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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3548**
November 5, 1998

RESOLUTION

RESOLUTION E-3548. SAN DIEGO GAS & ELECTRIC COMPANY (SDG&E) TRANSMITS ITS AFFILIATE TRANSACTIONS COMPLIANCE PLAN IN ACCORDANCE WITH ORDERING PARAGRAPH (OP) 2 OF DECISION 97-12-088. SDG&E'S COMPLIANCE PLANS WERE EFFECTIVE UPON FILING. THIS RESOLUTION REJECTS PORTIONS OF SDG&E FILINGS AND APPROVES OTHER PORTIONS. SDG&E IS ORDERED TO FILE A NEW ADVICE LETTER TO COMPLY WITH OP 2 OF THE DECISION.

BY ADVICE LETTER 1068-E/1078-G FILED ON DECEMBER 31, 1997
BY ADVICE LETTER 1068-E-A/1078-G-A FILED ON JANUARY 30, 1998.
BY ADVICE LETTER 1068-E-B/1078-G-B FILED ON JULY 2, 1998

SUMMARY

1. By Advice Letters 1068-E/1078-G, 1068-E-A/1078-G-A, and 1068-E-B/1078-G-B San Diego Gas & Electric Company (SDG&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 letters, and thus accepts in part the protests filed by the Joint Protestors (JP),[1] the Office of Ratepayer Advocates (ORA), and the Utility Consumers' Action Network (UCAN), for not complying with several of the Rules in the Decision (Appendix A). Generally, SDG&E fails to specify adequate mechanisms or procedures to show how it will comply with several of these Rules. Further, SDG&E interprets several of the Rules incorrectly.

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[1] The Joint Protestors (JP) consist of the City of San Diego; Utility Consumers' Action Network (UCAN); The Plumbing, Heating and Cooling Contractors of California ; The Institute of Heating and Air Conditioning Industries; The Electric and Gas Industries Association; School Project for Utility Rate Reduction; Southern California Utility Power Pool; Enron Corporation; The Utility Reform Network; and New Energy Ventures, Inc.

3. SDG&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. SDG&E shall also take the immediate actions specified in the Ordering Paragraphs herein.

BACKGROUND

1. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII) 97-04-011/97-04-012 to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services.

2. In the OIR/OII, the Commission recognized that the fundamental changes underway in the California electric and gas markets create a need for these rules.

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

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

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

> "No later than December 31, 1997, Respondent utilities Kirkwood Gas and Electric Company, PacifiCorp, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Sierra Pacific Company, Southern California Edison Company (Edison), Southern California Gas Company (SoCalGas), Southern California Water Company (SCWC),

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

5. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until January 30, 1998. SDG&E filed a preliminary compliance plan by Advice Letter 1068-E/1078-G on December 31, 1997, followed by an "Amended" Compliance Plan (Plan), AL 1068-E-A/1078-G-A, on January 30, 1998, which "amends SDG&E's Compliance Plan filed on December 31, 1997 . . . and presents its most current information regarding its compliance efforts." (Plan, p. 1) Protests to the Plan[2] were filed by the JP on March 19, 1998, and by the ORA on March 19, 1998. A Response to the ORA Protest was filed March 27, 1998, and a response to the JP Protest was filed by SDG&E on April 13, 1998. We incorporate these Responses into SDG&E's Compliance Plan as they include additions and clarifications lacking in the company's January 30 Advice Letter.

6. Pacific Enterprises, the parent company for SoCalGas, and Enova, the parent for SDG&E, were given conditional approval to execute a plan of merger by this Commission in D.98-03-073, issued in March, 1998, and final regulatory approval was obtained by the companies on June 26, 1998. On July 2, 1998, SoCalGas and SDG&E filed jointly Advice Letter 2661-B and 1068-E-B/1078-G-B, respectively, which described some of the initial organizational changes engendered by this merger, and how these changes are affected by these Rules. There was no protest received regarding this joint Advice Letter.

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[2] A Protest to the December 31, 1997, filing was submitted by UCAN on January 20, 1998.

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. SDG&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 modification and applications for rehearing regarding D.97-12-088 as well as various new applications, motions, and complaints arising from our adopted affiliate rules. This resolution does not address or prejudge these filings.

NOTICE

Notice of Advice Letters 1068-E/1078-G, 1068-E-A /1078-G-A, and 1068-E-B/ 1078-G-B was made by publication in the Commission's calendar and by mailing copies of the filings to parties in OIR/OII 97-04-011/97-04-012 and interested parties in accordance with Section III of General Order 96A.

PROTESTS

A Protest to Advice Letter 1068-E/1078-G was filed by UCAN on January 20, 1998. The JP filed a Protest to Advice Letter 1068-E-A/1078-G-A on March 19, 1998, and the ORA filed a Protest on March 23, 1998. No Protest to Advice Letter 1068-E-B/1078-G-B was received.

DISCUSSION

Overall Compliance Actions

Oversight. SDG&E has an Affiliate Compliance Department which is responsible for the company's compliance with these Rules. Its department manager heads the Affiliate Transaction Advisory Committee, which "will provide guidance to

emerging affiliate transaction issues" (Plan, p. 2), and has representatives from legal, regulatory, and other areas of the company. The Affiliate Compliance Department reports directly to the Chief Financial Officer and Controller of SDG&E.

The JP's Protest to the SDG&E Advice Letter (Protest) suggests on page 2 that one of the criteria used by SDG&E for its employee evaluations should be compliance with these Rules. Further, it urges that the company be required to give "whistle-blower" protections for its employees regarding these Rules.

SDG&E responds that it "has not and will not take action against employees who in good faith report an alleged or actual affiliates problem." (Response, p. 3) SDG&E maintains an "ethics hotline" as well as an "affiliate hotline." The company presents a copy of Enova Corporation's Business Conduct Guidelines (Guidelines) (Response, Attachment B), a six-page pamphlet which the company says each employee is required to read and sign annually. The pamphlet makes reference to both Hotline phone numbers, as well as to the Affiliate Compliance Department's home page on SDG&E's intranet Infoweb, which includes answers to frequently asked questions. SDG&E's Response contains a very small sample of these questions and answers in Attachment D. There are separate sections in the Guidelines which address the handling of confidential information by the employee, and the subject of retribution by management against employees who report ethical and other violations. The pamphlet says that "Enova will make every reasonable effort to protect from any negative consequences all employees who act in good faith in reporting any possible violations to the Company." The term "reasonable effort" is not defined in the pamphlet.

It should be noted that the safeguards and protections listed in the "Retribution" section of the Guidelines, while positive, do not constitute "whistleblower" protections as alleged by SDG&E in its Response. In all cases the employee who is protected has not yet reported the infraction to anyone outside of "the Company." If SDG&E is serious about affording true "whistleblower" protections to its employees, it will expand its protections to include reports by employees to the Commission and other government entities. Nevertheless, these steps urged by the JP are better addressed in the upcoming Rulemaking 98-04-009 which will consider new enforcement measures for these rules. The protest of the JP is denied on this issue.

Employee Training and Information. SDG&E states that the company's Affiliate Compliance Department currently makes quarterly training classes available to its and its affiliates' employees. The Department plans to have mandatory targeted training for units especially affected by the new Rules.

Summaries of the new rules have been distributed to all employees. SDG&E's Compliance Plans have been distributed to management. In addition to the intranet site and hotlines mentioned above, the company has developed a manual entitled Policy Guidelines for Affiliate Transactions (PGAT), which is included as Attachment G in SDG&E's Response.

The JP want SDG&E employees to be trained on these rules within six months of their implementation. (Protest, p. 2) In addition, the JP list several requirements that are designed to increase employee access to these new Rules. The JP hold PG&E's January 30 Compliance Plan filing up as an example of a good plan for training and informing employees about these Rules.

In its Response, SDG&E lists the specific materials and information sources the company has developed and which were mentioned above.

The Commission does not see a need to set forth specific steps for dissemination of this information and training of the employees that are advocated by the JP, which would no doubt increase the effectiveness of the SDG&E program. To do so would unnecessarily micromanage the company. It is sufficient to require that the employees understand the rules thoroughly enough to ensure compliance with these Rules by the company. We are satisfied that the programs and materials developed by SDG&E management, if administered faithfully and thoroughly, and if updated regularly, can satisfy this requirement without the imposition of another utility's programs.

The JP do make a good point, however, when they suggest that copies of the actual Rules, not only summaries, be made available to the employees. It is an easy matter to post the actual Rules (Appendix A of the Decision) on the company intranet. It is important to have the actual rules available in order to clear up the uncertainties which inevitably arise whenever rules or guidelines are disseminated through summaries and word-of-mouth. For example, in its PGAT manual mentioned above, its list of "Definitions" (p. 4), which are ostensibly verbatim, "for the most part," from the Decision, exclude a significant portion of the definition of "affiliate," specifically that portion which addresses the holding company itself. Further, this list of definitions includes the term "ESP" which is not one of the defined terms in the Decision. The inclusion of this term in the manual may mislead the reader into thinking that the service providers referenced in the Decision, which are the competitors to the utility's covered affiliates, are identical to the Energy Service Providers registered by the Commission to provide energy to customers. This confusion is not mitigated by

the actual definition given[3] which is similar to the description of a covered utility affiliate found in Rule II.B. For example, Section G (p. 13) of the manual, "Service Provider Information" makes the following statement:

> "Only upon the request of a customer may SDG&E provide the CPUC's list of service providers. SDG&E provides a website link to the list of registered Electric Service Providers at the California Public Utilities Commission website."

This statement only contributes to the confusion introduced by this term, which is used repeatedly in the manual. It should be noted that the "ESP" term is repeated in other materials submitted in the SDG&E Response, such as the Affiliate Compliance Training Program Materials presentation (Attachment H).

It is important that employees be informed accurately about the application, scope and specifics of these new Rules. It is clear from this example that it is dangerous and possibly confusing to rely entirely on summaries of the Rules. SDG&E should make the actual Rules available in its PGAT manual and other training materials, as well as on both its internet and intranet web sites. SDG&E should also rewrite the PGAT manual and other materials to delete references to "ESP," clarify what affiliates are covered by these Rules, and conform to findings in this Resolution. The company should submit copies of these corrected materials with its revised compliance plan. The Protest of the JP is thus approved in part and rejected in part on this issue.

SDG&E 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

[3] "Energy Service Providers include SDG&E's affiliates and other unrelated entities that engage 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."

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.

While SDG&E makes no comment on this definition, the JP claim that the document verifying the adequacy of the mechanisms in the compliance plan to ensure that SDG&E is not able to circumvent the Rules with its holding company or non-covered affiliates, required by this section, is not provided. SDG&E's Response alleged that the documents, signed by Mr. Ault and Mr. Kuzma, were provided with the Advice Letter and submitted copies of the documents. The Protest of the JP is denied on this issue.

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

B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.

C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.

D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.

E. "FERC" means the Federal Energy Regulatory Commission.

F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.

G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

SDG&E made no comments about these additional definitions.

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.

SDG&E asserts that Enova Corporation, its parent company, is not a covered affiliate under these Rules. SDG&E then lists several of its affiliates which it claims are either covered or not covered. (Plan, pp. 7-8)

The JP disagree, saying that Enova clearly provides services that relate to energy, that its employees are actively involved in strategic planning and "in the development of new ventures. . . ." (Protest, p. 3)

In its Response (pp. 4-5), SDG&E claims that the mere presence of energy experts in the parent company "does not mean that the parent company provides energy or energy-related products or services." If this were so, the company continues, all energy holding companies would necessarily fall under the ambit of these Rules.

The argument of SDG&E has merit here. The JP have presented no evidence that the holding company actually produces a product or service to any particular market. These Rules are designed to foster competition in new and growing energy markets engendered by the restructuring of the electric industry. If Enova, or the new parent of the merging Enova and Pacific Enterprises, Sempra, participates in any of these markets by providing a product which uses energy or a service which is related to energy, it will become an "affiliate" for the purposes of these Rules. The Protest of the JP is denied on this issue.

However, the list of SDG&E affiliates to whom the Rules apply and do not apply which is provided in the Plan is inadequate. The company simply states that this particular bifurcation is accurate, without explanation. SDG&E should revise this list to include an explanation of what products or services each company provides, and include these explanations with its revised compliance plan.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SDG&E and SoCalGas state that the merged company is creating a new affiliate, Sempra Energy Utility Ventures, which will "develop and operate regulated utility distribution operations throughout the country." (p. 9) The companies argue that this new business unit should not be classified as an affiliate for the purposes of these Rules. (p. 10) They state that the company's projects "will be small to medium-sized regulated energy utilities . . ." (their emphasis) The companies are incorrect when they assert that this new affiliate is not covered by these Rules, as they make no exemption based on the size of the project or the regulatory status of the affiliate's holdings. It is clear that the new affiliate will be "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" as specified in Rule II.B, and is thus covered fully by the requirements of these rules.

Further, the Advice Letter states that "Mr. Warren Mitchell, Sempra Energy Group President of regulated operations. . .will serve on the board of directors of Sempra Energy Utility Ventures." This is not allowed under these Rules, as Sempra Energy Utility Ventures is an affiliate as defined by these Rules. The companies should file the advice letter required by Rule VI.B which addresses this new affiliate within thirty days from the effective date of this Resolution, and advise the Commission in this advice letter about the duties of Mr. Mitchell.

Rule II.C states:

> 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.

In D.98-03-073, the Commission approved the merger between Pacific Enterprises and Enova, the parent company of SDG&E. In this decision, the Commission exempted utility to utility transaction from most of these Rules. In its revised compliance plan, SDG&E should explain its new organization, the effect of D.98-03-073, and transactions between it and each and every affiliated utility.

Rule II.D states:

> 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.

SDG&E points out that it does not have such an affiliate at this time.

Rule II.E states:

> 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.

SDG&E says that it will update its training program and other internal materials to reflect the new Rules. The JP Protest that this plan is insufficient, that "SDG&E should develop a coherent training program and set of Rules" to include prior Commission rules with these new Rules. It appears that the current program being pursued by the company is adequate and the Protest of the JP is denied on this issue.

Rule II.F 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.

SDG&E states that it will abide by this and other laws.

Rule II.G states:

> 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:
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> 1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
>
> 2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
> a) Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a letter to the Executive Director, served on all parties to this proceeding; and
> b) Agree in this notice to comply with the Rules in their entirety.

SDG&E describes a Petition for Modification, Advice Letter, and Application for Rehearing which the company has filed in this docket. The JP point out that this Rule addresses the procedure for a utility to follow if it wants to be exempt from these Rules altogether. As this is not the intention of SDG&E in the filings mentioned in its Plan, the Protest is denied on this issue.

Rules II.H and II.I state:

> H. Limited Exemption (Application): A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.
>
> I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

SDG&E has no plan to file under Rule II.H. Rule II.I is not controversial.

c. Nondiscrimination

Rules III.A states:

> A. No Preferential Treatment Regarding Services Provided by the Utility: Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:
>
> > 1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
> >
> > 2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

SDG&E refers to its training program as its plan to ensure utility employees are educated on these Rules sufficiently to ensure enforcement. (Plan, p. 11)

The JP state that the training materials should be presented and reviewed by the Commission, and that the groups to be targeted for specialized training should be identified. (Protest, p. 5) The JP also repeat their desire to incorporate compliance with these Rules into employee evaluations, and would like to see a system of incentives and penalties for employees implemented.

In its Response SDG&E includes examples of these materials, as discussed above. These appear satisfactory. We have also discussed the issue of incorporating compliance efforts into employee evaluations, and repeat that this is a subject for the upcoming enforcement Rulemaking. The Protest of the JP is denied on this matter.

Rule III.B states:

> 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.

Rules III.B.1 and III.B.2 state:

> 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.
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> 2. 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.

SDG&E states that it can comply with these Rules through an open competitive bidding process, as well as through the demonstration of an arms-length relationship between the utility and affiliate. The company suggests that this arms-length relationship can be demonstrated through the application of "a market-based, industry-wide pricing mechanism" such as the California Border Index (CBI).

The JP disagree that the purchase of goods or services from affiliates using the CBI or similar pricing mechanisms satisfies the requirements of this Rule. The JP argue that SDG&E does not explain this methodology sufficiently, and there is no such provision which would allow this in these Rules or elsewhere in the Rules.

In its Response, SDG&E argues that the CBI establishes the price of the good exogenously, through the actions of the market and independently of the individual companies involved in the transaction. This demonstrates an arms-length relationship "and therefore the type of independence required by Rule III.B."

In the words of the Rule: "Transactions between a utility and its affiliates shall be limited to . . . 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." The use of an index, whatever its source or construction, does not, by itself, satisfy the requirements of this rule. The methodology suggested by SDG&E implies an exclusive relationship

between the utility and its affiliate. It is one of the goals of these Rules to encourage the participation of new firms in these markets and to discourage exclusive relationships between the utility and its affiliates. The Protest of the JP is granted on this issue.

SDG&E plans to post notice of discounts through its Energy Bulletin Board (EBB). (Plan, p. 13) The JP state that SDG&E's plan to post notice to its EBB is unclear as the Plan does not explain who has access to these data. (Protest, p. 6) The JP want SDG&E to further explain how it plans to satisfy the requirement for "contemporaneous" offerings, discounts or waivers specified in these Rules. They provide a list of what it believes SDG&E should do, which includes posting notices of all such transactions on the internet; the form of the posting should be common among all of the utilities; there should be a time limit for posting the notice, depending on the duration of the transaction; "an actual form/format used to advise others of discounts" should be designed and sent to the Commission; SDG&E should write a guide on the use of the EEB; "similarly situated" competitors should have access to the EEB.

In its Response (p. 6), SDG&E states that its customers and energy suppliers can get a password to the system from the company at no charge. The company does not think the Commission wants SDG&E to "second-guess" what the Commission intended would be "contemporaneous" offerings. SDG&E argues that the recommendations of the JP "exceeds the requirements of the reporting requirements of the Rules."

We agree that many of the JP recommendations unnecessarily micromanage the utility and are beyond what is necessary to ensure that competitors are given the same treatment and opportunities afforded affiliates. However, the JP make a good point when they suggest that timely information about its transactions and potential transactions with its affiliates should be made available to its affiliates' competitors in order to satisfy the Commission's goal of increased competition in these emerging energy markets. For instance, access to the SDG&E EBB is unnecessarily restricted, and the affiliates' competitors should be given the same access to the EBB given to SDG&E affiliates.

SDG&E should post notice of its affiliate transactions, including but not limited to notice of available information, services, and unused capacity or supply, and discounts given to affiliates, in relevant industry publications, those targeted to the market(s) which its affiliates are serving.

SDG&E should also post notice of its affiliate transactions on its Affiliate Transaction internet web site no later than the time of the transaction. This web site has already been established by SDG&E and can be found through links

from the company's home page at http://www.sdge.com, clicking on the "About SDG&E" link, and then clicking on the "Affiliate Transactions" link. The direct address to this site is http://www.sdge.com/About/aff.html. If SDG&E makes a good faith attempt to inform in a timely manner its affiliates' competitors of the opportunity to engage in transactions with the utility using, for instance, the methods outlined here, the Rules' requirement for contemporaneous offerings will be satisfied. The Protest of the JP is thus granted in part and denied in part on this issue.

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

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

SDG&E asserts that it will exercise tariff discretion on a nondiscriminatory basis, and that it will incorporate these Rules into its training materials. The JP want more specific details on how SDG&E plans to incorporate these Rules, and think that tariff deviations should be posted at the SDG&E Affiliate Transactions web site. In its Response SDG&E protests that the additional information requested by the JP is unnecessary, and that the company's actions in this area are governed by its Electric Service Rule 25 which is currently under review by the Commission.

It should be pointed out that the PGAT manual, included in SDG&E's Response, restates that section of the company's Plan addressing the nondiscriminatory application of the tariffs and tariff deviations. A further explanation or restatement of this policy is unnecessary. However, any tariff deviations should be noticed on SDG&E's Affiliate Transactions web site. The Protest of the JP is thus granted in part and denied in part on this issue.

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.

SDG&E states that it will provide targeted training to ensure that its employees do not violate this Rule. In their Protest (p. 8), the JP want further explanation of what SDG&E defines as "tying," the company's planned procedures for identifying such actions, the planned discipline to use against employees who violate the rule, "whistle blower" protections, how SDG&E will report violations to the Commission, and how it will report violations at its web site.

SDG&E's PGAT manual says, on page 11:

> "In no case should SDG&E condition the provision of any services, nor the availability of discounts, rebates, or waivers of terms and conditions, to the procurement of any goods or services from ESP affiliates."

The problem of the use of the term "ESP" has already been addressed above. Further, as pointed out in the JP Protest, "tying" is already defined in antitrust law. Aside from the revision of the PGAT manual already addressed, it would be unnecessary to require further elaboration at this time from the company. The Commission will address this issue on a case by case basis in the future.

We have already discussed the issue of employee discipline and whistle blowers, and no further discussion is necessary. Finally, the reporting of violations to the Commission or to the public on the internet is beyond the scope of this Proceeding, but may be raised in the upcoming enforcement Rulemaking. The Protest of the JP is denied here.

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.

SDG&E asserts that it will not assign customers, but the JP insist that the company define what it means by "assign," that it elaborates on its training and internal controls to ensure that this rule is followed, and that it meet with the Commission staff quarterly to check that compliance is thorough. (Protest, p. 8)

In its Response, SDG&E says that assignment is "a lead, referral, or transfer of a customer from the utility to an affiliate, each of which is prohibited by the

Rules," and that its training materials cover this thoroughly. (p. 7) Its PGAT manual states:

> "SDG&E will not assign customers to any ESP affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all third party ESPs in California." (PGAT manual, p. 11)

Aside from the aforementioned problem with the term "ESP," this is a satisfactory treatment of this subject. As for the request by the JP that the Commission staff meet quarterly with SDG&E to review compliance, this is beyond the scope of this Proceeding. The protest of the JP is denied on this matter.

Rule III.E states:

> E. Business Development and Customer Relations: Except as otherwise provided by these Rules, a utility shall not:
>
> 1. provide leads to its affiliates;
>
> 2. solicit business on behalf of its affiliates;
>
> 3. acquire information on behalf of or to provide to its affiliates;
>
> 4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
>
> 5. request authorization from its customers to pass on customer information exclusively to its affiliates;
>
> 6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
>
> 7. give any appearance that the affiliate speaks on behalf of the utility.

This Rule addresses primarily how the utility's employees interact with its customers and potential customers, as well as its affiliates' customers and potential customers. Compliance with this Rule requires extensive training and retraining of the employees, as well as strict oversight by the responsible management unit. We have already pointed out the deficiencies of the PGAT manual in our discussion of SDG&E's Overall Compliance Actions, above. The training package should be revised and expanded to include verbatim quotes

from the Rules as well as updated to reflect the findings herein. Further, verbatim copies of the Rules contained in Appendix A of D.97-12-088 should be available on both the company's internet and intranet web sites.

SDG&E states that its Affiliate Compliance Department will provide training to appropriate personnel to ensure compliance with this Rule. The JP want further details on SDG&E's plan, such as who will be trained; what forms will be developed for the transfer of information; how the company will perform its timekeeping responsibilities; how employees who violate any of these rules will be disciplined; precisely how SDG&E "will comply with each of the seven measures."

SDG&E states in its Response that its Plan is sufficiently detailed, that it will provide training to employees in areas likely to encounter the issues raised by particular Rules, that timekeeping systems are already in place, and that forms for the handling of the transfer of data already exist.

We agree with SDG&E. The JP recommendations would micromanage unnecessarily the operations of SDG&E. It is not necessary for regulatory efficacy for the Commission to know precisely which employees will receive what training, whether forms have been designed for each type of information transfer, and how the company's timekeeping responsibilities will be executed. We have already discussed sanctions imposed on rank-and-file employees pursuant to the enforcement of these Rules. The protest of the JP is denied on this issue.

Finally, the JP refer once again to the compliance plan submitted by PG&E, comparing it favorably to the SDG&E Plan. It is important to point out that these are two entirely different companies, and that this sort of comparison is not helpful to the Commission. The management of each company must individually strive to enforce compliance with these Rules given the idiomatic environment, structure, employee relations, and history of each firm. The Protest of the JP is denied on this issue.

Rule III.F states:

> Affiliate Discount Reports: If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:
>
> 1. the name of the affiliate involved in the transaction;

2. the rate charged;

3. the maximum rate;

4. the time period for which the discount or waiver applies;

5. the quantities involved in the transaction;

6. the delivery points involved in the transaction;

7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and

8. procedures by which a nonaffiliated entity may request a comparable offer.

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

9. the name of the entity being provided services provided by the utility in the transaction;

10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);

11. the duration of the discount or waiver;

12. the maximum rate;

13. the rate or fee actually charged during the billing period; and

14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

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

SDG&E says it will post offerings of discounts or fee waivers, made to its affiliates, "electronically to all similarly-situated market participants. . ."

The JP point out that items 9 through 14 of this Rule are not addressed by SDG&E. Further, SDG&E does not include "rebates" in its compliance statement, as required by the Rule.

In its Response, SDG&E refers to its discussion of Rule III.B (pp.5-7), although it is unclear whether the company refers to its treatment of its EBB, its internet site, Gas Rule 21, or its standard transaction form which it includes as Attachment L. SDG&E also says that discounts to an affiliate will be noticed on its "website."

No mention is made by the company about rebates or, for that matter, fee waivers.

To be clear and to repeat much of what we said in our discussion of Rule III.B, above, access to the SDG&E EBB is too restricted, as described by the company. SDG&E's affiliates' competitors should be given the same access to the EBB given to SDG&E affiliates. SDG&E should post notice of discounts, rebates, and waivers of charges or fees which are given to affiliates in relevant industry publications, those targeted to the market(s) which its affiliates are serving. Notice should also be made on SDG&E's Affiliate Transaction internet web site no later than the time of the transaction. The Protest of the JP is thus granted in part and denied in part on this issue.

Further, in its revised compliance plan the company should affirm that it will comply with the requirements of items 9 through 14 of Rule III.F. The Protest of the JP is granted on this issue.

d. Disclosure and Information

Rule IV.A states:

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

SDG&E states that requests for this information are administered internally pursuant to its Electric Service Rule 25. The customer's written consent is obtained and kept on file. The company states that training on the correct processing of this information will be given to its employees.

The JP request further details on this process, including what internal checks, including disciplinary measures, which ensure that the information obtained is being handled correctly.

In its Response, SDG&E includes an example of its Customer Information Log as Attachment J, and its release form as Attachment I.

We have already addressed employee disciplinary measures as being more appropriately raised in the enforcement Rulemaking. The internal checks described by SDG&E appear sufficient. However, it is important that this information be made available to affiliates and their competitors on a non-

discriminatory basis, which means that the competitors must know it is available. If a customer has affirmatively consented in writing to the release of its information to the affiliates and third parties, notice that the utility will share customer information with an affiliate should be posted on the Affiliate Transaction web site no later than the time of its release. This notice should include the name of the affiliate to receive the information, the type of data which will be shared, the time period covered by the data, and the cognizant person at the utility to contact for further information about this information. This notice should not include the name of the customer or include the specific data to be distributed, but should have a general description of the type of data to be released. It is important to note that we are not requiring the actual data to be posted on the internet. The protest of the JP is denied on this matter.

Rule IV.B states:

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

SDG&E says that it will abide by this rule and post shared information to make it available contemporaneously to all service providers on the same terms and conditions as under Rule IV.A. The JP want the company to post the information specifically on its internet web site (Protest, p. 11) "within 24 hours." In its Response, the company agrees that it will post this information on its internet web site, but does not specify when the filing will be made and in what format the data will be posted.

To ensure that this data is "contemporaneously" available to other service providers "on the same terms and conditions," SDG&E should post this data at its Affiliate Transaction web site within 24 hours of its release to the affiliate(s). If the data file is to be downloaded from this site, or if it is to be made available through other means agreeable to both the utility and the service provider, its

format should be compatible with the EDI standards being developed in the Commission's Direct Access Proceeding, once they are established. The Protest of the JP is approved in part and denied in part on this issue.

Rule IV.C.1 states:

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

SDG&E will abide by this Rule and "is developing procedures" to compile and disseminate the required list of service providers, but says it is confused about what the company perceives as a conflict between this list and that required under the Commission's Direct Access Proceeding. The company asks for further guidance on this matter.

The JP ask for more details about SDG&E's compliance plan. They also state that this is the inappropriate forum in which to ask for clarification on a Rule, that the company should ask for a Workshop or file a Petition to Modify. The JP recommend further that a list of service providers (and "related lists") consistent with this rule be posted on the utility's Affiliate Transaction web site.

It is apparent that the confusion between the terms "service provider" and "ESP," revealed in SDG&E's PGAT manual and addressed earlier in Overall Compliance Actions, contributes to the confusion in the present case. The list of ESPs required under the Direct Access Proceeding refer to those companies who provide Direct Access electric service to customers. "Service providers" under these Rules refer to those firms which are the competitors to the utility's affiliates which provide a product that uses gas or electricity or provide a service that relates to the use of gas or electricity. No workshop or filing is necessary to clarify this distinction. The Protest of the JP is denied on this issue.

Rule IV.C.2 states:

> If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain

> on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages.) The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

In its Response (p. 8) SDG&E recognizes that "all energy-related service providers" are to be included in a semi-annual advice letter, and the company says it is developing plans to do so in the near future. SDG&E should file this Advice Letter no later that 60 days from the effective date of this Resolution.

Rule IV.C.1 requires utilities to 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 modifies this rule to allow the utilities to 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, a utility may refer customers to a generally available listing of service providers (e.g., the Yellow Pages).

Rule IV.D states:

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

SDG&E describes the log in which the Procurement Department registers all affiliate requests for supplier information. The JP ask that the company state that it will obtain the affirmative authorization required in the Rule, and that it state that it will not actively solicit the release of this information, in violation of the Rule. They also would require the company to create a form to obtain the release from the supplier.

In its Response, the company says that it will obtain this release whenever it plans to share the information with an affiliate, that it will not actively solicit

such a release, and that this will become part of its training materials. SDG&E should submit examples of how the company has incorporated this requirement into its training materials in its revised compliance plan. The Protest of the JP is approved in part and denied in part on this issue.

Rule IV.E states:

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

SDG&E has filed an Application for Rehearing which challenges this rule, among other things. The company says that, pending the outcome, it will "respond to customer requests with public information only." (Plan, p. 20) The JP state that, as SDG&E has not requested a stay of the Decision, the company should abide by the rule in the interim. In its response, SDG&E restates its "public information only" position and says that it directs its employees not to provide advice about affiliates.

The argument of the JP is persuasive here. No stay of this Decision has been issued, and until the Commission has acted on SDG&E's Application the company should abide by this Rule as written. More importantly, Public Utilities Code §1735 requires such compliance. It would be a violation of this Rule, for instance, for an SDG&E employee to give out even public information, such as phone numbers or addresses, about SDG&E affiliates or other service providers, except when providing the list required under the provisions of Rule IV.C.2. The Protest of the JP is granted on this issue.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SDG&E and SoCalGas state that the utilities are sometimes asked technical questions concerning proposals made by service providers having to do with "the merits of by-passing utility pipes and wires infrastructure." (p. 23) The companies say that they are asked to assess the technical merits of these proposals because of their technical understanding of their systems, as well as "their knowledge of the CPUC tariffs that govern their use and pricing." They state that they do not provide non-public information to customers about direct access providers and related products and services. They apparently do, however, currently provide information about technical and tariff issues.

Rule IV.E prohibits the utilities from providing "advice or assistance with regard to its affiliates or other service providers." The Rule makes no exception for "technical advice" or advice requiring a particular expertise which may be held

by the utility. As mentioned above, SDG&E and SoCalGas have filed an Application for Rehearing at the Commission regarding this Rule. Until their Application has been acted upon by the Commission, the utilities must follow the requirements of the Rule and refrain from providing advice and assistance regarding any service providers (including their affiliates), or any proposal of a service to provide services to a customer. These Rules do not prevent the utility from the provision of general technical advice not related to a specific service provider or to a proposal for services tendered a provider, however. The utilities are reminded that, if a customer asks about an affiliated service provider, the provisions of Rule IV.C must be satisfied. In its revised compliance plan, SDG&E should reaffirm that the company has modified its policies to comply with these Rules.

Rules IV.F and IV.G state:

> F. Record-Keeping: A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.
>
> If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.
>
> G. Maintenance of Affiliate Contracts and Related Bids: A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

SDG&E has a monthly billing cycle for transactions with its affiliates, and thus would like to define "contemporaneous" as once per month for purposes of this Rule. The company also interprets the 72-hour requirement to mean three business days following the request.

The JP want SDG&E to justify its one month billing cycle restriction. They also want information requests "received and responded to electronically via the internet."

Monthly billing cycles are common. The interpretations provided by SDG&E are reasonable and do not need justification. Further, while the internet is a

convenience, it is up to SDG&E management to choose what methods to use to handle this information. The Protest of the JP is denied on this issue.

Rule IV.H states:

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

SDG&E says it will incorporate this Rule into its training program. The JP provide a list of steps they wish the company to take to report on this program to the Commission. SDG&E's approach is reasonable and the additional steps specified by the JP are unnecessary at this time. The Protest of the JP is denied on this issue.

e. Separation

Rules V.A and V.B state:

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

The company states that it is already in compliance with these Rules. The JP make no protest here.

Rule V.C states:

> Sharing of Plant, Facilities, Equipment or Costs: A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks

> and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).

SDG&E states that its affiliates covered by these rules are located in a separate facility from SDG&E. The company has filed for an exemption from these Rules regarding activities outside of California and does not plan to comply with the physical separation requirements until the resolution of the exemption request. SDG&E says that its "data operations center may be brought in-house at the parent company. . ." and that "[a]ll systems, shared and not shared, may share a common processing environment where logical security will be the basis for separation."

The JP say that SDG&E is circumventing the Rule. Since no stay was issued the JP argue that SDG&E must comply with the Rule pending the resolution of the exemption request. They also say that the sharing of systems must be limited to shared corporate functions. The ORA also note that the actions of SDG&E violate these separation Rules, as well as Rule V.G.2.e.

In SDG&E's Response (p. 9) the company speaks of "computer systems" and a "common processing environment", yet does not define these terms. It is reasonable to assume that the company is referring to computers, computer networks, and computer facilities in its Response.

First, as was stated in the discussion of Rule II.A and II.B, above, SDG&E needs to provide additional justification for claiming which affiliates are covered under these Rules and which are not. To simply state that covered affiliates do not share office space, and then provide one or two examples of who these affiliates are, is insufficient. This Commission needs to know which affiliates are sharing space with SDG&E, and in its revised compliance plan the company should identify these companies.

Second, the JP are correct to point out that, as no stay of the Decision has been issued, the company must bring itself into compliance with this and all Rules immediately.

Third, we interpret SDG&E's statement about sharing "a common processing environment where logical security will be the basis for separation" as allowing affiliates to share its computing facilities using "firewall" software designed to separate the affiliate's system and data from the utility's. This is clearly prohibited under this rule, except to the extent necessary to do those narrowly-construed functions allowed under Rule V.E. Further, while the company asserts

that "computer systems that are used in the provision of shared corporate services" may be shared with affiliates, this too is interpreting the Rule too broadly. The rule allows the affiliates to access the utility's computer systems "to the extent appropriate to perform shared corporate support functions." The Rule does not allow the equipment or facilities themselves to be shared. The Protests of the JP and the ORA are granted on this issue.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SDG&E and SoCalGas state that "a separate data center . . . was purchased to house Sempra Energy's information technology needs." This data center will be used to provide computer services to all of the Sempra business units, including the utilities and the affiliates covered by these Rules. The Commission staff has been informed that the hardware is owned partially by at least one of the utilities. Access to data will be governed by "strict security measures and firewalls in place to ensure that there is no sharing of information or data not permitted by the Rules." (p. 21) The companies further state that the parent has established a service which allows all of its affiliates to share e-mail service. Finally, the parent has established "a common 'help' desk, and shared computer maintenance and support services."

This Rule does not allow affiliates access to the computer systems of the utility. Shared internal e-mail is thus prohibited by these Rules, and each company should keep and maintain its own computer and information systems. Further, these Rules do not provide for shared maintenance of facilities or "help desk" services. The utilities should report in their revised compliance plans on how they plan are restructuring their computer and information systems in order to comply with these Rules.

The utilities are unclear about their proposal to use "firewall" technology to prevent unauthorized access to data stored in a computer which is used by several business units. This technology is not explained or described in the filing, and the Commission does not have sufficient information to decide whether the methods proposed by the utilities ensure compliance with these Rules. It is crucial that Sempra separate effectively the computer and information systems of its utilities and affiliates. In their revised compliance plans, the utilities should explain these firewall systems thoroughly, including not only their design but their proven efficacy, and show to the Commission's satisfaction that these firewalls are sufficient to ensure compliance with the Rules. Interested parties to this proceeding are invited to provide relevant comments on these revised plans regarding these proposed methods and technologies.

Rule V.D states:

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

SDG&E says that it will follow this Rule, that its employees will be trained on this Rule, and that "[t]ransactions will be priced and reported in accordance with these Rules and other governing rules." The JP want more details on this Plan and want SDG&E's joint purchase records to be kept "in a manner similar to records kept on utility-affiliate transactions.

The Rule requires:

> 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.

It appears that SDG&E has no objection to this Rule, and additional restrictions do not appear necessary at this time.

The section of its PGAT manual which addresses Joint Purchases (pp. 8-9) repeats much of this Rule. However, it does include the sentence: "SDG&E and non-ESP affiliates can engage in joint purchasing." This illustrates the importance of removing the "ESP" term from the manual, as it could be interpreted to allow joint purchases of any kind between SDG&E and an affiliate that is covered by these Rules.

Rule V.E states:

> Corporate Support: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the

> Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.
>
> As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.
>
> Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.
>
> Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

SDG&E provides a list of what it considers qualifies as permissible shared services under this Rule. (Plan, pp. 26-29) The company says that these shared services are governed by existing Master Service Agreements.

The JP point out that there is no discussion presented in the Plan explaining why these functions are categorized as either shared or not shared. Specifically they list the following functions as incorrectly categorized in the Plan as shared:

1. Strategic planning
2. Energy forecasting
3. Customer communications
4. Advertising services
5. System construction and maintenance (except for service dispatching)
6. Regulatory-related pricing

The JP find the inclusion of advertising services and system construction and maintenance to be "particularly outrageous." They compare the SDG&E Plan to that submitted by PG&E and finds none of these services listed by PG&E as shared. The JP suggest that the Commission consider Enova Co. an affiliate and that its functions listed above be considered not shared. The JP also state that the required verification required by the Rule, stating that the company has sufficient procedures and mechanisms to prevent this Rule from being used to circumvent the other Rules, is not included in the Plan.

In its Response, SDG&E says that its "lists reflect a good faith effort to determine which areas, if shared, would create an undue competitive advantage for an affiliate." (emphasis added) In its next paragraph, SDG&E says that the JP's list of functions which should not be shared, repeated above, should be rejected as the JP do not "indicate exactly what sort of undue anticompetitive advantage" might be engendered if these functions are shared." (SDG&E's emphasis) The company then refers to its Attachment A which includes statements signed by a vice president of SDG&E and a CFO of Enova.

The inappropriate comparison of a particular company's compliance plan with another's has been already addressed above. The argument of the JP has merit, however. It is hard to see how the functions listed above can be construed by SDG&E to qualify as a shared service under this Rule. In addition to the list provided by the JP, the following functions, listed by SDG&E as shared, appear to be incorrectly listed as such:

1. Operations analysis and audit
2. Project year 2000
3. Production services
4. Application services
5. Fleet management, generally
6. Bill inserting
7. Survey and mapping
8. Employee store
9. Environmental
10. Training
11. Community affairs
12. Translation services
13. Engineering

Note that this list may not be complete, as there is nothing in the Plan which describes what these and other listed functions do, or whether they qualify as "corporate support services" pursuant to the Rule. It appears, however, that these functions have the potential to allow the transfer of confidential information, bestow preferential treatment or competitive advantage, lead to customer confusion, or create opportunity for cross-subsidy.[4] In fact, engineering, the final entry on this list, is specifically excluded by the Rule.

[4] The text of the Decision provides the following lists: "For example, sharing payroll, taxes, shareholder services, insurance, financial reporting, corporate accounting and security, human resources (compensation, benefits, employment policies) employee records, corporate legal unrelated to marketing or regulatory issues (such as labor, civil litigation and general corporate areas) and pension management is appropriate; sharing state and federal regulatory affairs, regulatory legal and lobbying, employee

It seems from the wording of SDG&E's Response that it acknowledges that its list of permissible shared services does indeed create an anticompetitive advantage for its affiliates, but SDG&E claims that this advantage is not "undue." This is not a word found in this or any Rule in this Decision. The Commission allows the utilities and their affiliates to share particular and limited centralized costs in an effort to enable the companies to capture available economies of scope without giving the affiliates a significant cross-subsidy or competitive advantage. As stated in the Decision: "The presence of any particular cost advantage for the affiliates, if derived from their association with the utility and not from their own internal efficiencies, engenders market power and entry barrier concerns." (Slip op., p. 55) Further, "It is unclear that permitting the utilities and affiliates to share corporate support will actually translate into a competitive market. However, such sharing of centralized functions generates scope economies and as such can increase production efficiency." (Slip op., p. 58) Hence we seek a balance between efficiency gains through the sharing of centralized costs, and the prevention of distortion in the competitive markets when the affiliates can produce at lower total costs than their competitors (due entirely to their affiliation with the regulated utility).

In its revised compliance filing, SDG&E should revise its list of shared corporate services, keeping the concerns mentioned above in mind. The revision should explain each function, what it does, why it should be treated as a shared corporate service, and, under the specific language of Rule V.E, why it will not cause any of the problems just listed above. Every shared function contained in SDG&E's list should be explained in this way. The Protest of the JP is granted on this issue.

On the issue of the verifications required by this Rule, the officer statements included as Attachment A in the SDG&E Response do not satisfy or even mention this Rule. These simply state that the mechanisms in the Plan will not be used to circumvent the Rules. Rule V.E allows the sharing of some corporate support services and requires assurance from the company that it will not be used to circumvent the other Rules. SDG&E should include the required verifications in its revised compliance plan. The Protest of the JP is granted on this issue.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SDG&E and SoCalGas state that, following the merger, "the bulk of the corporate

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recruiting, other financial planning and analysis, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing is not." Fn 11, slip op p. 57

governance and shared support services" are being moved to a "consolidated corporate center." (p. 2) The companies say that the purpose of this corporate model is to achieve efficiencies available from the merger, to separate the monopoly functions of the utility from the competitive functions of the unregulated affiliates "by corporate boundaries instead of intra-corporate divisions that are more difficult and expensive to monitor . . ." and to "avoid inefficient duplication in corporate governance and shared support services . . ." The companies say that placing shared services "at the corporate center tends to resolve or greatly mitigate potential self-dealing, cross-subsidy, and market power concerns that justify close regulation in this area." (p. 3) They further recognize that such a structure might engender concerns about the potential for information "conduits" through the corporate center, and that they "are taking concrete steps to ensure" that these problems do not come to fruition.

The Affiliate Compliance Department (ACD) is the first function the companies describe as being centralized at the parent level. It will be initially staffed with the following: director, manager, four analysts, an administrative assistant, and a compliance co¬rdinator. This department reports directly to the Sempra Energy VP and Controller (currently Frank Ault), who will be the affiliate transaction officer (ATO) and member of the Executive Steering Committee and Corporate Compliance Committee. This latter committee will have oversight responsibilities regarding Sempra compliance with these Rules, and the ATO has ultimate responsibility for enforcement of these Rules. In addition, the companies are establishing an Affiliate Transaction Advisory Committee, to provide "guidance and support" to the ACD, which will include representatives of legal and regulatory departments, as well as other unspecified areas of these companies.

The ACD will compile a manual comprising Commission and Federal Energy Regulatory Commission affiliate transaction rules. This "Sempra Energy Guidelines" manual will be made "available to all employees via the appropriate intranet web site (hard copy will also be available)." The company will submit a copy of this report in its Affiliate Transaction Report to be filed in May, 1999. The company is reminded that it is important that the definitions and explanations included in this manual be accurate, and that it should be reviewed and updated in accordance with our discussion of the errors found in the SDG&E PGAT manual described above.

In its revised compliance plan, SDG&E should provide elaboration on the makeup of its Affiliate Transaction Advisory Committee, list its members from the utilities and the unregulated affiliates, and describe how the companies intend to prevent this committee from being a "conduit" of information in violation of these Rules.

The companies report that the parent "will oversee and analyze its financial risks on an enterprise-wide basis . . ." and that this management activity is compliant with Rule V.E. (p. 14) The function will be overseen by Sempra Energy's Risk Management Officer and cannot include officers shared between parent and either utility. The risk management oversight function may include officers shared between parent and nonutility affiliate, but these officers cannot "direct specific trades or positions," they do not immediately supervise "physical or financial commodity traders" at the affiliate, and they do not use confidential information to influence positions taken by their affiliate. The companies say that "[t]o the extent feasible" the information used for risk management activities "will be aggregated and/or redacted" to conceal the exact positions of each business unit from the members of the risk management group.

Rule V.E says: "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." (emphasis added) While the Rule allows "financial planning and analysis" to be shared, it gives "[e]xamples of services that may not be shared" which include "hedging and financial derivatives and arbitrage services . . ." Although enterprise-wide policies concerning risk management may be developed and promulgated by the parent downward to its various companies, individual company-specific management of the sort described by the utilities in its July 2 filing is specifically prohibited by this Rule. The utilities have received authority from the Commission to participate, individually, in risk management of their gas operations only. SDG&E should report in its revised compliance plan that the merged companies have discontinued this shared function.

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

Rule V.F.2 through V.F.5 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.

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

a) A utility shall not participate with its affiliates in joint sales calls, 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.

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.

SDG&E has little to say about these Rules except that it will incorporate them into the company's policy and will train its employees about them. The Separation Rules are critical to the success of these emerging energy markets, and it is important that employees are clear on their meaning and purpose. SDG&E should include in its revised compliance plan examples of the training materials the company is using to implement these new policies.

We would like to remind SDG&E that it is permitted to attend meetings with their affiliates and customers to address technical and operational issues. However, we must emphasize that utility employees must refrain from engaging in prohibited activities during these meetings. Therefore, 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 and its affiliate must not participate in the discussion.

Rule V.G.1 states:

Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding

> company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility's compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan required in Rule VI, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.

SDG&E says that it is providing "training and oversight to ensure that employees are shared only in the provision of permitted shared corporate support functions." It lists several officers who have been reassigned in order to comply with this Rule. (Plan, p. 32) SDG&E claims that, in order that they may fully discharge their "fiduciary duties as required by law," and to provide "adequate corporate governance and oversight," the company's "officers and directors must have access to all material information concerning all of Enova Corporation's business activities and must be permitted to schedule, direct, and attend strategic meetings concerning such businesses, and to meet with directors and officers of Enova Corporation's subsidiaries to discuss matters of importance to the corporate enterprise." (Plan, p. 33)

The JP want more details on SDG&E's "training and oversight" process. They want additional information about the list of officer changes, and more information about the "mechanisms and procedures in place" which the company says ensures that its use of shared officers will not act as a conduit to circumvent the Rules.

The Decision expresses concern about the transfer of proprietary, strategic, or confidential information from the utility to its affiliate. While Rule V.E expressly is designed to allow "joint corporate oversight, governance, support systems and personnel," the second paragraph of this Rule continues "[a]s 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. . . ." The Decision also raises this concern in its discussion of the prohibition against the sharing of directors and officers between utility and affiliate:

> "Our concern with information sharing underlies this area as well. Although both officers and board members would undoubtedly do their professional best to abide by any nondisclosure rules and nondisclosure agreements, it is difficult to monitor against inadvertent information sharing." (Decision, mimeo p. 64)

In D.98-08-035, the Commission agreed in part with the arguments of SoCalGas and others who petitioned to modify these Rules:

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

It is permissible for SDG&E officers and directors to be shared between the utility and its affiliates covered by these Rules provided that their shared duties are limited to those necessary for the performance of corporate support services allowed under Rule V.E. However, the utility should be judicious when allowing such shared functions, as the Commission reminds the parties later in this decision:

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

Therefore, it is not necessary for "officers and directors" of SDG&E to have all material information of Enova Corporation's business activities.

In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E list the officers appointed to head the merged organization. They state that Sempra will "triple-hat" officers "essential to the efficient and responsible delivery of corporate oversight." Thus these will be officers of the parent, utility and affiliate.

SDG&E should report in its revised compliance plan on which officers and directors will be shared with its affiliates and how their shared duties will be limited to those shareable functions allowed under Rule V.E. The company should also report on its mechanisms and procedures it has developed to prevent the circumvention of these Rules through the sharing of officers and directors between the utility and Enova. The Protest of the JP is granted in part and denied in part on this issue.

The merged companies report that they have formed a centralized law department "providing legal services to all Sempra Energy affiliates." (p. 8) While this is permissible under Rule V.E, for the limited and specific purposes of performing allowed shared corporate support functions, the companies should recognize that D.98-08-035 specifically prohibits the Chairman of the Board from serving as a director "of affiliates covered by these Rules." (D.98-08-035, slip op. at p. 15) The companies state that "Sempra Energy's General Counsel . . . is tasked with managing the delivery of legal services and assisting the Office of the Chairman in exercising and maintaining the highest level of corporate governance and fiduciary responsibility." This assistance must be limited to duties expressly permitted under Rule V.E, and cannot be used as a vehicle to circumvent the Rules.

SDG&E and SoCalGas state in their joint Advice Letter of July 2 that the companies have formed "several corporate governance committees to maintain adequate oversight of the entire enterprise . . ." (p. 10) The companies provide outlines of three of these committees, along with cursory descriptions of their functions. (p. 12) The companies state that the committees will limit their discussions to "broad governance issues. . .and will refrain entirely from discussing matters which would be inconsistent with the Rules, like operational matters and customer-specific information." The agendas of these committee meetings will be reviewed by Mr. Ault, and he will either attend or (more likely) designate someone to attend to "intervene" and enforce these Rules, to ensure that these meetings "will not be allowed to become a conduit for the exchange of information prohibited by the Rules." (p. 13) The committee members listed in the filing (p. 12) include all "business unit presidents" as well as each of the Regulated and Nonregulated Group Presidents.

The companies are reminded that D.98-08-035 allows some sharing of officers for the execution of the limited functions allowed under Rule V.E. The inclusion of the presidents of the Sempra affiliates and utilities on these committees, regardless of the assurances of internal oversight by Mr. Ault's office, give rise to concern that these committees can be, in the words of the Advice Letter, "conduits for the flow of confidential information not permitted by the Rules." (p. 8) Further, the companies state that "the Sempra Energy officers will

generally meet monthly in separate meetings with the regulated and unregulated business unit officers to discuss operating issues, recent accomplishments, current issues, and other relevant activities." (pp. 13-14) These topics, including those having to do with operations and specific events, are excluded from allowable shared services and cannot be construed to be "joint corporate oversight" or governance, as allowed under Rule V.E. In its revised compliance plan SDG&E will report to the Commission what steps it has taken to restructure these meetings to prevent the sharing of operational and other data which is prohibited by these Rules.

The companies describe their efforts to create physical separation between utility and affiliate employees, but indicate that this effort was still ongoing on July 2, 1998 (pp. 16-17). In its revised compliance plan, SDG&E should update this section to report to the Commission on the progress and success of these efforts.

D. 98-08-035 clarifies the usage of "public affairs" and "corporate communications" as:

> "... 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, SDG&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.

Rule V.G.2 states:

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

SDG&E currently tracks these movements and will continue to do so.

> > 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.

SDG&E states that its transferring SDG&E employees are given exit interviews and are asked to sign at least two forms, one entitled "SDG&E Transfer Interview/Procedure and Checklist/Utility Employees to Affiliates," and another entitled "Acknowledgment by Departing Employee." The JP want SDG&E to provide more information about this process, and suggest that the interviews take place before the actual transfer. In its Response, SDG&E provides copies of the exit interview forms in Attachment K.

It is good that employees are required to know that they cannot transfer proprietary information to the affiliate when they transfer from the utility. However, the actual wording in these forms is troublesome from the point of view of these Rules. For example, in the Transfer Interview checklist item #4 states: "Ensure that no utility trade secret or customer information is taken to the Affiliate without approval of the SDG&E Affiliate Officer." This suggests it may be acceptable to transfer trade secrets or customer information to the affiliate as long as the utility approves. This would be a violation of this Rule, as well as Rule V.G.2.d. Trade secrets and customer information cannot be transferred to the affiliate. The sentence should be corrected to read: "Ensure that no utility trade secret or customer information is taken to the Affiliate." Item #5 states: "List all utility assets and information including trade secrets or customer information which will be taken to the Affiliate." Once again, this suggests that SDG&E is unaware of the restrictions of this Rule, and Item #5 should be changed to read: "List all utility assets which will be taken to the

Affiliate." SDG&E is reminded that the transfer of assets to an affiliate is governed by the provisions of Rule V.H.

There is also a problem with the exit interview form "Acknowledgment by Departing Employee." The first bullet paragraph suggests that the disposition of trade secrets is governed by the utility, while their transfer to an affiliate is prohibited by these Rules. A similar concern is raised by the fourth bullet paragraph. The seventh bullet paragraph states: "that in the future I must not use SDG&E cards, letterhead or other identifying material unless I have written authority to represent the Utility." The affiliate employee is prohibited from speaking on behalf of the utility by Rules III.E.7 and V.F.4. Finally, the top paragraph on the following page (page 4 of the exit interview document) suggests that the employee is allowed to disclose proprietary information and trade secrets upon written permission of the utility. This is a violation of these Rules.

SDG&E should rewrite the paperwork that is used for exit interviews when an employee transfers to an affiliate, to be consistent with the Rules as specified herein. Further, it is important that the employee have accurate and complete information about the application of these Rules to him or her. Therefore, the transferring employee should be given a copy of these documents (if this is not already the practice of the company) as well as a verbatim copy of Rule V.G.

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

> proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

SDG&E states that it will develop an accounting mechanism to track the payments made to the utility for transferred employees pursuant to this Rule. The company also points out that it had requested in comments it made during the Pacific Enterprises/Enova merger proceeding that Rules V.G.2.a through V.G.2.c not be applied to transfers of employees between SDG&E and SoCalGas following the merger, and that there be a six-month period in which all transfers between utility, affiliates, and parent be exempt from these Rules.

The JP want further information about the accounting mechanism which SDG&E will use for these payments.

In its Response, SDG&E points to Advice Letter 1079-E which it filed to establish a Streamlining Residual Account that will, among other things, be used to track affiliate transaction fee credits.

In D.98-03-073 (A.96-12-038), which approved a plan of merger between Pacific Enterprises and Enova Corporation, the Commission exempted utility to utility transactions from most of these Rules, including those governing employee transfers. However, utility to affiliate transactions were not exempted. Nevertheless, D.98-03-073 allows for a six-month implementation period for employee transfers.

Further, D. 98-08-035 clarified the usage of "corporate communications" and "public relations functions" as:

> "... 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, SDG&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.

> 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.

SDG&E mentions its exit interview process as it did above. We have already addressed this issue.

> 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.

This Rule was modified by D.98-08-035 to allow temporary assignment of employees under certain specified conditions. SDG&E's compliance plan stated that the company's Affiliate Compliance Department will ensure that SDG&E will share employees only for "allowable corporate support functions." In its

revised compliance plan, the company 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.

Rule V.H states:

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

SDG&E states that its Affiliate Compliance Department will oversee and enforce these Rules. The JP want each Rule accounted for separately and each account reviewed by the Commission at least twice a year. As these Rules are already similar to existing Commission rules which govern the transfer pricing of goods and services, and procedures are already in place which have been reviewed by the Commission, the company's mechanism appears to be reasonable. The Protest of the JP is denied on this issue.

f. Regulatory Oversight

Rule VI.A states:

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

Rule VI.B states:

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

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.

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.

SDG&E asserts that it will comply with these Rules, except to the extent of its filings in A.96-12-038, the Pacific Enterprises/Enova merger proceeding. We remind the company that these Rules apply to the merged utilities' dealings with their affiliates. The JP had no comments on SDG&E's Plan regarding these Rules.

Rules VII A-F (Utility Products and Services) are addressed by SDG&E in a separate Advice Letter filed on January 30, 1998, which will be considered separately.

FINDINGS OF FACT:

1. On April 9, 1997, the Commission issued its Order Instituting Rulemaking/Order Instituting Investigation (OIR/OII) 97-04-011/97-04-012 to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services.

2. Decision 97-12-088 established affiliate transaction Rules in accordance with the OIR/OII. These Rules address, among other things, nondiscrimination, disclosure and handling of information, and separation standards. The utilities were required to submit compliance plans in accordance with OP 2.

3. On December 23, 1997, the Executive Director issued a letter extending the time for compliance with this Ordering Paragraph until January 30, 1998.

4. SDG&E filed a preliminary compliance plan by Advice Letter 1068-E/1078-G on December 31, 1997, followed by an "Amended" Compliance Plan, AL 1068-E-A/1078-G-A, on January 30, 1998.

5. A Protest to Advice Letter 1068-E/1078-G was filed by UCAN on January 20, 1998. The JP filed a Protest to Advice Letter 1068-E-A/1078-G-A on March 19, 1998, and the ORA filed a Protest on March 23, 1998.

6. A Response to the JP Protest was filed by SDG&E on April 9, 1998. This Response is incorporated into SDG&E's compliance plan as it includes several additions and clarifications lacking in the January 30 Advice Letter.

7. Pacific Enterprises, the parent company for SoCalGas, and Enova, the parent for SDG&E, were given conditional approval to execute a plan of merger by this Commission in D.98-03-073, issued in March, 1998, and final regulatory approval was obtained by the companies on June 26, 1998. On July 2, 1998, SoCalGas and SDG&E filed jointly Advice Letter 2661-B and 1068-E-B/1078-G-B, respectively, which described some of the initial organizational changes engendered by this merger, and how these changes

are affected by these Rules. There was no protest received regarding this joint Advice Letter.

8. Notice of Advice Letters 1068-E/1078-G, 1068-E-A /1078-G-A, and 1068-E-B/ 1078-G-B was made by publication in the Commission's calendar and by mailing copies of the filings to parties in OIR/OII 97-04-011/97-04-012 and interested parties in accordance with Section III of General Order 96A.

9. 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.

10. SDG&E should file a new compliance plan by advice letter to comply with OP 2 in the Decision, incorporating the corrections discussed in this Resolution, no later than 30 days from the effective date of this Resolution.

11. SDG&E fails to specify adequate mechanisms or procedures to show how it will comply with several of these Rules.

12. Further, SDG&E interprets several of the Rules incorrectly.

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. SDG&E should 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. There are other petitions for modification and applications for rehearing regarding D.97-12-088 as well as various new applications, motions, and complaints arising from our adopted affiliate rules. This resolution does not address or prejudge these filings.

15. SDG&E has an Affiliate Compliance Department which is responsible for the company's compliance with these Rules. Its department manager heads the Affiliate Transaction Advisory Committee, which "will provide guidance to emerging affiliate transaction issues," and has representatives from legal, regulatory, and other areas of the company.

16. SDG&E maintains an "ethics hotline" as well as an "affiliate hotline."

17. Enova Corporation issues a pamphlet entitled Business Conduct Guidelines which the company says each employee is required to read and sign annually.

18. There are separate sections in these Guidelines which address the handling of confidential information by the employee, and the subject of retribution by management against employees who report ethical and other violations. The pamphlet says that "Enova will make every reasonable effort to protect from any negative consequences all employees who act in good faith in reporting any possible violations to the Company."

19. The safeguards and protections listed in the "Retribution" section of the Guidelines, while positive, do not constitute "whistleblower" protections as alleged by SDG&E in its Response.

20. The upcoming Rulemaking 98-04-009 will consider new enforcement measures for these rules.

21. SDG&E states that the company's Affiliate Compliance Department currently makes quarterly training classes available to its and its affiliates' employees. The Department plans to have mandatory targeted training for units especially affected by the new Rules.

22. Summaries of the new rules have been distributed to all employees and SDG&E's Compliance Plans have been distributed to management.

23. SDG&E has developed a manual entitled Policy Guidelines for Affiliate Transactions (PGAT).

24. It is sufficient to require that the employees understand the rules thoroughly enough to ensure compliance with these Rules by the company.

25. It is important to have the actual rules available in order to clear up the uncertainties which inevitably arise whenever rules or guidelines are disseminated through summaries and word-of-mouth.

26. In SDG&E's PGAT manual, its list of "Definitions" exclude a significant portion of the Decision's definition of "affiliate," specifically that portion which addresses the holding company itself.

27. This list of definitions includes the term "ESP" which is not one of the defined terms in the Decision. The inclusion of this term in the manual may mislead the reader into thinking that the service providers referenced in the

Decision, which are the competitors to the utility's covered affiliates, are identical to the Energy Service Providers registered by the Commission to provide energy to customers.

28. The term "ESP" is used repeatedly in the PGAT manual and in other materials submitted in the SDG&E Response, such as the Affiliate Compliance Training Program Materials presentation (Attachment H).

29. It is important that employees be informed accurately about the application, scope and specifics of these new Rules. It is dangerous and possibly confusing to rely entirely on summaries of the Rules.

30. It is reasonable to require SDG&E to include quotes of these Rules in its PGAT manual and other training materials and to make the actual Rules available on both its intranet and internet web sites. SDG&E should also rewrite the PGAT manual and other materials to delete references to "ESP," clarify what affiliates are covered by these Rules, and conform to findings in this Resolution. The company should submit copies of these corrected materials with its revised compliance plan.

31. These Rules are designed to foster competition in new and growing energy markets engendered by the restructuring of the electric industry.

32. The Commission has been given no evidence that Enova Corporation, SDG&E's parent company, produces a product or service for a market, and is thus a covered affiliate under these Rules.

33. The list of SDG&E affiliates to whom the Rules apply and do not apply which is provided in the Plan is inadequate.

34. SDG&E should revise its affiliate list to include an explanation of what products or services each affiliate provides, why this entitles the company to be either included or excluded from the ambit of these Rules, and include these explanations with its revised compliance plan.

35. The merged company is creating a new affiliate, Sempra Energy Utility Ventures, which will "develop and operate regulated utility distribution operations throughout the country." The companies argue that this new business unit should not be classified as an affiliate for the purposes of these Rules. They state that the company's projects "will be small to medium-sized regulated energy utilities . . ." (their emphasis)

36. The companies are incorrect and this new business unit is an affiliate as defined by these Rules. These Rules make no provision for exemption based on the size of the project or the regulatory status of its holdings. It is clear that the new affiliate will be "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" as specified in Rule II.B, and is thus covered fully by the requirements of these rules.

37. Further, the merged companies state that "Mr. Warren Mitchell, Sempra Energy Group President of regulated operations. . .will serve on the board of directors of Sempra Energy Utility Ventures." This is not allowed under these Rules, as Sempra Energy Utility Ventures is an affiliate as defined by these Rules. SDG&E should file the advice letter required by Rule VI.B which addresses this new affiliate within thirty days from the effective date of this Resolution, and advise the Commission in this advice letter about the duties of Mr. Mitchell.

38. D.98-03-073 (A.96-12-038) approved a plan of merger between Enova and Pacific Enterprises. In this decision, the Commission exempted utility to utility transactions from most of these Rules. The merger was executed on July 1, 1998. SDG&E and SoCalGas should revise their compliance plans to reflect the new organization, as well as D.98-03-073.

39. Rule III.B requires that "[t]ransactions between a utility and its affiliates shall be limited to . . . 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."

40. The use of a market-based, industry-wide pricing mechanism, such as the California Border Index, does not, by itself, satisfy the requirements of Rule III.B.

41. It is one of the goals of these Rules to encourage the participation of new firms in these markets and to discourage exclusive relationships between the utility and its affiliates.

42. Timely information about SDG&E's transactions and potential transactions with its affiliates should be made available to its affiliates' competitors in order to satisfy the Commission's goal of increased competition in these emerging energy markets.

43. Access to the SDG&E EBB is unnecessarily restricted, and the affiliates' competitors should be given the same access to the EBB given to SDG&E affiliates.

44. SDG&E should post notice of its affiliate transactions, including but not limited to notice of available information, services, and unused capacity or supply, and discounts given to affiliates, in relevant industry publications, those targeted to the market(s) which its affiliates are serving.

45. SDG&E should also post notice of its affiliate transactions on its Affiliate Transaction internet web site no later than the time of the transaction.

46. The direct address to the SDG&E affiliate transaction site is http://www.sdge.com/About/aff.html.

47. Any tariff deviations should be noticed on SDG&E's Affiliate Transactions web site.

48. SDG&E's PGAT manual says, on page 11: "In no case should SDG&E condition the provision of any services, nor the availability of discounts, rebates, or waivers of terms and conditions, to the procurement of any goods or services from ESP affiliates."

49. The term "tying" is defined in antitrust law. The Commission will address the issue of "tying" on a case by case basis in the future.

50. The SDG&E PGAT manual states: "SDG&E will not assign customers to any ESP affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all third party ESPs in California." (p. 11)

51. SDG&E defines assignment as "a lead, referral, or transfer of a customer from the utility to an affiliate, each of which is prohibited by the Rules."

52. Compliance with Rule III.E requires extensive training and retraining of the employees, as well as strict oversight by the responsible management unit.

53. SDG&E's training package needs to be revised and expanded to include verbatim quotes from the Rules as well as updated to reflect the findings herein. Further, it is reasonable to include quotes of the Rules contained in Appendix A of D.97-12-088 to be contained in this package, distributed to all employees, and the Rules should be available on both the company's intranet and internet.

54. Comparing SDG&E's compliance plan with another utility's compliance plan is not necessarily helpful to the Commission. The management of each company must individually strive to enforce compliance with these Rules given the idiomatic environment, structure, employee relations, and history of each firm.

55. In its revised compliance plan SDG&E should affirm that it will comply with the requirements of items 9 through 14 of Rule III.F.

56. It is important that customer information be made available to affiliates and their competitors on a non-discriminatory basis. It follows that the competitors must know it is available.

57. If a customer has affirmatively consented in writing to the release of its information to the affiliates and third parties, notice that the utility will share customer information with an affiliate should be posted on the Affiliate Transaction web site no later than the time of its release. This notice should include the name of the affiliate to receive the information, the type of data which will be shared, the time period covered by the data, and the cognizant person at the utility to contact for further information about this information. This notice should not include the name of the customer or include the specific data to be distributed, but should have a general description of the type of data to be released.

58. To ensure that Non-Customer Specific Non-Public Information data is "contemporaneously" available to other service providers "on the same terms and conditions," SDG&E should post this data at its Affiliate Transaction web site within 24 hours of its release to the affiliate(s).

59. If the data file is to be downloaded from this site, or if it is to be made available through other means agreeable to both the utility and the service provider, its format should be compatible with the EDI standards being developed in the Commission's Direct Access Proceeding, once they are established.

60. The confusion between the terms "service provider" and "ESP," revealed in SDG&E's PGAT manual and addressed earlier in Overall Compliance Actions, causes confusion.

61. The list of ESPs required under the Direct Access Proceeding refer to those companies who provide Direct Access electric service to customers.

62. "Service providers" under these Rules refer to those firms which are the competitors to the utility's affiliates which provide a product that uses gas or electricity or provide a service that relates to the use of gas or electricity.

63. SDG&E should file the list of service providers required by Rule IV.C.2 by Advice Letter no later that 60 days from the effective date of this Resolution.

64. SDG&E should submit examples of how the company has incorporated the requirements of Rule IV.D into its training materials in its revised compliance plan.

65. SDG&E has filed an Application for Rehearing which challenges Rule IV.E, among other things.

66. No stay of D.97-12-088 has been issued.

67. Until the Commission has acted on SDG&E's Application for Rehearing the company should abide by Rule IV.E as written.

68. SDG&E and SoCalGas state that the utilities are sometimes asked technical questions concerning proposals made by service providers having to do with "the merits of by-passing utility pipes and wires infrastructure."

69. The Sempra utilities have filed for rehearing on Rule IV.E, and state that they do not provide non-public information to customers about direct access providers and related products and services. They apparently do, however, currently provide information about technical and tariff issues.

70. Rule IV.E prohibits the utilities from providing "advice or assistance with regard to its affiliates or other service providers." The Rule makes no exception for "technical advice" or advice requiring a particular expertise which may be held by the utility.

71. Until their Application for Rehearing has been acted upon by the Commission, the utilities must follow the requirements of the Rule and refrain from providing advice and assistance regarding any service providers (including their affiliates), or any proposal of a service to provide services to a customer.

72. These Rules do not prevent the utility provision of general technical advice not related to a specific service provider or to a proposal for services

tendered a provider, however. In its revised compliance plan, SDG&E should reaffirm that it has modified its policies to comply with Rule IV.E.

73. It would be a violation of Rule IV.E for an SDG&E employee to give out even public information, such as phone numbers or addresses, about SDG&E affiliates or other service providers, except when providing information as specified under the provisions of Rule IV.C.2.

74. If a third party contacts SDG&E requesting information about its affiliates' telephone number or address, Rule IV.C.2 requires SDG&E to 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 modifies this Rule to allow SDG&E to 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, SDG&E may refer customers to a generally available listing of service providers (e.g., the Yellow Pages).

75. Monthly billing cycles are common.

76. SDG&E's definitions of "contemporaneous" as once per month, and 72 hours as three business days, for the purposes of Rule IV.F, are reasonable.

77. The interpretations provided by SDG&E are reasonable and do not need justification. Further, while the internet is a convenience, it is up to SDG&E management to choose what methods to use to handle this information. The Protest of the JP is denied on this issue.

78. In its revised compliance plan, SDG&E should identify which affiliates are sharing space with the company.

79. SDG&E has filed for an exemption from these Rules regarding activities outside of California and does not plan to comply with the physical separation requirements of Rule V.C until the resolution of the exemption request.

80. As no stay of the Decision has been issued, SDG&E must bring itself into compliance with Rule V.C and all Rules immediately.

81. Except to the extent necessary to do those narrowly-construed functions allowed under Rule V.E, it is a violation of these Rules to allow affiliates to

share SDG&E's computing facilities using "firewall" software designed to separate the affiliate's system and data from the utility's.

82. Rule V.E does not allow the equipment or facilities themselves to be shared.

83. These Rules prohibit the sharing of internal e-mail systems and supporting infrastructure between SDG&E and its affiliates, because e-mail is part of the computer and information system. It is sufficient for each company to keep and maintain its own communications "infrastructure" and to transfer data as two separate companies.

84. Allowing SDG&E and its affiliate to share a common e-mail and network communication system goes beyond shared corporate functions. SDG&E should separate its internal e-mail from that of its affiliates.

85. The merged companies state that "a separate data center . . . was purchased to house Sempra Energy's information technology needs." This data center will be used to provide computer services to all of the Sempra business units, including the utilities and the affiliates covered by these Rules.

86. The Commission staff has been informed that the hardware is owned partially by at least one of the utilities.

87. Access to data will be governed by "strict security measures and firewalls in place to ensure that there is no sharing of information or data not permitted by the Rules."

88. The companies state that the parent has established a service that allows all of its affiliates to share e-mail service.

89. The parent has established "a common 'help' desk, and shared computer maintenance and support services."

90. Shared internal e-mail is prohibited by these Rules, and each company should keep and maintain its own computer and information systems.

91. The "firewall" technology proposed by the utilities is not explained or described in the filing, and the Commission does not have sufficient information to decide whether the methods proposed by the utilities ensure compliance with these Rules. It is crucial that Sempra separate effectively the computer and information systems of its utilities and affiliates. In their revised compliance plans, the utilities should explain these firewall systems thoroughly, including not only their design but their proven efficacy, and

show to the Commission's satisfaction that these firewalls are sufficient to ensure compliance with the Rules. Interested parties to this proceeding are invited to provide relevant comments on these revised plans regarding these proposed methods and technologies.

92. These Rules do not provide for shared maintenance of facilities or "help desk" services.

93. SDG&E should report in its revised compliance plan on how it is restructuring the computer and information systems in order to comply with these Rules.

94. The presence of any particular cost advantage for the affiliates, if derived from their association with the utility and not from their own internal efficiencies, engenders market power and entry barrier concerns.

95. It is unclear that permitting the utilities and affiliates to share corporate support will actually translate into a competitive market. However, such sharing of centralized functions generates scope economies and as such can increase production efficiency.

96. Many of the functions listed by SDG&E as shared corporate services permitted under Rule V.E have the potential to allow the transfer of confidential information, bestow preferential treatment or competitive advantage, lead to customer confusion, or create opportunity for cross-subsidy of the utility's affiliates.

97. SoCalGas and SDG&E state that, following the merger, "the bulk of the corporate governance and shared support services" are being moved to a "consolidated corporate center." The stated purpose of this corporate model is to achieve efficiencies available from the merger, to separate the monopoly functions of the utility from the competitive functions of the unregulated affiliates "by corporate boundaries instead of intra-corporate divisions that are more difficult and expensive to monitor . . ." and to "avoid inefficient duplication in corporate governance and shared support services . . ."

98. The companies say that placing shared services "at the corporate center tends to resolve or greatly mitigate potential self-dealing, cross-subsidy, and market power concerns that justify close regulation in this area." They further recognize that such a structure might engender concerns about the potential for information "conduits" through the corporate center, and that

they "are taking concrete steps to ensure" that these problems do not come to fruition.

99. The Affiliate Compliance Department is being centralized at the parent level. This department reports directly to the Sempra Energy VP and Controller (currently Frank Ault), who will be the affiliate transaction officer (ATO) and member of the Executive Steering Committee and Corporate Compliance Committee. This latter committee will have oversight responsibilities regarding Sempra compliance with these Rules, and the ATO has ultimate responsibility for enforcement of these Rules.

100. In addition, the companies are establishing an Affiliate Transaction Advisory Committee, to provide "guidance and support" to the ACD, which will include representatives of legal and regulatory departments, as well as other unspecified areas of these companies.

101. The ACD will compile a manual comprising Commission and Federal Energy Regulatory Commission affiliate transaction rules. This "Sempra Energy Guidelines" manual will be made "available to all employees via the appropriate intranet web site (hard copy will also be available)." The company will submit a copy of this report in its Affiliate Transaction Report to be filed in May, 1999.

102. It is important that the definitions and explanations included in the "Sempra Energy Guidelines" manual be accurate, and that it should be reviewed and updated in accordance with our discussion of the errors found in the SDG&E PGAT manual.

103. In its revised compliance plan, SDG&E should provide elaboration on the makeup of its Affiliate Transaction Advisory Committee, list its members from the utilities and the unregulated affiliates, and describe how the merged companies intend to prevent this committee from being a "conduit" of information in violation of these Rules.

104. The merged companies report that the parent "will oversee and analyze its financial risks on an enterprise-wide basis . . ." and that this risk management activity is compliant with Rule V.E.

105. The companies state that the risk management function will be overseen by Sempra Energy's Risk Management Officer and cannot include officers shared between parent and either utility. The risk management oversight function may include officers shared between parent and nonutility affiliate, but these officers cannot "direct specific trades or positions," they

do not immediately supervise "physical or financial commodity traders" at the affiliate, and they do not use confidential information to influence positions taken by their affiliate.

106. The merged companies say that "[t]o the extent feasible" the information used for risk management activities "will be aggregated and/or redacted" to conceal the exact positions of each business unit from the members of the risk management group.

107. Rule V.E says: "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." (emphasis added) While the Rule allows "financial planning and analysis" to be shared, it gives "[e]xamples of services that may not be shared" which include "hedging and financial derivatives and arbitrage services . . ."

108. Although enterprise-wide policies concerning risk management may be developed and promulgated by the parent downward to its various companies, individual company-specific management of the sort described by the utilities in its July 2 filing is specifically prohibited by this Rule. The utilities have received authority from the Commission to participate, individually, in risk management of their gas operations only. The merged companies should report in their revised compliance plans that they have discontinued this shared function.

109. D.98-08-035 allows 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 SDG&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 SDG&E to be able to serve as a director and Board Chairman of its affiliates.

110. The public relations function is designed, among other things, to improve the image of the company, or companies, in the mind of the consumer. In D.98-08-035, the Commission found that corporate communication and public relations functions, if shared, should 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, SDG&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.

111. Further, SDG&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.

112. In its revised compliance filing, SDG&E should revise its list of shared corporate services, keeping the concerns mentioned herein in mind. The revision should explain each function, what it does, why it should be treated as a shared corporate service, and, under the specific language of Rule V.E, why it will not cause any of the anticompetitive problems discussed in this Resolution. Every shared function contained in SDG&E's list should be explained in this way.

113. The officer statements included as Attachment A in the SDG&E Response do not satisfy or even mention Rule V.E.

114. Rule V.E allows the sharing of some corporate support services and requires assurance from the company that it will not be used to circumvent the other Rules.

115. SDG&E has failed to include the verifications required by Rule V.E in its compliance plan, and should do so in its revised compliance plan.

116. The Separation Rules are critical to the success of these emerging energy markets, and it is important that employees are clear on their meaning and purpose.

117. SDG&E should include in its revised compliance plan examples of the training materials the company is using to implement these new separation Rules.

118. SDG&E is permitted to attend meetings with their affiliates and customers to address technical and operational issues. However, we must emphasize that utility employees must refrain from engaging in prohibited activities during these meetings. Therefore, 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 and its affiliate must not participate in the discussion.

119. In the joint Advice Letter 2661-B and 1068-E-B/1078-G-B, filed July 2, 1998, SoCalGas and SDG&E list the officers appointed to head the merged organization. They state that Sempra will "triple-hat" officers "essential to the efficient and responsible delivery of corporate oversight." Thus these will be officers of the parent, utility and affiliate.

120. In D.97-12-088, the Commission expressed concern that sharing of directors and officers between the utility and its affiliates would make it difficult to monitor against inadvertent information sharing.

121. It is permissible for SDG&E officers and directors to be shared between the utility and its affiliates covered by these Rules provided that their shared duties are limited to those necessary for the performance of corporate support services allowed under Rule V.E.

122. The utility should be judicious when allowing such shared functions, to prevent the sharing of confidential information with affiliates, or in some other way providing an advantage to the utility's affiliates not available to its competitors.

123. It is not necessary for SDG&E officers and directors to have access to "all material information concerning all of Enova Corporations business activities."

124. SDG&E should report on its mechanisms and procedures it has developed to prevent the circumvention of these Rules through the sharing of officers and directors between the utility and Enova.

125. D.98-08-035 requires that a corporate officer from the utility and its holding company should verify, in its 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 these Rules. SDG&E's compliance plan shall list all shared directors and officers, if any, between it and its affiliates. Further, no later than 30 days following a change to this list, SDG&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.

126. The merged companies have formed a centralized law department "providing legal services to all Sempra Energy affiliates."

127. D.98-08-035 specifically prohibits the Chairman of the Board from serving as a director "of affiliates covered by these Rules." The merged companies state that "Sempra Energy's General Counsel . . . is tasked with managing the delivery of legal services and assisting the Office of the Chairman in exercising and maintaining the highest level of corporate governance and fiduciary responsibility." This assistance must be limited to duties expressly permitted under Rule V.E, and cannot be used as a vehicle to circumvent the Rules.

128. SoCalGas and SDG&E state that the companies have formed "several corporate governance committees to maintain adequate oversight of the entire enterprise . . ." The companies state that the committees will limit their discussions to "broad governance issues. . .and will refrain entirely from discussing matters which would be inconsistent with the Rules, like operational matters and customer-specific information."

129. The agendas of these committee meetings will be reviewed by Mr. Ault, and he will either attend or (more likely) designate someone to attend to "intervene" and enforce these Rules, to ensure that these meetings "will not be allowed to become a conduit for the exchange of information prohibited by the Rules." The committee members include all "business unit presidents" as well as each of the Regulated and Nonregulated Group Presidents.

130. D.98-08-035 allows some sharing of officers for the execution of the limited functions allowed under Rule V.E. The inclusion of the presidents of the Sempra affiliates and utilities on these committees, regardless of the assurances of internal oversight by Mr. Ault's office, give rise to concern that these committees can be, in the words of the Advice Letter, "conduits for the flow of confidential information not permitted by the Rules."

131. The merged companies state that "the Sempra Energy officers will generally meet monthly in separate meetings with the regulated and unregulated business unit officers to discuss operating issues, recent accomplishments, current issues, and other relevant activities." These topics, including those having to do with operations and specific events, are excluded from allowable shared services and cannot be construed to be "joint corporate oversight" or governance, as allowed under Rule V.E. In its revised compliance plan, SDG&E should report to the Commission what steps it has taken to restructure these meetings to prevent the sharing of operational and other data which is prohibited by these Rules.

132. The merged companies describe their efforts to create physical separation between utility and affiliate employees, but indicate that this effort was still ongoing on July 2, 1998. In its revised compliance plan, SDG&E should update this section to report to the Commission on the progress and success of these efforts.

133. Transferring SDG&E employees are given exit interviews and are asked to sign at least two forms, one entitled "SDG&E Transfer Interview/Procedure and Checklist/Utility Employees to Affiliates," and another entitled "Acknowledgment by Departing Employee."

134. It is good that employees are required to know that they cannot transfer proprietary information to the affiliate when they transfer from the utility.

135. SDG&E's exit interview materials suggest it may be acceptable to transfer trade secrets or customer information to the affiliate as long as the utility approves. This would be a violation of Rule V.G.2.

136. SDG&E's exit interview materials suggest it may be acceptable for an affiliate employee to speak for the utility as long as the utility approves. This would be a violation of Rules III.E.7 and V.F.4.

137. The paperwork that is used by SDG&E for exit interviews, when an employee transfers to an affiliate, needs to be rewritten to be consistent with the Rules as specified herein.

138. It is important that the employee have accurate and complete information about the application of these Rules to him or her. Therefore, the transferring employee should be given a copy of these documents (if this is not already the practice of the company) as well as a verbatim copy of Rule V.G.

139. In order to accommodate 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.

140. SDG&E's revised compliance plan should explain how its Affiliate Compliance Department will ensure that SDG&E will share employees only for "allowable corporate support functions." Further, in its revised compliance plan, SDG&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 of Rule V.G.2.e.

141. D.09-03-073 allows for a six-month implementation period for employee transfers.

142. Rules VII A-F (Utility Products and Services) are addressed by SDG&E in a separate Advice Letter filed on January 30, 1998, which will be considered separately.

THEREFORE IT IS ORDERED THAT:

1. SDG&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. SDG&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. It is reasonable to require SDG&E to include quotes of these Rules in its PGAT manual and other training materials and to make the actual Rules available on both its intranet and internet web sites. SDG&E should also rewrite the PGAT manual and other materials to delete references to "ESP," clarify what affiliates are covered by these Rules, and conform to findings in this Resolution. The company should submit copies of these corrected materials with its revised compliance plan.

4. SDG&E shall include quotes of these Rules in its PGAT manual and other training materials, as well as make the actual Rules available on its intranet web site. SDG&E shall also rewrite the PGAT manual and other materials to delete references to "ESP," clarify what affiliates are covered by these Rules, and conform to findings in this Resolution. The company shall submit copies of these corrected materials with its revised compliance

5. SDG&E shall revise its affiliate list to include an explanation of what products or services each affiliate provides, why this qualifies the company to be either included or excluded from the ambit of these Rules, and include these explanations with its revised compliance plan.

6. SDG&E shall give its affiliates' competitors the same access to the EBB given to SDG&E affiliates.

7. SDG&E shall post notice of its affiliate transactions, including but not limited to notice of available information, services, and unused capacity or supply, and discounts given to affiliates, in relevant industry publications, those targeted to the market(s) which its affiliates are serving.

8. SDG&E shall also post notice of its affiliate transactions on its Affiliate Transaction internet web site no later than the time of the transaction.

9. SDG&E shall revise, expand and update its training package to reflect the findings herein.

10. SDG&E should file the advice letter required by Rule VI.B which addresses new affiliate, Sempra Energy Utility Ventures, within thirty days from the effective date of this Resolution, and advise the Commission in this advice letter about the duties of Mr. Mitchell.

11. In its revised compliance plan SDG&E shall affirm that it will comply with the requirements of items 9 through 14 of Rule III.F.

12. If a customer has affirmatively consented in writing to the release of its information to the affiliates and third parties, SDG&E shall post notice that the utility will share customer information with an affiliate on the Affiliate Transaction web site no later than the time of its release. This notice shall include the name of the affiliate to receive the information, the type of data which will be shared, the time period covered by the data, and the cognizant person at the utility to contact for further information about this information. This notice shall not include the name of the customer or include the specific data to be distributed, but shall have a general description of the type of data to be released.

13. SDG&E shall file the list of service providers required by Rule IV.C.2 by Advice Letter no later that 60 days from the effective date of this Resolution.

14. SDG&E's revised compliance filing shall require that its employees may 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. SDG&E shall 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, SDG&E shall refer customers to a generally available listing of service providers (e.g., the Yellow Pages).

15. SDG&E shall submit examples of how the company has incorporated the requirements of Rule IV.D into its training materials in its revised compliance plan.

16. Until its Application for Rehearing has been acted upon by the Commission, SDG&E must follow the requirements of Rule IV.E and refrain from providing advice and assistance regarding any service providers (including their affiliates), or any proposal of a service to provide services to a customer.

17. In its revised compliance plan, SDG&E shall reaffirm that it has modified its policies to comply with Rule IV.E.

18. SDG&E shall separate its e-mail from that of its affiliates.

19. In its revised compliance plan, SDG&E shall explain its proposed firewall systems thoroughly, including not only their design but their proven efficacy, and show to the Commission's satisfaction that these firewalls are sufficient to ensure compliance with the Rules. Interested parties to this proceeding are invited to provide relevant comments on these revised plans regarding these proposed methods and technologies.

20. Sempra shall separate the computer and information systems of its utilities and affiliates covered by these Rules.

21. SDG&E shall report in its revised compliance plan on how it is restructuring the computer and information systems in order to comply with these Rules.

22. In its revised compliance plan, SDG&E shall identify which affiliates are sharing space with the company.

23. SDG&E is permitted to attend meetings with their affiliates and customers to address technical and operational issues. However, SDG&E employees shall refrain from engaging in prohibited activities during these meetings. Therefore, 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 SDG&E employees and its affiliate shall not participate in the discussion.

24. As no stay of the Decision has been issued, SDG&E shall bring itself into compliance with Rule V.C and all Rules immediately.

25. In its revised compliance filing, SDG&E shall revise its list of shared corporate services permitted under Rule V.E, explain each function, what it does, why it should be treated as a shared corporate service, and why it will not allow the transfer of confidential information, bestow preferential treatment or competitive advantage, lead to customer confusion, or create opportunity for cross-subsidy of the utility's affiliates.

26. SDG&E shall discontinue its practice of allowing its officers and directors access to "all material information concerning all of Enova Corporations business activities,". SDG&E shall also report on its mechanisms and procedures it has developed to prevent the circumvention of these Rules through the sharing of officers and directors between the utility and Enova.

27. D.98-08-035 requires that a corporate officer from the utility and its holding company should verify, in its 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 these Rules. SDG&E's compliance plan shall list all shared directors and officers, if any, between it and its affiliates. Further, no later than 30 days following a change to this list, SDG&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.

28. In its revised compliance plan, SDG&E shall report to the Commission what steps it has taken to restructure its management meetings to prevent the sharing of operational and other data which is prohibited by these Rules.

29. The merged companies describe their efforts to create physical separation between utility and affiliate employees, but indicate that this effort was still ongoing on July 2, 1998. In its revised compliance plan, SDG&E shall update this section to report to the Commission on the progress and success of these efforts.

30. SDG&E shall report in its revised compliance plan that the merged companies have discontinued their shared risk management program as described in their July 2 filing.

31. SDG&E shall include the verifications required by Rule V.E in its revised compliance plan.

32. SDG&E shall not use Rule V.E to circumvent the other Rules.

33. SDG&E shall include in its revised compliance plan examples of the training materials the company is using to implement these new separation Rules.

34. SDG&E shall elaborate on how corporate communication and public relations functions are shareable under Rule V.G.2.c, as clarified by D.98-08-035, and how it proposes to prevent the abuses specified in the decision. Further, SDG&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.

35. SDG&E shall require a corporate officer from the utility and its holding officer to verify that the mechanisms and procedures are in place to ensure that the utility is not utilizing shared officers and directors as conduit to circumvent any of these Rules.

36. SDG&E shall list all shared directors and officers between it and the affiliates. SDG&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.

37. SDG&E shall discontinue its practice of allowing its officers and directors access to "all material information concerning all of Enova Corporations business activities," and allowing these executives to "schedule, direct, and attend strategic meetings concerning such business" immediately and report that it has done so in its revised compliance plan. It shall also report on its mechanisms and procedures it has developed to prevent the circumvention of these Rules through the sharing of officers and directors between the utility and Enova.

38. SDG&E shall rewrite the paperwork that is used for exit interviews when an employee transfers to an affiliate, to be consistent with the Rules as specified herein.

39. The employee transferring from the utility to an affiliate shall be given a copy of the exit interview documents (if this is not already the practice of the company) as well as a verbatim copy of Rule V.G.

40. The Protests filed by the JP and the ORA are granted in part and denied in part in accordance with the discussion herein.

41. This Resolution is effective today.

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 November 5, 1998, the following Commissioners voting favorably thereon:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

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

I will file a written concurrence.

/s/ JOSIAH L. NEEPER
Commissioner