIS; and post any affiliate discounts on intra-state transactions and maintain all required information on its internet web site.
41. PG&E uses a Standard Customer Release Information Form or an equivalent form to obtain affirmative customer written consent for the release of information.
42. PG&E's corporate policy E.2(3)(a) states that employees may not use or disclose confidential or proprietary information during employment.
43. Rule IV.A requires that information be made on a nondiscriminatory basis. To comply with this Rule, PG&E should post a notice on its internet site that it intends to release customer information to an affiliate contemporaneous with the actual transaction. Moreover, this notice should generally describe the type of data to be released without releasing the name of the customer or the specific data to be released.
44. As long as non-customer specific, non-public information is made available contemporaneously to all service providers on the same terms and conditions, PG&E is in compliance with these Rules III.E.4 and IV.B.
45. Service providers addressed by these Rules are not limited to the Commission's list of Electric Service Providers (ESPs). Compliance with Rule IV.C requires that PG&E file 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, with the Commission by



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Advice Letter.

46. PG&E may provide customers with a list of all providers of gas-related, electricity-related, or other utility-related goods and services, approved by the Commission, operating in its service territory, including its affiliates. PG&E may also provide customers with a list of service providers approved by other governmental bodies as long as it has filed this list by an advice letter during its first semi-annual advice letter filing and is either approved or pending approval. If there is no Commission-authorized list available, PG&E may refer customers to a generally available listing of service providers (e.g., the Yellow Pages).
47. Rule IV.E does not prohibit PG&E from explaining to its customers bundled utility distribution service, virtual direct access, direct access tariffs or other PG&E tariff, gas or electric rules, or to provide general advice.
48. PG&E states that it will issue a policy to all utility officers and managers for dissemination to all utility employees, and to the CEOs of each affiliate for dissemination to all employees of that affiliate which will implement Rule IV.G. The company should submit a copy of this policy statement in its revised compliance plan.
49. The Overland audit should be reviewed in A.95-10-024 and should not control the outcome of this proceeding.
50. PG&E and its affiliates should maintain separate Board of Directors, officers, and books of accounts, except to the extent necessary to perform shared corporate services allowed under Rule V.E. Further, PG&E and its affiliates are separate corporate entities. PG&E affiliate employees should no longer be sharing facilities with the company. Finally, the books and records of PG&E affiliates should be open for examination by Commission staff.
51. PG&E has provided its employees two listings of goods and services, listing goods and services that may or may not be purchased jointly by the utility and one or more of its affiliates. Both lists of goods and services appear to be in compliance with these Rules.
52. PG&E states that it transferred 120 employees who previously performed shared corporate services to PG&E Corporation. PG&E should report in its revised compliance plan whether there are any affiliate employees still occupying any of the utility's buildings, and,

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if so, its plan to rectify this.

53. PG&E Corporation's financial statements and PG&E financial statements and annual FERC reports shall be audited for compliance with GAAP by independent accountants on an annual basis.
54. According to the company, Corporate Accounting charges PG&E Corporation for its allocated share of the costs of corporate services provided by PG&E on a monthly basis. Also, PG&E corporate service employees charge time spent directly on holding company or affiliate matters to the appropriate entity, by reporting time spent on these matters. Finally, PG&E Corporation shall charge PG&E for services and support it provides to PG&E.
55. PG&E states that the August 1997 Procedures were revised to comply with the transfer pricing rules adopted in D.97-12-088.
56. The Rules allow for limited sharing of directors and officers, specifically the Chief Financial Officer and General Counsel, in the performance of the corporate support functions as set forth in Rule V.G.1. This limited sharing of officers and directors apply only to the sharing of officers and directors between PG&E and its affiliates. Nothing in the Rules preclude the holding company and all affiliates from sharing the same officers and directors, provided they are not also directors of the utility. However, Rule V.E is a limited exception and does not allow the Chief Executive Officer and Chairman of the Board of PG&E to be able to serve as a director and Board Chairman of its affiliates.
57. In its revised compliance plan, PG&E should elaborate on how its corporate communications and public relations functions are shareable under Rules V.E, as clarified by D.98-08-035, and how the company proposes to prevent the abuses specified in the decision. Further, PG&E should discuss how shared corporate support services does not include any activities which would violate the Federal Energy Regulatory Commission's rules concerning marketing affiliates.
58. If the parent is not an affiliate under these Rules, the utility's web site may contain a link to the parent web site, and the parent web site may provide information about the utility on its web site limited to the facts necessary and important to the financial community, i.e., information conveyed in the corporation's annual report and other investor communications.

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59. In its revised compliance plan, PG&E should provide a copy of its memorandum issued by Senior VP and General Counsel to all PG&E Corporation employees and subsidiaries setting forth the requirements of Rules V.F.2 and V.F.3.
60. PG&E's contract with PG&E ES, having to do with static transfer switches, is allowed by Rule III.B.1, as long as its non-discrimination constraints are followed. Such interaction with its affiliate is not addressed by Rule V.F.4.a, which allows technical or operational meetings to discuss the provision of transportation service to a third party customer, provided that the meeting is not solicited by the utility or affiliate and that it not be used for marketing purposes.
61. The purpose of Rule V.F.4 is to allow the utility, its affiliates, and customers the flexibility to resolve technical and operational problems regarding the utility's provision of transportation service. This flexibility cannot and must not be abused by allowing the utility and its affiliate to jointly market their services.
62. PG&E employees should be permitted to attend meetings with their affiliates and customers to address technical and operational issues regarding the utility's provision of transportation service. These utility employees must refrain from engaging in prohibited activities during these meetings.
63. If a prohibited topic arises, i.e., advertising, sales, marketing or other activity which may be classified as a joint activity, during a meeting, trade show, conference or other public marketing event, then the utility employee must not participate in the discussion.
64. PG&E will issue a memorandum to all employees of PG&E Corporation and its subsidiaries setting forth the requirements of Rule V.F.5. The company should include a copy of this memorandum in its revised compliance plan filing.
65. In its revised compliance plan, PG&E should report on how it plans to share its employees with its affiliates, if at all, and how it will satisfy the various conditions listed in Rule V.G.2.e.
66. In the case of shared directors and officers, D.98-08-035 requires a corporate officer from PG&E and its holding company to verify, in PG&E's compliance plan, that mechanisms and procedures are in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. Further, PG&E's compliance plan shall list all shared directors and officers between it and the affiliates. No later than 30

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days following a change to this list, PG&E 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.

67. The tracking of employee movement between the utility and its affiliates is an established procedure under D.93-02-016.
68. PG&E sent each employee in the holding company a letter outlining their responsibilities with respect to the use of confidential utility information. Holding company employees were asked to sign an acknowledgment that they understood the policy and intended to comply. Copies of this letter and acknowledgment should be included in PG&E's revised compliance plan filing.
69. For the purposes of Rule V.G.2.c, it is reasonable to assume that the initial staffing period ends on July 1, 1998.
70. For the purposes of Rule V.G.2.c, it is reasonable to define calendar year as a 12-month period.
71. In order to accommodate certain employees whose position are impacted by the electric industry restructuring, D.98-08-035 modified Rule V.G.2.c to provide the utility the opportunity to demonstrate that no fee, or a lesser percentage than 15% is appropriate for affected rank-and-file (nonexecutive) employees. 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. For employees working at divested plants, the Board 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.
72. Rule V.H.6 applies to utility transfers with affiliates as defined in Rule II.B, i.e., 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.
73. Rules VII.A through VII.F (Utility Products and Services) are addressed in a separate PG&E advice letter filed on January 30, 1998 describing the existing products and services it will offer. We will rule on this filing separately.
74. The Protests filed by the JPC and the ORA are granted in part and denied in part in

accordance with the discussion herein.

**THEREFORE IT IS ORDERED THAT:**

1. PG&E 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 corrections discussed in this Resolution, no later than 30 days from the effective date of this Resolution.
2. PG&E 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. PG&E has developed and implemented a training program for employees who participate in the dealings between the utility and its affiliates. In its revised compliance plan, PG&E shall provide information on how plans to target which employees need special and/or more intensive training.
4. In the revised compliance plan PG&E shall provide a listing of each and every subsidiary and affiliate, along with their particular products and services, and why they are or are not covered by these Rules.
5. PG&E shall explain in its revised compliance filing the functions of its parent company, PG&E Corporation, and why PG&E Corporation is not an affiliate under these Rules.
6. In its revised compliance filing, PG&E must provide assurance that it will not use exposure from its outreach efforts through affinity groups to offer or provide its audience advice or assistance about its affiliates or other electric service providers.
7. To ensure compliance with regulatory requirements governing affiliate relationships, PG&E's new compliance plan must include its revised guidelines and standards and be distributed to each employee.
8. PG&E shall describe in its revised compliance filing how it will provide information it has on surplus supplies, capacity, or available information or services, on its affiliate transaction internet web site contemporaneously with when those resources

will be made available. PG&E should also explain how it will make these resources available to similarly situated firms, including all competitors serving the same market as the utility's affiliates.

9. In its revised compliance plan, PG&E shall explain how it instructs its employees not to say or imply that taking utility service is contingent upon the taking of service from an affiliate.
10. In its revised compliance filing, PG&E will show how it has expanded its definition of "assigning customers" to apply to not only slamming cases, but to also apply to each and every conduct and/or different type of assignment of customers that may arise in the future.
11. PG&E shall require that its employees provide customers with a list of all Commission-authorized providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. PG&E may also provide customers with a list of providers approved by other governmental bodies which has either been approved by or pending approval of the Commission. If there is no Commission-authorized list available, PG&E shall refer customers to a generally available listing of service providers (e.g., the Yellow Pages).
12. If a customer sends PG&E communication which is intended for an affiliate, PG&E shall have the employee return the communication to the customer informing the customer of the difference in entities and enclose a list of all service providers' telephone numbers and addresses, including its affiliates.
13. PG&E shall not share information with its affiliates which are "proprietary or non-publicly available reports" unless it provides the same information contemporaneously to its affiliates' competitors.
14. PG&E shall restrict the transfer of information for all employees who leave PG&E for an affiliate.
15. PG&E shall post all discounts related to interstate natural gas transaction on its PGTNW electronic bulletin board; discounts related to interstate electricity transaction on OASIS; and discounts on intra-state transactions and maintain all required information on its internet web site.
16. To comply with Rule IV.A, PG&E shall post a notice on its internet site that it intends to

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release customer information to an affiliate contemporaneous with the actual transaction. Moreover, this notice shall generally describe the type of data to be released without releasing the name of the customer or the specific data to be released.

17. PG&E shall file a list of service providers in its service territory, including its affiliates, with the Commission by Advice Letter, unless it granted relief under the provisions of Rule IV.C. Until such a list is approved by the Commission, the Company may refer the customer who inquires about service providers to a generally available list of such service providers, such as the Yellow Pages.
18. PG&E shall submit a copy of its policy statement implementing Rule IV.G in its revised compliance plan, and issue this statement to all utility officers and managers for dissemination to all utility employees, and to the CEOs of each affiliate for dissemination to all employees of that affiliate.
19. PG&E states a memorandum was issued by Senior VP and General Counsel to all PG&E Corporation employees and subsidiaries setting forth the requirements of Rules V.F.2 and V.F.3. The company shall provide a copy of this memorandum in its revised compliance plan filing.
20. PG&E says that it will issue a memorandum to all employees of PG&E Corporation and its subsidiaries setting forth the requirements of Rule V.F.5. The company shall include a copy of this memorandum in its revised compliance plan filing.
21. PG&E shall include in its revised compliance filing copies of letters issued by its General Counsel, sent to each employee in the holding company, that outlined their responsibilities with respect to the use of confidential utility information. The company shall also include copies of acknowledgments signed by employees which said that they understood the policy derived from Rule V.G.2.
22. PG&E shall elaborate on how corporate communications and public relations functions are shareable under Rules V.E, as clarified by D.98-08-035, and how it proposes to prevent the abuses specified in the decision. Further, PG&E shall discuss how shared corporate support services does not include any activities which would violate the Federal Energy Regulatory Commission's rules concerning marketing affiliates.
23. PG&E shall require a corporate officer from PG&E and its holding company to verify that mechanisms and procedures are in place to ensure that the utility is not utilizing shared

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officers and directors as a conduit to circumvent any of these Rules.

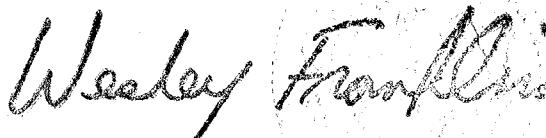
24. In its revised compliance plan, PG&E shall report on how it plans to share its employees with its affiliates, if at all, and how it will satisfy the various conditions listed in Rule V.G.2.e.
25. PG&E shall list all shared directors and officers between it and the affiliates. PG&E shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 no later than 30 days following any changes to this list.
26. The Protests filed by the JPC and the ORA are granted in part and denied in part in accordance with the discussion herein.
27. This Resolution is effective today.



Resolution E-3540  
PG&E AL 2058-G-A / 1725-E-A /\*\*\*\*

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I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the state of California held on September 17, 1998, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN

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