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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

E-4 I. D. # 1843

ENERGY DIVISION **RESOLUTION E-3711**

APRIL 3, 2003

R E S O L U T I O N

Resolution E-3711. Pacific Gas and Electric Company (PG&E) requests authority to revise its electric and gas tariff to add language specifying payment options available to PG&E customers, including credit card payment and electronic billing and payments. Southern California Edison (Edison) requests approval of a form by which customers may receive and pay their Edison bills electronically through the Internet. Southwest Gas Corporation (SWG) requests authority to revise tariffs to allow electronic billing. San Diego Gas & Electric (SDG&E) requests authority to add the definition of electronic billing to its rules, and to discontinue mailing a paper bill to customers enrolled in internet billing. The utilities' requests are approved, subject to compliance with certain consumer protection measures, and subject to certain modifications.

By PG&E Advice Letter 2221-G/1982-E, filed on March 21, 2000.
By Edison Advice Letter 1446-E, filed on March 30, 2000.
By Southwest Gas Advice Letter 622, filed on October 31, 2000.
By SDG&E Advice Letter 1229-E-A/1200-G-A filed on August 10, 2000.

SUMMARY

Through advice letters, PG&E, Edison, SWG, and SDG&E all request authority to provide electronic billing, with various options.

The utilities' billing and payment options are approved, provided that 1) the utilities comply with the interim consumer protection rules in Appendix A of this resolution, and 2) certain modifications are made. These rules are taken from similar rules that we have adopted on an interim basis for telecommunications companies in our Decision (D.) 01-07-030.

Where applicable, the utilities' tariffs should be modified to clearly state that a third party vendor or financial institution would assess an extra fee.

We also order other energy utilities that are offering alternative billing and payment options such as Internet billing or credit/debit card payment to comply with these interim rules.

Edison and SWG should clearly specify in their Rule 9 all acceptable payment methods. PG&E should clearly specify that electronic billing may be arranged.

The PG&E, SWG, SoCalGas, and SDG&E credit/debit card payment option should be covered by the consumer protection rules provided in Appendix A.

Utility.com, a utility-bill consolidator, filed a protest against Edison's AL 1446-E. This protest is denied.

BACKGROUND

PG&E

PG&E filed AL 2221-G/1982-E, dated March 21, 2000, to revise electric and gas Rule 9, Rendering and Payment of Bills, to add language specifying payment options available to PG&E customers.

PG&E proposes to add the following payment options to its Tariff Rule 9:

1. "Check via U.S. mail or in person by cash or check at a PG&E business office or at an authorized PG&E pay station;

2. Recurring Automated Bank Debit, through Electronic Funds Transfer/Home Banking, or by Electronic Data Interchange (EDI). A transaction fee over and above the utility bill amount may be charged to the customer for these services.

3. Automated Teller Machine *(ATM) Card-by-Phone* Contract Services or by *Credit Card-by-Phone* Contract Services. Credit Card and ATM payments by Phone are available through a third party vendor. A transaction fee over and above the utility bill will be charged to the customer by the third-party vendor for its services."

PG&E says that all these payment options have been offered to its customers for several years. The electronic payment options and the Pay-by-Phone services were offered most recently in response to customers who have asked PG&E to offer more sophisticated and convenient payment options.

In responses to Energy Division inquiry PG&E explained:

- PG&E hires a value added network (VAN) company to transmit and receive data from its EDI customers. A VAN provides encryption, electronic mailbox, audit trail, and a firewall preventing access to PG&E's system. Each customer can choose it's own VAN. PG&E has offered electronic payment options since April 1, 1998.

- PG&E reads the meter and produces the electronic invoice, which is sent to the PG&E electronic mailbox in PG&E's VAN. The invoice is then transmitted to the customer's electronic mailbox. The customer makes payment through his/her bank, which in turn, sends the payment to PG&E's bank. The VAN service that the bank uses sends the appropriate information to PG&E to enter a credit to the customer's account. Residential customers, apartments, small and large commercial customers, industrial customers, schools, universities and government authorities use EDI for their billing and payment arrangements.

- PG&E has notified customers of the availability of these options through bill inserts, and through information provided on every energy statement, account service representatives, utility trade shows, and EDI workgroups. Also, PG&E's third-party billing agent uses a recorded script that was approved by PG&E to inform customers of these options during times when customers are placed "on hold" during phone calls.

- PG&E provides the *ATM/Debit Card by phone* service through a PG&E selected contractor. Customers access a third party vendor by telephone to initiate payments by ATM card.

- When a customer pays with *ATM/Debit Card-by-Phone or Credit Card-by Phone*, the debit or credit card is assessed the utility bill amount, plus a separate transaction charge by the third party vendor. PG&E provides both

ATM/Debit Card-by-Phone and *Credit Card-by Phone services* through a PG&E selected contractor.

- The third-party vendor charges $5.50 per credit card payment and $1.50 for an ATM/Debit Card payment. PG&E has no provision in its tariff for charging the customer for using a credit card or an ATM/Debit Card for payment of his utility bill.

- The customer initiates *Electronic Funds Transfer/Home Banking*, through the financial institution of his choice. The customer pays the bank a fee for processing all of his bills. PG&E receives payment from that financial institution and posts it to the customer's account.

- PG&E provides basic customer information, stored in their system, to the billing agent[1] and receives information on the payment, including account number and amount of payment from the billing agent.

Edison

Edison filed AL 1446-E, dated March 30, 2000, to establish Form 14-574, Energy Statement, Format Internet Billing and Payment (IBP). Format *IBP* would allow Bundled Service customers and direct access customers with Utility Distribution Company Consolidated[2] or Dual Bill[3] Presentation, receiving service on general service rate schedules, to review and pay their bills electronically through the Internet.

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[1] The proposed rules in Appendix A refer to billing aggregators as billing agents. Some utilities refer to them as service providers. To be consistent with the definitions of our proposed rules we use the term billing agent throughout this resolution.

[2] The customer's authorized billing aggregator sends its bill to Edison. Edison sends a consolidated bill, including both Edison's and the billing aggregator charges to the customer.

[3] A Dual Bill Presentation means that Edison and the billing aggregator separately send their bills directly to the customer.

Edison points to their Rule 9.A.6. that allows a Qualified Customer to request bill presentation and payment electronically through the Internet. Edison's Rule 9 defines *IBP*. Rule 1 defines a Qualified Customer as having met the criteria and supplied the facilities for electric service under Edison's Tariff Rules, and/or having special skills and equipment necessary to participate with Edison in business services.

Edison currently offers *IBP* to residential and small business customers. Edison commenced offering IBP to employees in March 2000 and to customers in June 2000.

Edison's AL 1118-E, dated October 16, 1995, approved both Electronic Transfer and Qualified Customer definitions.

AL 1446-E states that Format – *IBP* would allow bundled service customers and direct access customers with Dual or Consolidated Bill Presentation and receiving service on Schedules D-CARE, D-APS, D-CARE-APS, GS-1, GS-1-CARE, GS-2, GS-2-APS, and GS-2-CARE to receive and pay their bills electronically.

AL 1446-E explains that Edison will initially offer *IBP* in partnership with *CheckFree*. Edison has a contract with *CheckFree* for electronic billing services. The customer tells *CheckFree* which bills should appear on *CheckFree*'s statement.

In this initial phase, on a pilot basis, customers must agree to pay their bills electronically to receive bills on Format – *IBP*. Customers choosing to use the *IBP* have the option of only receiving the bill, only paying the bill, or receiving and paying the bill electronically. In a later phase, more schedules will be available along with the option of taking *IBP* through additional billing aggregators directly through Edison's Internet site.

Edison explains that to participate in *IBP* through a billing agent the customer must undergo an enrollment process. First, the customer registers on line with the billing agent, and the billing agent passes the information to Edison who activates the customer on *IBP*. When the customer is enrolled, Edison can present the bill to the customer who can then pay the bill. The customer will be enrolled until the customer decides to cancel participation in *IBP*. The first paper bill following enrollment will convey a message confirming the customer's

participation and that both hard copy and electronic bill will be sent until one complete cycle of the customer's receiving and paying the bill is complete. From this time on, there will be no further paper bills mailed unless *IBP* is cancelled. With the exception of electronic bill presentation and payment, customers electing *IBP* will have no different account treatment than customers receiving paper bills. Edison will continue to mail overdue notices and collection notices in hard copy.

Edison further explains that *IBP* uses advance security and encryption technologies. The customer has a personal identification number to ensure that all transactions and databases are kept safe from unauthorized access.

Edison states that all sections of Format – *IBP*, will closely mirror its current bill format. The customer can click to various sections of the bill including contact phone number, bill inserts, current charges, billing details, energy usage section, and message section.

Edison states that AL 1446-E will not increase any rate or charge and that the savings on postage for paper bills offset the cost of electronic billing. Edison also stated that it pays *CheckFre*e 25 cents per transaction.

In response to an Energy Division request, Edison explained that the customer-selected payment option is initiated through a third-party billing agent. The customer who chooses to use this service provides any required information to the service provider.

<u>Southwest Gas</u>

SWG filed AL 622 to request authorization to provide an electronic billing and payment option to its customers. Electronic Billing would allow customers to receive, view, and pay the bill electronically. SWG proposed to add the following text to its Tariff Rule 9 to specify the means by which payment of bills may be made:

> "Payments are required to be made in cash, by check, money order, certified check, electronic transfer, credit card acceptable to the Utility, or any other means mutually agreeable to the Utility and the customer. Payment by credit card, which may be made either in

> person or over the telephone, is an option that is available only to residential customers."

These payment methods had not previously been specified in SWG's tariff. In addition, SWG specifies in its proposed Rule 9 the terms under which electronic billing and payment may be arranged. After SWG activates the customer to begin the electronic billing cycle, the customer will receive a message with the first billing that this will be the last paper bill. Subsequent bills will be sent in electronic format.

SWG began offering electronic billing to its Arizona and Nevada customers in January 2001.

To notify customers that electronic billing is available, SWG will use its web site, bill stuffers, press releases and recordings for customers while on hold. Customers using electronic billing will receive all the bill stuffers currently received by mail.

Customers must use a third party Electronic Billing Service Provider. SWG will use *CheckFree* as the billing service provider. SWG will pay *Check-Free* about $0.26/e-bill.

Check-Free offers free service to customers for viewing and paying utility e-bills only. Customers using *CheckFree* to pay all bills will pay a fee. *CheckFree* will notify customers, through e-mail or postal service, of any increases in service charges.

<u>SDG&E</u>

In AL 1229-E/1200-G, San Diego Gas & Electric Company (SDG&E) requested authority to add the definition of Electronic Billing to Electric and Gas Rule 9. Under SDG&E's proposal, customers could pay their bills either directly through SDG&E's website or through a billing agent. SDG&E would discontinue mailing hard copy bills to those customers paying on line.

SDG&E already offers a credit or debit card payment option. AL 1323-E/1251-G, patterned after the measures adopted in Resolution G-3310, became effective November 5, 2001.

Additional Background

Southern California Gas Company (SoCalGas) filed AL 2884 on December 30, 1999. That advice letter requested authority to add language to the tariff rules to suspend the mailing of traditional paper bills to customers who choose to receive, view, and pay their gas bills electronically. Draft Resolution G-3278 denied that authority for lack of sufficient consumer protection and was placed on the Commission's agenda for September 7, 2000, but was held. SoCalGas withdrew AL 2884, on September 19, 2000 stating that it would submit a new advice letter addressing the consumer protection issues raised by draft Resolution G-3278. SoCalGas has not filed such an advice letter.

On May 3, 2001, in response to SoCalGas AL 2965, Resolution G-3310 approved SoCalGas' proposal for credit or debit card billing options. In Resolution G-3310, we required SoCalGas to establish certain consumer protection measures associated with credit/debit card payment.

NOTICE

Notices of AL 2221-G/1982-E, 1446-E, 622, and 1229-E-A/1200-G-A were made by publication in the Commission's Daily Calendar. PG&E, Edison, SWG, and SDG&E stated that a copy of their Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

No protest to either PG&E's AL 2221-G/1982-E, SWG's AL 622, or SDG&E's AL 1229-E-A/1200-G-A was filed.

Utility.com's Protest

Utility.com, an Energy Service Provider and a utility-bill consolidator, filed a protest of Edison's Advice Letter 1446-E on April 20, 2000. Utility.com offers three reasons for its protest; 1) Edison limited participation in this program to only one billing agent, *CheckFree*, 2) Edison did not clearly state that their *IBP* service will be offered to all customers, whether Direct Access or Bundled, and 3) Edison did not guarantee continuity of service when a customer switches from

Bundled service to Direct Access, ESP to ESP, or Direct Access to Bundled service.

Utility.com requests that the Commission reject AL 1446-E and not allow Edison to offer *IBP* service solely in partnership with *CheckFree*. Utility.com maintains that customers should be able to choose their own billing agent as long as that billing agent meets a minimum set of public and non-discriminatory requirements established by Edison. Restrictions should not be placed on the number of companies that may participate at the outset of the program, according to Utility.com. Utility.com points to companies that offer similar services such as *PayMyBills.com*, *PayTrust*, *StatusFactory.com*, and *TransPoint.com* that should not be excluded from offering *IBP* at the start of the program.

Utility.com's second objection to AL 1446-E is that Edison does not clearly guarantee all Direct Access and Bundled customers equal access to the *IBP* program. Edison states "*Format – IBP* allows Bundled Service Customers and Direct Access Customers with Dual or Utility Distribution Company (UDC) Consolidated Bill Presentation, receiving service on Schedules D-CARE, D-APS, D-CARE-APS, GS-1, GS-1-CARE, GS-2, GS-2-APS, and GS-2-CARE, to receive and pay their bills electronically." Utility.com asserts this statement should be clarified. Utility.com states that Edison is unclear exactly which customers are eligible to receive *IBP* service. Utility.com also requests that Edison clarify whether Direct Access and Bundled Customers taking service under Tariff Schedule D are eligible to receive service.

Finally, Utility.com requests that the Commission order Edison to ensure that there is continuity of service when a customer switches from Bundled service to Direct Access, from billing agent to billing agent, or from Direct Access back to Bundled service.

<u>Edison's Reply</u>

On April 27, 2000, Edison filed a reply to Utility.com's protest.

With regard to Utility.com's protest that Edison limited participation in this program to only one billing agent, Edison stated in its response that it has not placed restrictions on the number of billing agents and is currently looking at

other billing agents with which to do business. Edison adds that as of April 2002 customers can access Edison's website to enroll in electronic billing and payment.

Edison also said that a universal electronic infrastructure that allows a billing agent to route a bill to any customer requested destination does not yet exist. To provide this type of service in today's electronic environment Edison would have to establish a contract, electronic connectivity, and security protocols with each and every billing agent that a customer might request and this is not now feasible. Edison said it is currently looking at other billing agents that it will investigate for inclusion at a later date.

Edison argued that *CheckFree* gives the customer a wider variety of choices with its hundreds of websites nation wide. Edison also says that customers should not have to wait until all potential billing agents are at the point of development at which *CheckFree* currently stands before they can benefit from the additional choice that *CheckFree* offers.

Edison objects to Utility.com's suggestion that Edison should be required to enter into contractual relationships with any billing agent that meets a minimum set of requirements. Edison says that such a requirement would interfere with Edison's right to choose with whom it will do business. Further, Edison says it will be impossible to develop a complete set of requirements in advance that would anticipate every potential circumstance that might cause Edison to decline to do business with a third party.

Edison asserts that Utility.com incorrectly states that *PayMyBills.com, PayTrust, and StatusFactory.com* are excluded from the *IBP* process, since Edison has customers using these services today, and *IBP* will not prevent these customers from participating in the future. Edison points out that such billing agents operate by receiving the hard copy bill from Edison, then converting it to an electronic document, which the customer can access through the Internet.

With regard to Utility.com's second protest point, Edison responded that *IBP* is available to all Bundled Customers and all Direct Access Customers who have UDC Consolidated or Dual Bill Presentation. Customers on all rate schedules, including Schedule D are now eligible for *IBP* service.

With regard to Utility.com's third protest point, Edison states that Edison cannot offer *Format - IBP* services to direct access customers who choose a billing agent's Consolidated Billing. For such customers the billing agent would send the bill to the customer. Edison can only offer *IBP* where Edison presents its bill to the customer, such as bundled or direct access customers. Under such a circumstance, Edison cannot guarantee continuity of service.

DISCUSSION

PG&E and Edison have already been offering various payment options to their customers. With its AL 2221-G/1982-E, PG&E proposes to formally state these payment options in its tariff. These options include traditional receipt of a "hard copy" bill and payment by cash and check, as well as alternative billing and payment options such as credit card payments, home banking, and electronic billing and payment. As indicated in their response to an Energy Division data request, PG&E is apparently also offering the option of electronic billing, but this is not specified in their Rule 9. PG&E Rule 9E. simply states:

> "Payments shall be received at the office of PG&E, or by an authorized agent of PG&E."

Edison has also offered an Internet billing and payment option, and now wants to formally establish this option in its tariff, and thereby eliminate the "hard copy" bill. Other than the option of payment by electronic transfer, Edison does not specify in their Rule 9 other acceptable payment methods.

SWG has not previously offered an Internet billing and payment option in California. With AL 622, SWG now proposes to do so, and to establish this procedure in its tariff. SWG also had not previously specified other acceptable payment methods in its tariff. One of the acceptable methods it now proposes in addition to electronic billing and payment is payment by credit card.

SoCalGas offers various billing and payment options, including traditional payments and credit card payments, but does not yet offer an Internet billing and payment option. We approved a credit/debit card payment option for SoCalGas in Resolution G-3310, along with certain customer protection measures.

SDG&E also offers a credit/debit card payment option, but does not yet offer an Internet billing and payment option.

Traditional Payment options

Traditional payment by cash or check does not involve third-party billing and does not raise our concerns, nor does payment of utility bills through home banking concern us. We will approve inclusion of these methods of payment in the utilities' tariff rules.

Payment by Credit Card

PG&E and SWG offer the option of payment by credit card. PG&E uses *BillMatrix*, a third party provider, to provide the billing and collection service. Edison does not offer the credit card payment option and did not request authorization for offering the credit card payment option in Advice Letter 1446-E.

In Resolution G-3310 we authorized the Southern California Gas Company to commence offering the option of paying by credit card. SDG&E also offers the option of paying by credit card, under similar consumer protection measures adopted in Resolution G-3310.

The PG&E and SWG credit/debit card payment option should be covered by the consumer protection rules provided in Appendix A.

SoCalGas' and SDG&E's credit/debit card payment option should also comply with the attached consumer protection rules.

Third-Party Electronic Billing and Payments

Edison said the first phase was implemented on a pilot basis; a later phase would expand *IBP* to more tariff schedules and billing agents. Currently, Rule 9.A.6. allows a qualified customer to request bill presentation and payment electronically through the Internet.

Whether Edison sends a consolidated bill or Edison and the billing agent send separate bills to the customer, the possibility exists that the billing agent can

abuse the billing process by adding unauthorized charges. Edison's AL 1118-E authorized electronic billing, but not the third party billing by billing agents. Edison has never requested authorization to offer *IBP* with third-party billing.

PG&E said that all these payment options have been offered for several years. PG&E's Rule 9.E. states: "Payments shall be received at the office of PG&E, or by an authorized agent of PG&E." At the time the Commission approved PG&E Rule 9.E., the Commission did not anticipate electronic billing with third-party providers or problems of cramming and credit identity theft.

AL 622 is SWG's first request for authorization of electronic billing.

Consumer Protection Rules

PG&E, SWG, Edison, and SDG&E submitted advice letters requesting authority to offer electronic billing and payment to their customers, or have been already offering electronic billing and are now formally revising their tariffs. In addition, they are offering customers the option of credit/debit card bill payments. SoCalGas and SDG&E also already offer the credit/debit card payment option.

We are pleased that customers are being provided with these options. However, electronic billing is a timely example of a competitive service in need of consumer protection rules. We are concerned about protecting consumers from unauthorized charges and invasion of privacy that could occur under such options.

Cramming, the submission or the inclusion of unauthorized, misleading, or deceptive charges for products or services on the subscriber's telephone bills, became a serious and widespread problem in California. Experience with telephone providers has shown that it often occurs in the context of a billing chain involving one or more billing agents in addition to the billing telephone company each of who can initiate the process of placing a charge on a subscriber's bill.

We are aware that the telecommunications industry has seen numerous complaints concerning cramming, and we seek to avoid these occurrences in the energy industry. The Energy Division requested that PG&E, Edison, and SWG fully explain what mechanisms were in place in order to ensure that cramming

would not occur. In reviewing the responses, we note that the utilities are relying on existing contracts with billing agents and existing controls.

Offering electronic billing raises concerns of unauthorized charges or other crimes that could be committed by billing agents against customers without safeguards in place. We will discuss below the steps that the utilities should take to offer sufficient consumer protection from unauthorized charges.

D.01-07-030, slip opinion p 10, refers to a "wait and see what fraud happens," approach and rejects that approach as irresponsible. Energy utility customers rely on regulation to protect their rights. Even when an energy customer has practical alternatives, competition among providers is insufficient to assure consumer rights. We are concerned that a third-party billing agent may expose customers to an excessive charge.

Rather than grant such requests with varying constraints, or no constraints at all, we will order these utilities to be subject to a uniform, enforceable, and workable set of rules that will provide consumer protection from unauthorized charges and invasion of privacy. Public Utilities Code section 2890 was amended July 1, 2001 to permit the use of telephone bills to bill for non-communications charges. This amendment triggered in D. 01-07-030 the establishment of consumer protection rules applicable to all telecommunications utilities. We believe that consumer protection rules should be established for energy utilities as well.

In D.01-07-030, we adopted new, modified rules to be set in place for telecommunications billing companies. While those rules are "interim" in nature, we do not think it necessary to hold up electronic billing by energy utilities pending that rulemaking since any rules that come out of this resolution can be modified, if necessary. We will approve Advice Letters 2221-G/1982-E, 1446-E, 622, and 1229-E-A/1200-G-A subject to compliance with the interim rules that we attach as an Appendix to this resolution. These interim rules mirror the rules that we adopted in D.01-07-030 for telecommunications companies.

Rather than establishing separate rules specific to each energy utility, we intend to establish generic rules applicable to all providers of energy services. This would be efficient and would help ensure that no provider has a cost advantage of not honoring fundamental consumer rights, that service disclosures are

adequate to promote informed consumer choice, and that consumers are treated fairly.

Vendor

In these rules, we have used the term "vendor" to refer to a person or corporation that initiates the process of placing a non-energy charge on a customer's energy bill. In the context of non-energy charges, vendors likely will not be public utilities in most cases; however, if a billing energy company sells non-energy products or services directly to its own customers, it will be acting both as a billing energy company and as a "vendor" within the meaning of these rules.

Presentation of Offer

Utilities should fully disclose to the residential consumer[4] the enrollment procedure, the electronic billing service and the terms of payment in any offers made and should solicit from the billing agent data including, but not limited to, the following:

- Suggested text phrase language,
- Description of how the product is ordered, including any telemarketing scripts,
- Description of how the End-User Customer can direct questions, request adjustments, etc., including a description of how such requests will be accommodated, and
- Copy of actual post sale fulfillment documentation.

[4] The Commission has been informed of numerous fraudulent acts in the telephone industry, concerning "cramming", "slamming", and most recently false information and misrepresentations made to consumers in offers by telephone companies. By requiring disclosure, we seek to curtail such acts.

- We will require the utilities to provide the name(s), phone number(s) and address (es) of the third party billing agent(s) that the utilities are doing business with. The name and phone number of the billing agent should be shown on the bill that is filed with the tariff.

We have recently established consumer protection rules for the telecommunications utilities. Our rulemaking to revise General Order 96-A[5] is considering changes that include disclosure requirements, and may touch less directly on other consumer protection aspects. Consequently, we are addressing disclosure requirements in this resolution.

Privacy

Failure to keep personal financial information confidential can result in identity theft, which in turn may result in severe damage to the credit record of the victim, and may require victims to spend days establishing that they are not responsible for debts incurred in their names. Intrusive telemarketing practices may also occur in customer's homes. To help customers avoid such invasions of privacy, confidential information, including financial information, should not be released to a third party without the subscriber's written consent. The utility would obtain and retain the necessary records. The Commission would not be directly involved.

Complaint Procedure

Our proposed rules set forth a procedure that enables customers to resolve cramming problems by contacting the billing energy company that issued the bill. Billing energy companies can refer the complaints to the entity responsible for generating the charge. If it does, the billing energy company must require of that entity that the dispute resolution service of that entity meet the requirements set forth in our rules[6]. Customers must also be informed that they can return to the billing company if they cannot get the problem resolved with the vendor.

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[5] R.98-07-038.

[6] This requirement is parallel to that of PU Code sections 2889.9 and 2890 for telephone companies.

The utilities should provide all possible cooperation to effect customer protection in the event an electronic billing agent makes unauthorized charges to a customer's bill or commits any other crime against a customer.

Applicability of Truth in Lending Act

It's likely that billing companies will impose finance or interest charges related to charges on a utility bill.

In D.01-07-030, slip opinion p 8, we said:

> "As an example of how Truth in Lending may apply to billing for non-communications charges, a business offering or extending credit falls under Regulation Z's scope when:
>
> 1. The credit is offered or extended to consumers,
> 2. The offering or extension of credit is done regularly,
> 3. The credit is subject to a finance charge or is payable by a written agreement in more than four installments, and
> 4. The credit is primarily for personal, family, or household purposes.[7]
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> Thus, it appears that if billing telephone companies impose a finance charge in connection with billing for non-communications charges unrelated to telephone service, in effect the billing service will constitute an offer or extension of consumer credit that is subject to

[7] See 12 C.F.R. § 226.1(c).

Regulation Z. (See 12 C.F.R. § 226.1(c).) "Finance charges" are broadly defined under Regulation Z.[8]

Lacking information on this point, we cannot assume that no billing telephone company will impose finance charges as that term is defined for purposes of the Truth in Lending Act. The Commission must consider the possibility that some billing telephone companies may impose finance charges and that their billings for non-communications charges may be subject to the Truth in Lending Act and Regulation Z, as well as parallel state laws.

State regulations governing creditor disclosure requirements and billing complaint procedures must be consistent with Regulation Z (See § 226.28.) Consequently, the Commission's rules governing non-communications charges must be consistent with Regulation Z, given the possibility, if not likelihood, that at least some non-communications billing will be subject to that body of law. Clearly, having two distinct sets of rules, one consistent with Truth in Lending, one not, is not workable or desirable. Accordingly, our intent in drafting these rules is to make them consistent with the Truth in Lending Act. We have focused primarily on the areas of disclosure requirements, complaint procedures, and rules that enable the customer to alert the billing telephone company to any unauthorized use of the subscriber's account, and to revoke authorization to use the account for billing non-communication charges. Billing telephone companies must bear in mind, however, that they are responsible for complying with all applicable legal requirements under federal and state law, not just those requirements set forth in our rules.[9] As many parties have commented, there are

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[8] Regulation Z defines a finance charge as "the cost of consumer credit as a dollar amount" and includes "any charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." (See 12 C.F.R. § 226.4(a).)

[9] While our objective in drafting these rules is to make them consistent with the Truth in Lending Act, to the extent these rules provide any greater protections than those provided by

Footnote continued on next page

> other good reasons to pattern these rules after the Truth in Lending Act and Regulation Z. (See, inter alia, Comments of the California Attorney General, the California Department of Consumer Affairs, California Small Business Association, and TURN.) The federal rules governing credit card transactions and credit card billing disputes are relatively well known to consumers and to businesses. They have been tested, and they apply nationwide. They include disclosure requirements that enable consumers to verify charges on their bills, and provide a workable procedure to get unauthorized charges removed and other errors corrected. California consumers who opt to open up their telephone bills to non-communications charges will be well served by these safeguards."

We think that customers who would opt to open up their energy bills to non-energy charges would also be well served by these safeguards.

Service List

The consumer protection rules proposed in Appendix A could, if implemented in whole or in part, affect many, or all, intrastate energy providers. We will therefore direct that this resolution initially be served on all parties mentioned in the three advice letter filings, and to all other regulated energy utility companies under our jurisdiction. We will order SoCalGas, PG&E, Edison, SWG, and SDG&E, who have submitted advice letters requesting authority to offer electronic billing, to comment. Other energy companies should either participate or state in their comments that they do not contemplate offering electronic billing through a third-party billing agent.

The proposed rules would apply to any billing agent or vendor of non-energy-related products or services that bills for those products or services on a California energy bill. We will include on our mailing list those billing agents that came to the attention of the Energy Division during the drafting of this resolution.

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the Act, we believe these protections are consistent with and therefore not preempted by the Act.

Utility.com Protest - Choice of Billing Aggregators

Utility.com alleged that Edison limited participation in this program to only one billing agent, *CheckFree*, and customers should be able to choose their own billing agent.

Edison replied that Edison is looking for other billing agents; a universal electronic infrastructure does not yet exist; customers should not have to wait until all potential billing agents can compete with *Checkfree*; other billing agents can participate in electronic billing; and Format IBP is available to all bundled and direct access customers.

In response to an Energy Division inquiry, Edison provided the following:

- Edison will be able to do business with other billing agents in addition to *CheckFree*. Additional billing agents will be evaluated based on Edison and customer needs.

- Edison now offers *IBP* to bundled customers, direct access customers (with either utility distribution company Consolidated or Dual billing), and Tariff Schedule D (Domestic) customers. Since April 2002 Edison has offered IBP through its own website, *SCE.com*.

Edison stated that it has not placed restrictions on the number of billing agents and is currently looking at other billing agents with which to do business. Edison also said it is taking steps to accommodate other billing agents who offer electronic billing services and will in time, have other billing agents with whom it can do business. We deny this protest item.

Utility.com Protest - Customer Eligibility

Utility.com's second objection to AL 1446-E is that it does not clearly guarantee all Direct Access and Bundled customers equal access to the *IBP* program. As Edison stated in its reply, all customers using Consolidated or Dual Bill Presentation are eligible for Format IBP.

Currently, any customer, bundled or direct access, can enroll in Format IBP.

We will deny Utility.com's protest on this issue.

Utility.com Protest – Continuity of Service When Switching Providers

Finally, Utility.com requests that the Commission order Edison to ensure that there is continuity of service when a customer switches from Bundled service to Direct Access, from billing agent to billing agent, or from Direct Access back to Bundled service.

Edison states that Edison cannot offer *Format - IBP* services to direct access customers who choose a billing agent's Consolidated Billing. For such customers the billing agent would send the bill to the customer. Edison can only offer *IBP* where Edison presents its bill to the customer, such as bundled or direct access customers. Under such a circumstance, Edison cannot guarantee continuity of service.

In addition, in response to an Energy Division inquiry, Edison explained that it would continue to transmit the necessary information to sustain *IBP* service through customer transfers from Bundled service to Direct Access, from billing agent to billing agent, or from Direct Access back to Bundled service. Edison cannot guarantee continuity of its electronic billing service under all the circumstances suggested by Utility.com.

We deny this protest item.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

This resolution was mailed to Southern California Gas Company, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas and

Electric Company, Southwest Gas Corporation, Pacificorp, Avista Corporation, West Coast Gas Company, Mountain Utilities, Alpine Natural Gas, Pacificorp, and NRG Energy Center San Francisco LLC.

The proposed resolution of the Energy Division in this matter was mailed to the parties in accordance with PU Code 311(g). Comments were filed by_____ on_____. Reply comments were filed by_____ on _____.

FINDINGS

1. With AL 2221-G/1982-E, PG&E requests authority to revise its Rule 9 to include seven payment options by which customers can pay their bills.

2. With AL 1446-E, Edison requests authority to initiate Format IBP for transmitting bills electronically, and allowing electronic payment of bills.

3. With AL 622, SWG requests authorization of payment options by electronic means for all customers and by credit card for residential customers only.

4. SDG&E's Advice Letter 1229-E-A/1200-G-A should be approved subject to the Rules set forth in APPENDIX A.

5. Approval of electronic billing should be subject to a set of enforceable, workable consumer protection rules.

6. It is reasonable to order all energy utilities under Commission jurisdiction to be subject to the interim rules of Appendix A.

7. It is reasonable to require that the PG&E and SWG payment option for credit/debit card billing be subject to the same consumer protections as are included in the interim rules.

8. The PG&E, SWG, SoCalGas, and SDG&E credit/debit card payment option should be covered by the consumer protection rules provided in Appendix A.

9. D.01-07-030 established Interim Rules Governing Non-Communications-Related Charges on Telephone Bills.

10. Those interim rules should also be largely applicable to electronic billing by energy companies.

11. The utilities' request to provide electronic billing should conform to the full disclosure requirements enumerated in the text of this resolution.

12. Credit identity theft, the use of a customer's personal identification and credit information and the unauthorized use of this information to obtain money, credit, goods, services, and other things of value in the victim's name, is a growing consumer problem in California.

13. Requiring a customer's informed consent to the release of confidential customer information by energy companies will help to deter identity theft and other violations of customer's privacy rights.

14. Effective safeguards are needed to ensure that only charges authorized by energy customers are included in energy bills.

15. To the extent billing energy companies impose finance charges in connection with charges unrelated to energy service, the underlying transactions and the billing for those transactions will be subject to the federal Truth in Lending Act, 15 U.S.C. paragraph 1601 et seq., and Regulation Z, 12 C.F.R. paragraph 226.

16. The Truth in Lending Act requires that state regulations governing the types of transactions regulated by the Truth in Lending be consistent with federal law.

17. The Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code paragraph 1788-1788.17, would apply to the billing and collection activity of energy corporations that opt to bill for non-energy related charges on energy bills.

18. The federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. paragraph 7001 et seq.) and the California Uniform Electronic

Transactions Act (Civil Code paragraph 1633.1-1633.17) permit legally binding contracts to be formed via electronic communications, including electronic signatures, provided the parties agree to the use of electronic communications to send and receive specified documents.

19. California has a substantial state interest in ensuring that confidential information that energy customers reveal to energy companies in order to obtain services be kept confidential and not be released to third parties without a customer's written consent.

THEREFORE IT IS ORDERED THAT:

1. PG&E AL 2221-G/1982-E, Edison AL 1446E, and SWG AL 622 are approved subject to compliance with the interim rules set forth in Appendix A and modifications ordered below.

2. SDG&E's Advice Letter 1229-E/1200-G is approved as of the effective date of this resolution subject to the Rules in APPENDIX A.

3. The PG&E, SWG, SoCalGas, and SDG&E credit/debit card payment option should be covered by the consumer protection rules provided in Appendix A.

4. Edison should specify in its tariff all of the different payment options it allows.

5. Utilities should specify in their tariff that additional fees may be assessed for certain billing or payment options.

6. PG&E shall clearly state in their Rule 9 that electronic billing may be arranged in lieu of a hard copy bill.

7. A utility's offer of electronic billing should meet the disclosure requirements set forth in the text of this resolution.

8. Other energy utilities shall comply with the rules in Appendix A to the extent they offer electronic billing and payment options or a credit/debit card payment option.

9. Utility.com's protest is denied.

This order 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 April 3, 2003; the following Commissioners voting favorably thereon:

_____
WILLIAM AHERN
Executive Director

APPENDIX A
INTERIM RULES GOVERNING BILLING ALTERNATIVES INCLUDING NON-ENERGY-RELATED CHARGES ON ENERGY BILLS

A. SCOPE AND PURPOSE

The purpose of these rules is to protect energy consumers from unauthorized charges on their energy service bills, including charges for non-energy-related products and services. These rules are intended to provide consumers control over charges on their bills; to provide for prompt and effective recourse if they find unauthorized charges or other billing errors on their energy bills; and to protect the confidentiality of information they provide to energy utilities.

These rules apply to: (1) any electric or gas (energy) corporation, as defined in Public Utilities Code Section 218 and 222, operating in California, that offers billing alternatives and/or opens its energy billing service to non-energy-related products and services; (2) any billing agent that presents such charges to a California energy corporation to appear on a bill of a California energy consumer; and (3) any vendor of non-energy-related products or services that bills for those products or services on a California customer's energy bill, whether it makes billing arrangements directly with the California billing energy company or indirectly through billing agents. Business entities in both categories must comply with the applicable rules in this Part. These rules apply to billing for residential and small commercial energy service (defined as <20 kW[10] for electricity and 250,000[11] therms per year for gas).

These rules are intended to be consistent with other consumer protection laws that are or may be applicable to billing for products and services unrelated

[10] PU Code sec. 331(h).

[11] 22 CPUC 2d 506

to energy service. These laws include state and federal laws governing debt collection activity and consumer credit. The Commission's rules governing non-energy-related charges on energy bills are not intended to deprive consumers of other remedies available under such laws. While our objective in drafting these rules is to make them consistent with the Truth in Lending Act, in particular, to the extent these rules provide any greater protections than those provided by the Act, we believe they are consistent with and therefore not preempted by the Act.

Our discussion of rules applying to telecommunications companies reflects our intent to hold energy companies to the same consumer protection standard as telecommunications companies.

B. DEFINITIONS

Agent

Any person, company, or entity, other than a billing energy company:
(1) that represents or acts on behalf of a billing energy company, billing agent, or vendor as those terms are defined in these rules; or
(2) that solicits, promotes, advertises, offers, or bills for, products or services that are billed for on a customer's energy bill or included in the envelope containing any bill for energy services; or
(3) whose function is to bring about or accept performance of contractual obligations between a consumer and either a billing energy company or a vendor whose charge for products or services is billed for on a customer's energy bill or included in the envelope containing any bill for energy services.

Billing Agent

A company or other business entity that aggregates billing for energy service providers and/or vendors and submits that billing to an energy company for inclusion on subscribers' energy bills, either directly or indirectly through one or more billing aggregators.

[Comment: With reference to telephone companies, Sections 2889.9 and 2890 use the term "billing agent." Billing agents are sometimes referred to as " billing

aggregators." The FCC uses the term "clearinghouse" (see FCC Anti-Cramming Best Practices Guidelines).]

Billing Error

A charge made on a customer's energy bill without proper authorization as required by statute and/or these rules (see definition of "unauthorized charge, below); a charge not identified as required by statute and/or these rules; a charge assessed on customer's energy bill for products or services not accepted by the customer, or the customer's designee, or not delivered to or provided to the customer or the customer's designee as authorized; the billing energy company's failure to mail or deliver an energy bill to the customer's last known address if that address was received by the billing energy company or the entity responsible for initiating the charge, in writing, at least 20 days before the end of the billing cycle for which the statement was required; a reflection on the customer's energy bill of the billing energy company's failure to credit properly a payment or other credit issued to the customer's account; a computational error or similar error of an accounting nature made by an energy company or vendor; a reflection on an energy bill of a charge inconsistent with the terms and conditions of the customer's service agreement (whether defined by tariff or by contract) or purchase agreement, whichever is applicable.

Billing Energy Company

See Energy Company

Clear and Conspicuous

A statement is clear and conspicuous if it is readily understandable and presented in a size, color, contrast, location, and audibility, compared to the other material with which it is presented, that make it readily noticed and understood. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies and in a manner that makes it as readily noticed and understood as the information it modifies, explains, or clarifies.

Commission

The California Public Utilities Commission.

Energy-related charges; Non-energy charges

Energy-related charges include, but are not limited to, charges for: services tariffed by energy utilities; including home insulation and weatherization, energy audits, and charges for adjustment of, or installation of meters, equipment and facilities. Any charge that is not energy-related, with the exception of taxes and mandatory charges for public purpose programs, is a non-energy charge.

[Comment: The Affiliate Transaction Rules of D.98-08-035 Appendix A VII.H. requires energy utilities to submit an annual report listing each non-tariffed product or service offered. The Commission recognizes that energy-related products and services vary from time to time; therefore, this list is generalized.]

Complaint (to a billing energy company from a customer)

A communication, whether written or verbal, from a customer to the customer's billing energy company disputing a charge on that customer's energy bill.

A question about a charge is not necessarily a complaint; however, if the bill provides insufficient information to enable the customer to verify the charge, fails to identify clearly the source of the charge, includes incorrect information about the charge or the source of the charge, or in any way falls within the definition of a billing error, the question should be deemed a complaint.

Fraudulent Authorization

An authorization (written, verbal, or electronic) is fraudulent if it is inauthentic (not given by the customer) or was obtained from the customer based on false or misleading information.

Legal name (of a business entity that is not an energy company)

Name of company as registered with the California Secretary of State.

Signature

Signature includes an electronic signature as defined by the Uniform Electronic Transactions Act, Civil Code § 1633.2(h), provided, however, that an oral communication or a recording of an oral communication shall not constitute an electronic signature.

Solicitation

An offer, tentative or otherwise, by an energy company or agent of an energy company, or a vendor, to a consumer or consumers, or to the public generally, to provide a product or service for compensation. Proposed sales agreements and contracts are solicitations. Sales pitches of all types are solicitations, and energy companies' interactions with existing or prospective customers to set up new services generally include multiple solicitations. Product- or service-specific advertising and other promotional materials fall within the definition of solicitation, whereas brand-name or image advertising generally would not.

Customer

Any individual or business that hooks up to any energy service subject to Commission jurisdiction. For purposes of these rules, "customer" also includes individuals who use the customer's energy service with the permission of the customer of record.

Energy Company; Billing Energy Company

An energy company is any energy corporation (as defined in Public Utilities Code § 218 and §222) operating within California. A billing energy company is an energy company that also provides billing services to any third party, including its own affiliate, or that bills for non-energy-related products and services on its own behalf.

Unauthorized charge

In the context of billing for non-energy-related products or services on a customer's energy bill, an unauthorized charge is a non-energy-related charge included on a customer's bill when the customer (1) has not authorized the billing energy company, directly, to include non-energy-related charges on that customer's bill; or (2) has not authorized that

particular charge. A charge placed on the customer's bill by a person who does not have actual, implied, or apparent authority to place such a charge, and which confers no benefit upon the customer, is an unauthorized charge.

Vendor

Any person, company or entity that offers or provides non-energy-related products or services billed on a customer's energy bill. Vendors are responsible for their agents' compliance with these rules.

[Comments:

(1) As used in these rules, "vendor" refers to the entity that makes the sale to a California customer, attempts to make the sale, or sets in motion the process of placing a charge on a customer's bill. In the Commission's view, "entity responsible for generating a charge" as that term is used for telephone companies in Section 2890, i.e., is synonymous. Some telephone companies have argued, however, that the "entity responsible for generating a charge" could include billing agents. To eliminate this ambiguity, we will use the term "vendor" to refer to entities that set in motion the process of placing a charge on a customer's bill, not to billing agents acting as an intermediary between vendor and billing energy company. In the event that a billing entity is responsible for setting the process in motion, i.e., is responsible for generating a charge on behalf of no one but itself, it would be subject to the Commission's jurisdiction as provided by Section 2890[12], as are vendors. Note that if a billing telephone company sells non-communications-related products and services directly to subscribers, it is a vendor as well. Similarly we will use the term "vendor" to refer to energy providers that set in motion the process of placing a charge on a customer's bill, not to billing agents acting as an intermediary between vendor and billing energy company.

(2) Vendors are not necessarily public utilities, nor are they necessarily California corporations, though they sell or offer to sell to California customers.]

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[12] *Although this section applies to telecommunication companies, we will hold energy companies to the same standard.*

Written; In Writing

"Written" describes material intended to be read, either in the form of hardcopy (including fax) or transmitted through electronic media. "In writing" similarly describes (1) written material in hardcopy document form, and (2) messages intended to be read that are sent electronically. For purposes of these rules, however, whenever anything is required to be done in writing, the requirement must be satisfied in the form of hardcopy unless the customer agrees to having the required information (disclosure, notice, confirmation etc.) provided electronically.

[Comment: This definition of "Written; In Writing" will be interpreted consistent with the provisions of the Uniform Electronic Transactions Act, Cal. Civil Code §§ 1633 et seq., and with the Electronic Signatures Act, 15 USCA §§ 7001 et. seq., subject to the limitation on the definition of "signature" as defined in these rules.]

C. AUTHORIZATION REQUIREMENTS

Effective July 1, 2001, non-communications-related charges may be included in a subscriber's telephone bill, provided both of the following conditions pertaining to authorization have been satisfied: (1) the subscriber has affirmatively "opted in", i.e., provided a general one-time authorization directly to the billing telephone company to open up the customer's account to non-communications charges; AND (2) the subscriber has authorized the specific charge placed on the account. We will apply these requirements to energy companies as is described in more detail below.

(1) General ("opt-in") authorization: The billing energy company may place non-energy charges on a customer's account only if it has first obtained express written authorization, directly from the customer, to include non-energy charges on that customer's energy bill, and the customer has not revoked that authorization. The billing energy company must use a PIN number or other equally reliable security procedure designed to prevent anyone other than the customer and individuals authorized by the customer from placing charges on the customer's account. Opt-in authorization information or confirmation, including any assigned or confirmed PIN, must be sent to the customer's billing address even if the authorization lists a different address for delivery of products or services.

[Comment: Because billing for non-communications-related charges on telephone bills was previously prohibited by law, many subscribers initially will be unaware that they are now exposed to a new risk of having unauthorized charges for non-communications-related products or services improperly placed in their telephone bills. Customers of energy providers may be exposed to a similar risk, if they employ an energy provider. The Legislature has acknowledged that additional safeguards are necessary to protect consumers from the risk of being "crammed" with charges that are unrelated to telephone service or other communications services. (See Stats 2000, ch 931 (AB 994).) Consumers should not be exposed to this risk unknowingly. We propose to extend similar additional safeguards to energy companies.

As with telephone companies, these interim rules require billing energy companies to obtain express permission from a customer to include non-energy-related charges before any non-energy-related charges may be included on that customer's bill.

(a) In obtaining authorization to bill for non-energy charges, billing energy companies must disclose in a clear and conspicuous manner all material terms and conditions related to this service. Material terms and conditions include any applicable fees and charges, including late payment penalties and interest; whether payment prior to the due date is required to avoid late payment penalties; any available options for limiting authorization (for example, to a dollar amount per month); how a customer may dispute a charge; the fact that the billing energy company may not terminate service, file an adverse credit report, or charge interest or finance charges on disputed amounts; how a customer may revoke authorization; and how a customer's confidential information is protected.

[Comments:

(1) Billing energy companies may create forms for obtaining customers' authorization, although written authorization may be provided in other ways.

(2) Regardless of the manner in which written permission is given, billing energy companies must provide sufficient information to enable consumers to make informed decisions about whether to allow non-energy charges on their energy

bills, and must abide by those decisions. They must disclose all material terms and conditions, and must not mislead customers in an effort to convince them to authorize the use of their energy bill for non-energy-related charges. (See Id. and Business and Professions Code § 17500.) Companies that do so will be subject to sanctions by the Commission for violating these rules. Such practices may also lead to court-ordered penalties pursuant to California's Unfair Competition Law (Business and Professions Code §§ 17200 and 17500).

(3) If a customer disputes a charge on the ground that the customer had not authorized the billing energy company to include non-energy-related charges on the customer's bill, the billing energy company bears the burden of proving that the customer did in fact provide such authorization.]

(2) Point-of-sale authorization: Only charges that the customer has specifically authorized may be included on the customer's bill. Authorization must be provided by use of a PIN number or other equally reliable security procedure.

[Comments:

(1) The primary goal of these rules is to ensure that only authorized charges are billed to customers, i.e., to deter "cramming." Billing energy companies, billing agents, and vendors all are responsible for ensuring that only authorized charges are billed.

(2) Requiring PIN number authorization is one way to ensure that a purchase is properly authorized at the point of sale. As commenters pointed out in response to the first draft of the rules for telephone providers in R.00-02-004, better methods of ensuring proper authorization may exist or may be developed in the future. Accordingly, these rules allow flexibility in the means used to ensure authorization. Whatever the security procedure used, it should be at least as reliable as a PIN number, however. In the event a customer claims that a charge was unauthorized, the billing energy company may not require the customer to pay the charge until the billing energy company has obtained proof of proper authorization from the vendor or from the billing agent that submitted the charge for billing.

(3) This type of authorization will be referred to as "point-of sale authorization" to distinguish it from general authorization to include non-energy charges on a customer's telephone bill (see Rule C(1)).]

(3) Customers may not be held liable for unauthorized charges. Customers must make a reasonable, good-faith effort to notify the billing energy company promptly when the customer becomes aware of a probability of unauthorized use of the customer's account. If the billing energy company is unable to verify authorization, a charge is deemed unauthorized.

[Comment: Section 2890 provides that a telephone bill "may only contain charges for products or services, the purchase of which the subscriber has authorized." This provision mandates a "zero-liability" rule for unauthorized charges.]

D. REVOCATION OF OPT-IN AUTHORIZATION

(1) By customer: Customers may revoke authorization to allow non-energy charges on their bills at any time without charge. They may do so by notifying their billing energy company, by telephone, in writing, or via the Internet, that they no longer wish to allow non-energy charges on their energy bill. The billing energy company must confirm the revocation in writing within 10 business days. This written confirmation shall indicate the date and time the customer notified the billing energy company that authorization was revoked. Billing energy companies must allow customers to revoke authorization by telephone 7 days a week, 24 hours a day. The right to revoke authorization to allow charges includes charges from standing authorizations previously made by the customer, such as charges for monthly dues or enrollment service. This right is in addition to any other right that the customer may have to cancel the transaction that gave rise to the billing charge.

[Comment: As with credit cards, the consumer must be able to revoke authorization at any time to protect the customer in the event of attempted fraudulent use of the customer's account. As customers cannot be held liable for unauthorized charges, this provision protects the billing energy company as well.]

(2) By billing energy company: A billing energy company may suspend a customer's authorization to bill for non-energy charges

without prior notice if the company has reason to suspect fraudulent or unauthorized use of the customer's account. The billing energy company shall give prompt notice to the customer of such action. In all other cases, a billing energy company must provide reasonable notice before suspending or revoking the customer's authorization. Billing energy companies must inform customers of their revocation policies when soliciting customers' authorization and when responding to customers' requests for information about the billing service.

(3) Any agreement by a customer not to revoke an authorization is contrary to public policy and of no effect.

E. BILLING ENERGY COMPANIES' OBLIGATIONS TO SCREEN AND MONITOR ENTITIES FOR WHOM THEY BILL

(1) Billing energy companies must take reasonable precautions to screen vendors and billing agents before agreeing to provide billing services for them, in order to screen out unreliable or untrustworthy business entities.

(2) Before providing billing services to any vendor or billing agent, billing energy companies must require and obtain from the vendor or billing agent the following information:

(a) If the company is a corporation or other type of business entity required to file with the State of California (Secretary of State or other state agency) as a domestic or foreign corporation, its legal name as registered with the State of California, and if doing business under a different name in California, its fictitious name as registered in each county in California in which it is doing business under that fictitious name.

(b) If the company is not a corporation or other type of business entity required to register with the State of California (Secretary of State or other state agency), but is doing business under a fictitious name, its fictitious name as registered in each county in California in which it is doing business under the fictitious name.

Billing energy companies must provide this information to the Commission and the California Attorney General upon request.

(3) Contracts to provide billing services for vendors and billing agents must provide that the billing energy company will require proof of authorization for all charges disputed by customers, including but not limited to the nature, time, place and fact of the authorization; the nature, qualities and price of the product or service; and other charges of any and every kind, such as taxes, charges for other products and services, shipping expenses, interest, and penalties; and the legal basis for any such charge, and that without such proof, the customer will be credited for the charge and the corresponding amount withheld from the vendor or billing agent. Billing energy companies may impose fees on these vendors and billing agents for the cost of investigating and resolving customer complaints.

(4) Billing energy companies must monitor the performance of the vendors and billing agents for whom they provide billing services, promptly investigate customers' complaints, whether written or verbal, of unauthorized charges and other billing errors, and promptly suspend billing on behalf of a vendor or billing agent whose charges are generating a significant percentage of complaints (over five percent in two out of three consecutive months), or if the billing energy company has any other reason to believe unauthorized billings are being presented to it. A billing energy company may resume billing for a vendor or billing agent after investigating the alleged billing errors, if it has determined that the problem(s) underlying the errors have been resolved.

[Comment on what constitutes a "significant percentage" of complaints: The Federal Trade Commission has defined "excessive consumer dispute chargebacks" in the credit card context as chargebacks that exceed three percent of all credit card transactions for any single company for two out of three consecutive months. See In re Citicorp Credit Services, Inc. (1993), FTC No. C-3413, 116 F.T.C. 87, 1993 Lexis 19 (holding that failure to investigate excessive chargebacks and terminate billing when excessive chargebacks occur constitutes an unfair business practice in violation of the Federal Trade Commission Act.]

(5) Billing energy companies must keep records of all customer complaints, both written and verbal, of unauthorized non-energy

charges and other billing errors related to those charges for at least four years, and be able to categorize those complaints by vendor and by billing agent. Billing energy companies will make this complaint information available to Commission staff or the California Attorney General upon request.

[Comment: As a further deterrent to cramming, billing energy companies are encouraged to consider including escalating fee provisions in their contracts with billing agents and vendors, so that those vendors whose charges generate a large number of complaints quickly suffer financial consequences. The purpose of such provisions is to make cramming unprofitable for vendors and billing agents, thereby eliminating the incentive to engage in the practice and reducing the harm to consumers, as well as the number of complaints addressed to billing energy companies and the Commission.]

6) The Rosenthal Fair Debt Collection Practices Act, Sections 1788-1788.17 of the California Civil Code, applies to the billing and collection activity of energy corporations subject to these rules. Insofar as these rules require action inconsistent with an explicit requirement of that Act, that Act shall apply.

F. NO DISCONNECTION OF ENERGY SERVICE FOR NONPAYMENT OF NON-ENERGY CHARGES

Billing energy companies that provide energy service may not disconnect or suspend a customer's service for failure to pay any non-energy charge on the customer's energy bill. Billing energy companies must give customers notice of this rule when requesting initial authorization and on every bill that contains non-energy-related charges.

[Comment: See § 779.2.

(1) When discussing non-payment of charges with customers, orally or in writing, billing energy companies must inform them of this rule in a clear and conspicuous manner.

(2) Billing energy companies and their agents, as well as billing agents, vendors, and their agents, including assignees of accounts receivables, may not tell customers or lead them to believe that customers' energy service may be disconnected for failure to pay for non-energy charges.

(3) Unless otherwise directed by the customer at the time the payment is made, billing energy companies shall credit partial payment amounts in the following order: (1) energy service and associated mandatory fees and taxes; (2) other energy-related charges; (3) other charges.

G. COMPLAINT PROCEDURES

(1) The billing energy company is responsible for ensuring that customer complaints about non-energy charges on its bills are processed as required by these rules. Customer questions and complaints concerning non-energy-related charges should be addressed to the billing energy company, or to its agent, as designated on the bill. The energy bill must include a prominently displayed toll-free customer service number for this purpose. Personnel with sufficient training and authority to answer questions, investigate complaints, and adjust bills in favor of customers when appropriate must adequately staff the toll-free number.

Energy companies are required to provide adequate customer service as an energy provider. They must ensure that the additional customer service required of them in connection with non-energy charges does not negatively impact energy customer service.

(2) Billing energy companies or their agents shall promptly investigate customers' complaints of billing errors. Within 30 days of receiving a complaint of a billing error unrelated to the customer's energy service, the billing energy company must either credit the disputed charge to the customer or acknowledge, in writing, receipt of the complaint, and must verify the validity of the charge. Billing energy companies must resolve such complaints within 60 days.

[Comment: These rules are meant to be consistent with federal regulations governing credit card transactions, which may be applicable in some cases. See 15 U.S.C. 1666(a)(3)(A),(B) and 12 C.F.R. 226.13(c)(1),(2).]

(3) While the investigation is pending, the customer shall not be required to pay the disputed charge, no late charges or penalties may be applied, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of that charge.

(4) The billing energy company or, if the vendor is handling the complaint, the vendor, will notify the customer in writing of the result of its investigation. If the vendor has failed to provide proof of authorization within the time allowed, the billing energy company will credit the charge to the customer. If the billing energy company has obtained proof of authorization within the time allowed, it may require payment of the charge within 30 days of sending written notice to the customer. The notice shall state the reason for the creditor's belief that the billing error alleged by the customer is incorrect and include the amount due and the date of payment. If, however, the customer alleges that the authorization provided was fraudulent, or the billing energy company has reason to believe it was fraudulent based on other information, the billing energy company has an obligation to investigate further. An authorization is fraudulent if it is inauthentic (not given by the customer) or obtained from the customer based on false or misleading information. Consumers must be given copies of evidence to support the billing energy companies' allegations that charges are authorized if the consumer so requests. Consumers who request such evidence will be given a time period equal to one billing cycle or ten days, whichever is less, to determine if the evidence is authentic and to offer other evidence, by oral statements or otherwise, that would show the purchase was not authorized by the customer.

(5) If the customer alleges that a non-energy charge is improper because the customer had not "opted in," i.e., consented to the inclusion of non-energy charges on the energy bill (see Rule C(1)), or had revoked such authorization, the billing energy company bears the burden of proving that it had a valid general authorization from the customer at the time the particular charge was authorized.

(6) A customer dissatisfied with the billing energy company's resolution of the complaint may file an informal complaint with the Commission's Consumer Affairs Branch (CAB). Consumers who believe they have been crammed may also notify other agencies such as the District Attorney's Office in their county or the Attorney General's Office.

(7) Pending CAB's investigation, the customer's obligation to pay the disputed charge is stayed, provided that the customer's complaint was filed with CAB within 30 days from the date the billing energy company notified the customer of its decision in writing.

(8) If CAB obtains proof of proper authorization, CAB will so inform the customer and the billing energy company in writing. Within 30 days of such a notice, the customer must pay the disputed charge if it has not been paid. If the customer believes CAB's conclusion was in error, the customer may file a formal complaint with the Commission. The filing of a formal complaint does not, however, stay the customer's obligation to pay the disputed charge.

(9) If CAB is unable to obtain proof of proper authorization, it will ask the billing energy company, in writing, to remove the charge. If the billing energy company fails to remove the charge, the customer may file a formal complaint with the Commission. CAB may refer the case to the Commission's Consumer Services Division or to other law enforcement agencies for further investigation.

(10) A billing energy company shall credit a payment to the customer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. If a billing energy company fails to credit payment as required in this rule, in time to avoid the imposition of finance or other charges, the billing energy company shall adjust the customer's account so that the charges imposed are credited to the customer's account during the next billing cycle.

(11) When a positive balance in excess of $1 is credited on an energy account (through transmittal of funds to the billing energy company in excess of the total balance due on an account, through rebates of unearned charges, or through amounts otherwise owed to or held for the benefit of a customer) the billing energy company shall: Credit the

amount of the credit balance to the customer's account; refund any part of the remaining credit balance within seven business days from receipt of a written request from the customer; and make a good faith effort to refund to the customer by cash, check, or money order, or credit to a deposit account of the customer, any part of the credit balance remaining in the account for more than six months. No further action is required if the customer's current location is not known to the billing energy company and cannot be traced through the customer's last known address or telephone number.

(12) When an entity other than the billing energy company accepts the return of property or forgives a debt for services, and agrees to credit the customer's energy bill, the entity shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the billing energy company through normal channels for billing statements. The billing energy company shall, within 3 business days from receipt of a credit statement, credit the customer's account with the amount of the refund.

(13) Nothing in these rules precludes a customer that has been the victim of cramming, misleading advertising, or other unfair business practice from pursuing other legal remedies and obtaining relief that the customer may be entitled to under state or federal law.

H. BILL FORMAT

(1) Energy bills containing non-energy charges must be clearly organized, readily understandable, and provide sufficient information to enable customers to verify whether the charges they were billed for are the charges they authorized.

(2) Non-energy charges must be placed in one or more separate sections of the energy bill clearly labeled "Non-energy-related charges," separate from the charges for energy services. The name of the vendor and billing agent associated with each charge must be clearly identified, along with contact information.

(a) Upon request, billing energy companies shall provide Commission staff and the Attorney General with information

about the types of non-energy-related products and services they bill, and the names of the vendors and billing agents on whose behalf they bill for these charges. Billing energy companies shall require the vendors on whose behalf they bill, either directly or indirectly through billing agents, to provide the necessary information.

(3) Each bill must provide a clear, concise, non-misleading description of the product or service for which a charge has been imposed. The description of the product or service must be sufficiently clear and specific to enable customers to determine whether the products or services for which they are being billed are the products or services that they have requested and received.

(4) If the energy bill includes charges for energy service, the section of the bill containing non-energy charges must include a notice that states:

"The energy company is not allowed to disconnect your energy service for failure to pay this portion of your bill. It may, however, take steps other than disconnection, as permitted by law, to collect legitimate charges."

I. CONFIDENTIAL CUSTOMER INFORMATION

Billing energy companies may not release confidential customer information, credit or financial information, or any other confidential information about a customer, including information about a customer's spending patterns, to their affiliates or to other third parties, without the subscriber's informed, written consent, with the following exceptions:

Confidential information may be released: (1) to affiliates of the billing energy company, or to others, to the extent necessary to provide and bill for energy services; (2) to a law enforcement agency or other public agency for the purpose of responding to an emergency ("911"); (3) to law enforcement personnel in possession of a valid search warrant for the information sought; (4) if required to turn over such information by a court order; or (5) if otherwise required by law. In addition, information

about unpaid charges may be released to a collection agency for the purpose of collecting a debt, subject to the requirements of Rule G (Complaint procedures) and all applicable laws.

[Comment: See §§ 2891- 2891.1, and 47 U.S.C. § 222.]

J. PENALTIES

The Commission may impose fines and other penalties on billing energy companies, billing agents, and vendors that fail to comply with these rules. Nothing in these rules, however, precludes district attorneys, the Attorney General, or other law enforcement agencies from obtaining injunctive relief, civil penalties, and other relief permitted by law against a billing energy company, billing agent, or vendor that engages in business practices that violate these rules. The Commission will make relevant complaint data and investigation reports available to the Attorney General and to district attorneys who are investigating possible consumer fraud.

[Comments:

(1) On the Commission's authority to impose penalties on billing agents and vendors, see §§ 2100.9- 2119.

(2) Government Code § 26509 requires the Commission to give district attorneys access to complaints against, and the Commission's investigation of, a person being investigated by a district attorney regarding possible consumer fraud.]

(END OF APPENDIX A)