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Decision 93-02-019 February ⁹ 1993

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the)	
Commission's Own Motion to Adopt)	R.92-08-008
Reporting Requirements for Electric,)	(Filed August 11, 1992)
Gas, and Telephone Utilities)	
Regarding Their Affiliate)	
Transactions.)	
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ORDER MODIFYING AND DENYING REHEARING OF OIR 92-08-008,
AND SUPERCEDING PARTIAL STAYS GRANTED BY DECISIONS 92-11-021
AND 93-01-052

Applications for Rehearing of Order Instituting Rulemaking 92-08-008 (OIR or rulemaking) have been filed by Pacific Telesis Group (PacTel), AT&T Communications of California, Inc. (AT&T-C), and Los Angeles Cellular Telephone Company (LA Cellular). Petitions for Modification of the OIR have been filed by McCaw Cellular Communications, Inc. (McCaw), Teleport Communications San Francisco, Inc. and Teleport Communications Los Angeles, Inc. (Teleport). HBT Associates (HBT) has filed a Motion for Stay and Petition for Modification of the OIR.¹ Fresno MSA Limited Partnership, Contel Cellular of California, Inc., California RSA No.3 Limited Partnership, and California RSA No. 4 Limited Partnership (collectively "Contel petitioners"), GTE Mobilnet of California Limited Partnership (GTEM-C), GTE Mobilnet of Santa Barbara Limited Partnership (GTEM-SB), and GTE Mobilnet of California, Inc. (GTEM-Inc.), and

1. HBT's motion and petition was filed on November 2, 1992, four days before the issuance of Decision 92-11-021, which granted a partial stay of the rulemaking's interim reporting requirements.

the California Association of Long Distance Telephone Companies (CALTEL) have also filed Petitions for Modification of the OIR as well as of Decision 92-11-021, which granted a partial stay of the OIR's interim reporting requirements.² Numerous responses were filed to the above referenced pleadings.

Rulemaking 92-08-008 implements Public Utilities Code sections 587 and 797³, by adopting interim reporting requirements for gas, electric and telephone utilities and their subsidiaries, affiliates and controlling corporations ("affiliated entities"). As we clearly stated when we issued Rulemaking 92-08-008, we will not promulgate final reporting requirements until we have received and considered the comments of interested parties. Comments are due March 31, 1993. With respect to the interim reporting requirements which apply only until the final reporting requirements have been adopted, we stated that we expect compliance on the "best efforts" basis. Today's order modifies the interim reporting requirements for telephone utilities as further described herein. As modified, the interim reporting requirements continue to be subject to compliance on a "best efforts" basis.

We remind parties that the final rules adopted may differ significantly from the interim reporting requirements. The final rules we adopt should be both simple and clear. In addition, the required reports should focus our attention on areas that may be problematic and avoid producing excess information that is not pertinent to what we need to know concerning affiliate transactions. Rulemaking comments that

2. On January 22, 1993, by Decision 93-01-052 we ordered all interim reporting requirements for all telephone utilities stayed until March 1, 1993.

3. All statutory references are to the Public Utilities Code unless otherwise indicated.

propose alternative rules that will achieve these goals will be helpful to us in formulating final rules.

Although Rulemaking 92-08-008 concerns all gas, electric and telephone utilities, at this time only telephone utilities have filed applications for rehearing, petitions for modification and motions for stay of this order. There are numerous requests for modifications and several allegations of error; however, most of the parties' arguments are similar and can be summarized as follows: (1) challenges to the rulemaking's definition of the terms "controlling corporation", "affiliate," and "significant transaction" and our interpretation of Public Utilities Code sections 587 and 797; 2) allegations of due process violations; 3) challenges to the adequacy of proprietary information protection; 4) concerns that the scope of the interim reporting requirements is overbroad; and 5) challenges to the dominant status assigned to AT&T and various cellular carriers.

The two statutes at issue, Public Utilities Code section 587 and section 797, were enacted in 1988.⁴ Section

4. Section 587 provides:

Every electrical, gas, and telephone corporation shall prepare and submit to the commission a report describing all significant transactions, as specified by the commission, between the corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas or telephone corporation. The report shall identify the nature of the transactions and the terms and the conditions applying to them, including, but not limited to, the basis upon which cost allocations and transfer pricing were established for the transactions.

Section 797 provides:

The commission shall periodically audit all significant transactions, as specified by the commission, between an

(Footnote continues on next page)

587 requires gas, electric, and telephone utilities to annually prepare reports describing all significant transactions between the utility and every affiliated entity. Section 797 requires the Commission to audit those transactions. The rulemaking was issued in mid-1992, and initially required the responding utilities, as part of their interim reporting requirements, to submit this information for the years 1989 through 1991 by January 29, 1993. However, by Decision 93-01-052 the reporting of all interim requirements has been stayed until March 1, 1993 for all telephone utilities. Thereafter, such reports shall be due every May 1.

Definitions

Many of the telephone utilities in their applications, petitions and responses have alleged that the Commission is misinterpreting the terms "significant transaction," "affiliate"

(Footnote continued from previous page)

electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, that electrical, gas, or telephone corporation. The commission may, in this connection, utilize the services of an independent auditor, who shall be selected and supervised by the commission. Nothing in this section prohibits the commission from auditing any transaction between an electrical, gas, or telephone corporation and any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation, as otherwise permitted or required by law.

and "controlling corporation,"⁵ as used in sections 587 and 797.⁶ Section 587 explicitly allows the Commission to specify what constitutes a significant transaction and we have defined the term based not only on our existing standards for monitoring and auditing utility-affiliate transactions (Rulemaking 92-08-008 at pages 10-12 and 17) but also with regard to the legislative intent of sections 587 and 797 (See R.92-08-008 at 5, 17-18). The definitions of "affiliated entity" and "controlling corporation" used in the rulemaking are each based on similar definitions found in the Public Utilities Holding Company Act of 1935 (PUHCA)⁷ and used by other regulatory agencies.⁸ No one has presented us with evidence that our definitions are erroneous.

The intent of the rulemaking was not to require the reporting of any transactions between a utility and any of its regulated subsidiaries.⁹ PacTel has informally requested a

5. The rulemaking refers to the utilities' affiliates, subsidiaries and controlling corporations as "affiliated entities."

6. See Rulemaking 92-08-008 at page 16 and pages 18 through 19.

7. 15 U.S.C. §§ 79 et seq.

8. For example, the definition of affiliated entity in Rulemaking 92-08-008 is similar to that used by the Federal Energy Regulatory Commission (FERC). (See FERC Order 497-A.) The term "controlling corporation" is almost identical to our definition of "holding company" in Southern California Edison Company (1988) 27 Cal.P.U.C.2d 347, 357 (Decision 88-11-063).

9. A "regulated subsidiary" is any "subsidiary of a utility, the revenues and expenses of which are subject to regulation by the Commission" (R.92-08-008, Appendix A, Section I.G., at 5.)

clarification of the status of its Yellow Pages subsidiary.¹⁰ We will modify the rulemaking to clarify that the Yellow Pages subsidiary of Pacific Telephone, as well as the similar subsidiaries of the other local exchange carriers (LECs), are defined as "regulated subsidiaries" in this rulemaking. We will also clarify that transactions between the utility and its regulated subsidiaries are generally not required to be reported under this rulemaking.¹¹ However, all significant transactions any regulated subsidiary has with any other affiliated entity must be reported.

Due Process

PacTel has alleged the rulemaking is legally erroneous because the reporting requirements for the years 1989 through 1991 are "retroactive" and thus, present due process violations. As noted above, sections 587 and 797 have been in effect since 1988. In fact, PacTel was extensively involved in the legislative process leading to the enactment of those statutes. The information required by the rulemaking is not retroactive and covers periods after enactment of the statutes. Moreover, the information requested is consistent with the usual requests for information that the Commission routinely requires of the utilities under its existing regulatory authority.

10. Although the Commission does not control either the rates or expenses of the Yellow Pages subsidiary, the net income of the subsidiary is imputed by the Commission in setting PacTel's rates.

11. The rulemaking requires some reporting of the actions of "regulated subsidiaries" such as their corporate affiliations (Section II-A), allocation of tax responsibilities (Section II-G) and the filing of consolidated financial statements (Section II-G).

Further, in order to assist the telephone utilities in responding to the rulemaking, we stated in Decision 92-11-021 that they should employ a best efforts approach in responding to the interim reporting requirements. In this way we can utilize the comments to be submitted by the utilities on the interim reporting requirements in analyzing the proposed rules. Not only will the utilities be better able to focus on the rules after having the opportunity of working with them, but the experience should expedite the whole rulemaking process, thereby affording all parties and the Commission a more informed basis on which to implement the final rules.

Proprietary Information

PacTel in its application and other telephone utilities in their petitions and responses have also challenged the proposed rules' request for potential confidential or proprietary information. Although no legal authority has been cited in support of the utilities' arguments, we note that the rulemaking follows Commission precedent on this issue by placing the burden of proof on the utility claiming the information requires confidential treatment.

PacTel also raises the argument that the rulemaking requires the submittal of potentially proprietary information outside the course of a regulatory proceeding. One of the goals of the rulemaking is to streamline the collection of utility-affiliate information, thereby lessening the time spent on affiliate-related discovery issues in regulatory proceedings. (See R.92-08-008 at 10, fn 8.) It is a specific intent of this rulemaking to gather this information and address confidentiality claims outside of formal regulatory proceedings. Such an approach is well within the Commission's authority under section 583.

Many utilities have alleged in their petitions and applications that the rulemaking could require a utility to

submit potentially confidential information about other companies. In Decision 92-11-021 we ordered a stay of the two portions of the rulemaking that affected this issue and upon further reflection will modify both of these sections. Accordingly, we will no longer require the reporting of information concerning "[a]ny other company besides the utility that owns 5% or more of the affiliated entity" of a utility. (R.92-08-008, Appendix A, Section II A at 7.) and the reporting of financial information for the nonconsolidated subsidiaries of controlling corporations (R.92-08-008, Appendix A, Section II-G) where the utility is legally precluded from providing the information.

PacTel also alleges that the rulemaking requires the reporting of the transfer of "governance" information between the utility and its affiliated entities. Information exchanged between affiliated entities and PacTel for the purpose of assisting PacTel in compiling corporate tax returns or Securities and Exchange Commission filings are two examples cited by PacTel. Contrary to PacTel's allegation, the rulemaking does not generally require any reporting of the transfer of "governance" information. Instead, the OIR requires only the reporting of the transfer of "intangible assets" and "intellectual property." The rulemaking defines both of these terms and does not generally require the reporting of governance information per se. (See R.92-08-008 at 6.) One of the purposes of this rulemaking is to report the transfer of intellectual property that has an economic value. The vast majority of "governance" information does not have any economic value, a point that is even noted by PacTel in its application. (See PacTel application at 9.) Governance information that does have an economic value, such as customer lists and marketing studies, must be reported. This information should amount to a small portion of the total volume of governance information exchanged between PacTel and its affiliates.

PacTel has likely experienced confusion on this issue because of the use of the term "proprietary information" on page 20 of Appendix A. Accordingly, as set forth below, we will modify the rulemaking and replace the term "proprietary information" with the phrase "intangible asset and/or intellectual property."

Scope of the Interim Reporting Requirements

PacTel, AT&T and LA Cellular allege the OIR is overbroad in various respects, such as its requirement for the reporting of certain internal information about the utility and its affiliated entities, the reporting of information on affiliated entities located outside outside of California, the reporting of tariffed services (including a specific concern of the cellular utilities with regard to "roamer" transactions¹²), and the detail required on the reporting of employee information.¹³

PacTel alleges that the rulemaking requires the reporting of internal company information not related to "transactions" between the utility and its affiliated entities and that this exceeds the Commission's authority under sections

12. Roamer rates are charges paid by a cellular telephone user for using a cellular telephone outside of his/her service area. Roamer rates allow, for example, a customer of LA Cellular to use his/her phone while on business in the San Francisco Bay Area.

13. We addressed the issue of employee transfers in Decision 92-11-021.

314¹⁴, 587, and 797. As currently revised the OIR requires the reporting of non-transaction information only to the extent required by Part II-A of Appendix A. The information sought is fairly restricted solely to requiring each utility to list its affiliated entities and their corporate officers. Such a request is a basic information gathering tool necessary to the accomplishment of the mandates of sections 587 and 797. Such non-transaction information is only the most basic information needed by the Commission in order for us to ensure not only that the utility is reporting all of its significant transactions but also to assist in carrying out our auditing responsibilities under section 797.

PacTel also alleges that the OIR is overbroad in that it requires the reporting of information on affiliated entities that may be located outside of California. There can be no doubt that in cases where utility-affiliate abuses do occur they are not restricted to intrastate affiliates. Further, the abuse would be equally wrong whether it occurred with an intrastate affiliate or whether a California utility wrongly diverted

14. Section 314 provides in pertinent part:

(a) The commission ... may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission ... may examine under oath any officers, agents, or employees of a public utility in relation to its business and affairs

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business which is a subsidiary or affiliate of, or a corporation which holds a controlling interest in, any electric, gas or telephone corporation with respect to any transaction between the electric, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the electric, gas, or telephone corporation.

ratepayer funds to an out-of-state or foreign affiliate.¹⁵

We do, however, believe that both PacTel and McCaw have justifiable concerns regarding the rulemaking's requirement to provide information on tariffed telecommunication services. Originally, the rulemaking required telecommunication utilities to include in their reports the provision of all tariffed services to their affiliated entities. (See R.92-08-008, Appendix A, Section II-C at 13.) However, this reporting requirement has been stayed by Decision 92-11-021 until March 1, 1993. We believe PacTel, McCaw and other utilities have correctly pointed out problems with this requirement and we will modify the rulemaking to require only the reporting of tariffed services offered under a special contract or where the affiliate is a major purchaser of the tariffed service. Modification of this reporting requirement also greatly simplifies the reporting concerning the roamer rates of cellular carriers. McCaw, among others, has noted that roamer transactions constitute a significant portion of all transactions between cellular carriers. By modifying this requirement, we can focus this rulemaking on the significant transactions between the affiliated entities of cellular carriers, e.g., the provision of non-tariffed services such as billing support, general administration and financial support.

Although we believe the rulemaking can better serve us with these modifications, it should be made clear that the modifications will not prejudice the final outcome of the

15. In at least three different cases, the California Supreme Court has supported the Commission's regulatory oversight of a telephone utility's transactions with its affiliate despite the fact that the affiliates were not California corporations. In none of these cases did the utilities raise the issue of Commission jurisdiction. (See Pacific Tel. & Tel. Co. v. Public Util. Com. (1965) 62 Cal.2d 634, City of Los Angeles v. Public Utilities Commission (1972) 7 Cal.3d 331, and General Telephone Co. v. Public Utilities Com. (1983) 34 Cal.3d 817.)

rulemaking. The elimination of certain information from the interim reporting requirements should not be interpreted as a sign that the information may not ultimately be required when we adopt the final version of the reporting requirements, following receipt of the comments and other information during the rulemaking process. Tariffed services are one area in particular which we expect to revisit during the course of the rulemaking, particularly as we offer utilities greater flexibility to negotiate individual rates with each customer.

The rulemaking does require all utilities with either captive ratepayers or substantial market power to "submit, in tabular form, a list of all contracts ... [with their] affiliated entities." (R.92-08-008, Appendix A, Sections II-B at 9.) Decision 92-11-021 stayed the reporting of all contracts involving less than \$1,000 until March 1, 1993. In order to further simplify the reporting requirements, we shall modify the rulemaking to require the listing of only those contracts that involve more than \$5,000. Consistent with our position on the reporting of tariffed services, we have determined that telecommunication utilities are not required to report any contracts with their affiliated entities for the provision of generally available telecommunication services (such as paging and cellular telephone usage) if offered at tariffed rates or pursuant to a contract filed with the Commission.

Many of the other alleged compliance issues raised by the utilities in their applications, petitions and responses concern precisely the sort of information we have sought to gather through the comment period in this OIR. The remaining information requirements placed on the utilities by this OIR are essential to ensure there are no abuses of the utility-affiliate relationship. Accordingly, at this stage of the proceeding we urge parties to direct their concerns to the comment phase on our final rule rather than filing further petitions for modification.

As we instructed in Decision 92-11-021, the utilities are required to use their best efforts in compiling this

information. If a utility is unable to obtain the requested information, we have asked that it provide us with a verified statement detailing the efforts expended to obtain the information, the reasons for the failure of compliance and a description of the information it is unable to present. (See D.92-11-021 at 2.)

Dominant Status of Certain Utilities

The facilities-based cellular carriers have challenged their classification as dominant utilities in the OIR.¹⁶ (See R.92-08-008 at 12-13.) We have stated before our belief that each facilities-based carrier acts as a "duopolist" and our concern about the actual level of competition in the facilities-based portion of the cellular market. (See e.g., D.92-10-026.) However, in order to assist these carriers in preparing their reports we have already granted an additional three months to file their annual reports. Combined with additional modifications to the rulemaking, such as the filing of consolidated reports (discussed below), the elimination of reporting requirements for roamer services and a higher threshold of \$5,000 for the reporting of contracts, we believe that we have greatly simplified the compliance concerns of these companies.

The cellular resellers, nondominant inter-exchange carriers (NDIECs), and radio-telephone utilities have raised a number of issues concerning the ability of these utilities to effectively comply with the reporting requirements. In Decision 92-11-021 we recognized a number of the potential problems such carriers may have in complying with the OIR and we granted a partial stay of Sections II-B and II-G of Appendix A until March

16. AT&T has also pursued an argument concerning its status as a dominant carrier. However, this argument does not belong in this proceeding and we find it without merit.

Any controlling corporation or utility which controls more than one utility subject to the above reporting requirements may file a single consolidated report for the utilities covering all of the information required of each of the utilities in Section II-A, and Section II-B Items #2 and #3. The remaining information required of each utility must be filed separately by each utility. The consolidated report must be verified by the appropriate corporate officers of each utility for which the report is being filed in accordance with Section I-F.

d. Replace the first sentence of page 4 with the following:

Each utility shall file its annual report or annual statement for calendar years 1989, 1990, and 1991 by January 29, 1993 if it is an electric or gas utility and by March 1, 1993 if it is a telephone utility.

e. Replace the third paragraph of page 4 with the following:

Each utility shall file an original, plus two hard copies, and one electronic copy of either its annual report or annual statement with the Finance Branch, Commission Advisory and Compliance Division. The electronic copy must be submitted in a form compatible with Commission software and computer capabilities.

f. Replace the definition of "Affiliated Entity" on page 5 with the following:

"Affiliated Entity means any "Controlling Corporation", "Subsidiary" (other than a Regulated Subsidiary) or "Affiliate" as defined below.

g. Add the following at the end of part (g) of Section I-G:

For purposes of this rulemaking only, the Yellow Pages subsidiary of any telephone company which is a local exchange carrier (LEC) is a regulated subsidiary if its net revenues are imputed by the Commission in setting the rates of the LEC.

h. Add a Section I-H to read as follows:

H. APPLICABILITY TO REGULATED SUBSIDIARIES

A regulated subsidiary is considered a part of the utility, and therefore any transactions between a regulated subsidiary and an affiliated entity are considered the same as a transaction between the utility and an affiliated entity and must be reported accordingly.

i. Replace the first part of the first sentence on page 7 with the following:

Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual report:

j. Add the phrase "(unless legally precluded from providing the information)" after the phrase "Any other company besides the utility that owns 5% or more of the affiliated entity" in Section II A 1, on page 7.

k. Replace the phrase "the affiliated entities listed in #1 above" in the first sentence of Section II A 2, on page 7 to provide: "the affiliated entities and regulated subsidiaries listed in #1 above."

l. Add the following as Item 3 of Section II-A on page 7:

For a competitive utility that has individuals who are classified as "controlling corporations" of any competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either 1) is a public utility or 2) transacts any business with the utility filing the annual report excluding the provision of tariffed services.

m. Add the following to the end of the first sentence of Item #2 of Section II-B on page 9:

...and that involve the provision of greater than \$5,000 in goods and/or services.
Contracts covering the provision of tariffed

telecommunication services shall not be reported if offered at tariffed rates or pursuant to a contract filed with the Commission.

n. Replace Item 11. of Section II-C on page 13 with the following:

Telephone utilities shall not report in Table II-C-1 any tariffed services (including roamer services) provided to any of their affiliated entities. Instead, each telephone utility shall separately list for each affiliated entity the following information;

- o All special contracts under which utility services were bought;
- o The dollar amount and volume of services bought under each special contract;
- o The dollar amount of services bought under each special contract as a percentage of the total dollar amount of services provided by the utility to all customers receiving service under the special contract.

Telephone utilities shall also report the following:

- o Any tariffed rate schedule or option, 10% or more of the revenues from which are attributable to a utility's affiliated entities.
- o. In Section II F 3 on page 20 delete the phrase "proprietary information" and add in its place the phrase "intangible assets and/or intellectual property."
- p. In Section II G on page 21, change Item 5 to provide:

Each utility shall specify the procedures used to allocate tax liabilities and responsibilities between the utility and its regulated subsidiaries and affiliated entities.

q. On page 21, add the following to the end of 7.b. of Section II-G:

...(unless legally precluded from providing them);

r. Add the following to the end of Item 7.a:

(both regulated and unregulated);

s. In Section H 1 on page 23, add the following sentence after the first sentence:

For calendar years 1989 through 1992 the utility must only report utility employees who commenced employment for an affiliated entity within six months after leaving the utility.

A conformed copy of the interim reporting requirements and proposed General Order of Rulemaking 92-08-008 is appended to today's decision.

2. To the extent that we modify Rulemaking 92-08-008 as set forth in Ordering Paragraph 1, all Petitions for Modification of Rulemaking 92-08-008 are granted. In all other respects they are denied.

3. No modification made today to Rulemaking 92-08-008 should be interpreted as precluding the Commission from subsequently reinstating any of the reporting requirements removed from the initial version of Rulemaking 92-08-008.

4. All reporting requirements of Rulemaking 92-08-008 applicable to telephone utilities for calendar years 1989, 1990, and 1991 are due on March 1, 1993. Decision 92-11-021, which granted a partial stay of some of the reporting requirements of Rulemaking 92-08-008, and Decision 93-01-052 ordering a stay of all interim reporting requirements for all telephone utilities until March 1, 1993, have been superseded by this decision.

5. All motions for stay of Rulemaking 92-08-008, except as otherwise granted, are denied.

6. The motion of California Cable Television Association for acceptance of a late filed response to PacTel's application for rehearing is denied.

7. All Applications for Rehearing of Rulemaking 92-08-008, as modified hereby, are denied.

This order is effective today.

Dated February 9, 1993, at San Francisco, California.

DANIEL WM. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

APPENDIX A

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

REPORTING REQUIREMENTS
FOR UTILITY-AFFILIATE TRANSACTIONS
AND
PROPOSED GENERAL ORDER

RULES GOVERNING THE REPORTING OF TRANSACTIONS BY
ELECTRIC, GAS, AND TELEPHONE UTILITIES
WITH THEIR AFFILIATED ENTITIES

Adopted August 11, 1992 Effective August 11, 1992 .

R.92-08-008.

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I. GENERAL

A. INTENT

The purpose of these reporting requirements is to enable the Commission to monitor, track, and audit transactions between electrical, gas, and telephone corporations on the one hand and every subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas or telephone corporation on the other. This order also serves to meet the statutory requirements of Public Utilities Code Sections 587 and 797.

B. APPLICABILITY

This Order applies to all electric, gas, and telephone corporations.

Each corporation subject to this order will hereinafter be referred to either as a "utility" or as a specific type of utility (e.g. "electric utility", "gas utility", "telephone utility") as appropriate.

C. REQUIREMENTS

Each utility that has any affiliated entities (as defined in Section I-G) must annually file a report with the Commission entitled "Annual Report on Significant Utility-Affiliate Transactions" (hereinafter referred to as the annual report).

Each utility that does not have any affiliated entities is not required to file an annual report but must file an annual statement to the Commission stating that the utility has no affiliated entities (hereinafter referred to as the annual statement). The annual statement must meet the requirements of Sections I-D, I-E, and I-F with regards to reporting period covered, schedule for filing, and verification.

The annual report for each utility that is any one of the following:

- o an electric utility;
- o a gas utility;
- o a telephone utility which is a Local Exchange Carrier (LEC);
- o a telephone utility which is a dominant Inter-Exchange Carrier (IEC) as determined by Decision (D.) 84-06-11;
- o a telephone utility offering facilities-based cellular telecommunications services;

shall contain the material required in Sections II A through G of this order as well as any supporting material and/or documents also required under those sections. These utilities are classified as "dominant utilities."

The annual report for each utility that is any one of the following:

- o a telephone utility which is a Non-Dominant Inter-Exchange Carrier (NDIEC) as determined by D.84-06-11;
- o a telephone utility that resells cellular telecommunications services; and,
- o a telephone utility that is a radiotelephone corporation;

shall consist of accurately completing, preparing, and filing the material required in Sections II-A of this order as well as any supporting material and/or documents also required under that section. These utilities are classified as "competitive utilities."

Any material that is required that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual report and verified in accordance with Section I-F.

Any controlling corporation or utility which controls more than one utility subject to the above reporting requirements may file a single consolidated report for the utilities covering all of the information required of each of the utilities in Section II-A, and Section II-B Items #2 and #3. The remaining information

required of each utility must be filed separately by each utility. The consolidated report must be verified by the appropriate corporate officers of each utility for which the report is being filed in accordance with Section I-F.

D. TIME PERIOD TO BE COVERED IN THE ANNUAL REPORT

Each annual report or annual statement filed by a utility shall cover the period of one calendar year (January 1 to December 31).

Each utility must file an annual report or annual statement for calendar year 1989 and every calendar year thereafter, according to the schedule contained in Section I-E.

E. TIME, PLACE, AND MANNER OF FILING

Each utility must file its annual report or annual statement for calendar years 1989, 1990, and 1991 by January 29, 1993 if it is an electric or gas utility and by March 1, 1993 if it is a telephone utility.

Each utility must file its annual report or annual statement for calendar year 1992, and every year thereafter, on the 1st of May in the calendar year following the period covered in the annual report or annual statement.

Each utility shall file an original, two hard copies, and one electronic copy of either its annual report or annual statement with the Finance Branch, Commission Advisory and Compliance Division (CACD). The electronic copy must be submitted in a form compatible with Commission software and computer capabilities.

F. VERIFICATION

Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

Each annual statement filed with the Commission by a utility stating that it has no affiliated entities also must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the statement is accurate and contains no material omissions.

G. DEFINITIONS

Unless the context otherwise requires, the following definitions govern the construction of this Order:

Definitions Applicable to Corporate Structure and Organization

(a) "Company" means any corporation or person as defined in Public Utilities Code Sections 204-206, including but not limited to joint ventures, limited partnerships, and strategic alliances.

(b) "Affiliated Entity" means any "Controlling Corporation", "Subsidiary" (other than a "Regulated Subsidiary") or "Affiliate" as defined below.

(c) "Controlling Corporation" means any company which holds a controlling interest in a utility. A controlling interest is defined as directly or indirectly owning, controlling, or holding the power to vote 10 per cent or more of the outstanding voting securities of a utility.

(d) "Subsidiary" means any company 10 per cent or more of the outstanding securities of which are directly or indirectly owned, controlled, or held with power to vote, by either a utility or a controlling corporation.

(e) "Affiliate" means any company 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.

(f) "Securities" means any note, draft, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, receiver's or trustee's certificate, or in general any instrument commonly known as a security.

(g) "Regulated Subsidiary" means any subsidiary 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. For purposes of this rulemaking only, the Yellow Pages subsidiary of any telephone company which is a local exchange carrier (LEC) is a regulated subsidiary if its net revenues are imputed by the Commission in setting the rates of the LEC.

Definitions Applicable to the Reporting of Transactions

(h) "Allocated Cost" means the cost to provide a good and/or service that is calculated by first determining the total cost to provide a good or service, and then assigning to either the affiliated entity (or the utility) a portion of the total costs based upon the affiliated entity's (or the utility's) proportional share of the good or service provided. Allocated cost should be determined according to the procedures outlined by each utility in Section II-B of this report and should include applicable overhead and direct use of utility assets.

(i) "Fair Market Value" means the price offered by a willing purchaser in an arms-length transaction.

(j) "Intangible Asset" means any asset having no physical existence, its value being set by the rights and anticipatory benefits that possession confers upon the owner. This includes intellectual property, licenses, franchises, marketable emission permits and emission offsets, etc.

(k) "Intellectual Property" means any proprietary market data, customer lists, marketing or feasibility studies, leads and prospects for future business opportunities, patents, trade secrets, copyrights, or other marketable technologies.

(l) "Tariffed Service" means any provision of electric, gas, or telephone service the price, terms, and conditions of which are set by tariffs established by the Commission and which are available to all customers meeting the requirements contained in the tariff.

(m) "Transaction" means the provision of any good, property, service, privilege, or act between any two parties for which compensation normally would be provided if each party was independent of the other and acting in its best financial interest.

(n) "Transfer Price" means the price that the utility recorded in its accounting records as either 1) having paid an affiliated entity for the provision of any good, property, service, privilege, or act or 2) received from an affiliated entity for providing the affiliated entity with any good, property, service, privilege, or act. If no payment was either received or made, then the transfer price is zero (\$0).

H. APPLICABILITY TO REGULATED SUBSIDIARIES

A regulated subsidiary is considered part of the utility, and therefore any transactions between a regulated subsidiary and an affiliated entity are considered the same as a transaction between the utility and an affiliated entity and must be reported accordingly.

II. REPORTING REQUIREMENTS

A. ORGANIZATIONAL STRUCTURE

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual report:

- o Name;
- o Form of organization (e.g. corporation, partnership, joint venture, strategic alliance, etc.);
- o Brief description of business activities engaged in;
- o Relationship to the utility (e.g. controlling corporation, subsidiary, regulated subsidiary, affiliate);
- o Ownership by the utility (including type and percent ownership);
- o Voting rights held by the utility and percent
- o Corporate officers;
- o Any other company besides the utility that owns 5% or more of the affiliated entity (unless legally precluded from providing the information);

2. The utility shall prepare and submit a corporate organizational chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries listed in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (e.g. a subsidiary that in turn is owned by another subsidiary or and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a competitive utility that has individuals who are classified as "controlling corporations" of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either 1) is a public utility or 2) transacts any business with the utility filing the annual report excluding the provision of tariffed services.

B. PROCEDURAL AND ACCOUNTING SAFEGUARDS

1. Each utility shall submit to the Commission a description of the procedures and controls in effect during the period covered by the annual report, as well as copies of any guidelines and/or policies in effect during the period covered by the annual report that relate to any transaction between a utility and any of its affiliated entities and that are used to:

- o Ensure that all transactions between a utility and its affiliated entities are recorded in the accounting systems of the utility (except for employee transfers);
- o Calculate the "transfer price" for transactions with affiliated entities;
- o Ensure that the utility and its affiliated entities maintain subsidiary ledgers for recording all inter-company transactions;
- o Reconcile subsidiary ledgers with the utility's books;
- o Ensure that recordkeeping practices are sufficient to allow and facilitate full reporting and documentation by the Commission of all transactions between the utility and its affiliated entities.
- o Ensure that the affiliated entities make timely reimbursement to the utility for any outstanding balances due;
- o Calculate and determine the cost allocations used to apportion the cost of providing any good or service between the utility and its affiliated entities;
- o Calculate the overhead costs associated with the provision of any good or service;
- o Calculate the facilities cost and use of utility assets associated with the provision of any good or service;
- o Calculate the fair market value of any good, service, or asset;

- o Approve any request for goods or services requested from the utility by an affiliated entity (this description should include the corporate officers who must approve the request)
- o Approve any request for goods or services requested by the utility from an affiliated entity (this description should include the corporate officers who must approve the request).

2. Each utility shall submit, in tabular form, a list of all contracts (including written agreements if not otherwise listed under #1 above) between the utility and its affiliated entities that were either signed or in effect during the period covered by the annual report and that involve the provision of greater than \$5,000 in goods and/or services. Contracts covering the provision of tariffed utility services shall not be reported if offered at tariffed rates or pursuant to a contract filed with the Commission. This list shall include the following;

- o Parties to the contract;
- o Corporate officers of both the utility and the affiliated entity that signed the contract;
- o Date the contract became effective;
- o Brief description of the substantive terms and conditions of the contract;
- o Approximate value of the goods, services, or assets provided under the contract;
- o Location of the contract; and,
- o Any material or subsequent modifications to the contract, including any waivers (written or otherwise) to the contract, as well as a brief description of the reasons for the modifications and/or waiver.

3. Any verbal agreement between a utility and any of its affiliated entities that involves or will ultimately involve the expenditure by the utility of any amount over \$100,000 should be reported, to the extent possible, under #2 above.

4. Each utility shall annually provide a list of all internal audits conducted regarding transactions between the utility and any of its affiliated entities, including in its list the following;

- o Dates the audit was conducted;
- o Date of final audit report;
- o Purpose of audit; and,
- o Summary of audit findings and recommendations.

**C. UTILITY PROVISION OF GOODS AND SERVICES
TO ITS AFFILIATED ENTITIES**

1. Using the format of Table II-C-1, each utility shall report any goods and/or services that the utility provided to any of its affiliated entities during the period covered by the annual report. All goods and/or services shall be reported regardless of whether or not the utility was reimbursed.

2. For purposes of this section, and section II-D, "Goods" are defined as any tangible item having economic value. Examples of "goods" include office supplies, office computers, and personal automobiles. No item shall qualify as a good if it has:

- (a) a depreciable life, for federal tax purposes, of more than 3-years, except for cars, personal computers, and office machinery¹, and
- (b) a value of greater than \$20,000.

The transfer of any item of tangible property described in (a) or (b) above shall be reported under Section E ("Transfer of Tangible Asset").

3. For purposes of this section, "Services" includes any activity of economic value provided by the utility, or a company under contract to the utility, to any affiliated entity. Examples of "services" include, but are not limited to the provision of professional expertise (e.g. legal, consulting, engineering), administrative support (e.g. data and payroll processing, arranging travel, transportation services, etc.) and general corporate management and support activities (e.g. time spent by corporate executives and employees on affiliated entity issues, investor relations, shareholder services, etc.).

4. The cost of each good and/or service that the utility provided to any of its affiliated entities shall be assigned to an appropriate USOA Account of the utility.

¹ See Section 1240, "Classes of Depreciable Property", 1992 U.S. Master Tax Guide (Commerce Clearing House) discussing Internal Revenue Code sections 1245 and 1250.

5. Using the format shown, each utility shall create a table (entitled Table II-C-1), containing;

- o A set of columns by listing horizontally across the top each affiliated entity of the utility, excluding, however, any affiliated entities to which the utility provided no goods and/or services during the calendar year.
- o A set of rows by listing vertically down the left side of Table II-C-1 each USOA account (listed in ascending order) for which the utility had incurred a cost (whether or not reimbursed) for providing any good or service to an affiliated entity.
- o The middle portions of Table II-C-1, corresponding to each horizontal column and vertical row, will be called cells.

6. For each cell in Table II-C-1, the utility shall aggregate all transactions for goods and/or services it provided to each affiliated entity under;

- 1) The appropriate column heading for that affiliated entity; and,
- 2) The row corresponding to the appropriate USOA account category.

7. The following information shall be reported in the corresponding cells of Table II-C-1;

- o The total transfer price assigned to this USOA account for any goods or services provided by the utility to the affiliated entity;
- o The allocated cost, if different from the transfer price, for any goods or services provided by the utility to the affiliated entity;
- o Allocated costs as a percentage of total recorded costs for the USOA account;
- o The ratio for each USOA account of the actual total recorded expenses versus total expenses authorized in the utility's most recent General Rate Case (expressed as a percentage)

8. At the end of each row, briefly list the applicable cost allocation methodology and transfer pricing method used to determine the corresponding dollar volumes listed under #7 above.

9. In addition to the information requested in Table II-C-1, each utility shall provide, as a separate document, a brief narrative description for any affiliated entity that had over \$10,000 of transfer price recorded in any USOA account. This narrative description will describe in greater detail the types of goods and services provided, as well as the methodologies used to calculate their transfer price and allocated cost.

10. Electric and gas utilities are not required to report in Table II-C-1 any tariffed utility services provided to their affiliated entities.

11. Telephone utilities shall not report in Table II-C-1 any tariffed services (including roamer services) provided to any of their affiliated entities. Instead, each telephone utility shall separately list for each affiliated entity the following information;

- o All special contracts under which utility services were bought;
- o The dollar amount and volume of services bought under each special contract;
- o The dollar amount of services bought under each special contract as a percentage of the total dollar amount of services provided by the utility to all customers receiving service under the special contract.

Telephone utilities shall also report the following:

- o Any tariffed rate schedule or option, 10% or more of the revenues from which are attributable to a utility's affiliated entities.

D. AFFILIATED ENTITIES PROVISION OF GOODS AND SERVICES TO THE UTILITY

1. Section C required each utility to report goods and/or services that it provided to its affiliated entities. This section (Section D), requires the reporting of all goods and/or services that the affiliated entities provided to the utility.

2. Each utility shall report any goods and/or services that were provided to it by any of its affiliated entities during the period covered by the annual report. All goods and/or services shall be reported regardless of whether or not the affiliated entity was reimbursed.

3. For purposes of this section, "Goods" has the same meaning as used in Section C above.

4. For purposes of this section, "Services" includes any activity of economic value provided by the affiliated entity, or any company under contract to the affiliated entity, to the utility. The examples of the types of services listed in #3 of Section II-C above are applicable to this section as well. Purchases of natural gas or electric energy from any affiliated entity should be reported in this section.

5. The cost of each good and/or service that the affiliated entity provided to the utility shall be assigned by the utility to an appropriate USOA Account of the utility.

6. Using the format shown, each utility shall create a table (entitled Table II-D-1), containing;

- o A set of columns by listing horizontally across the top of Table II-C-1 each affiliated entity listed in Table II-A-1, excluding, however, any affiliated entities which provided no goods and/or services to the utility during the calendar year.
- o A set of rows by listing vertically down the left side of Table II-C-1 each USOA account (listed in ascending order) for which the utility had incurred a cost for goods and/or services provided by the affiliated entity.
- o The middle portions of Table II-C-1, corresponding to each horizontal column and vertical row, will be called cells.

7. For each cell in Table II-C-1, the utility shall aggregate all transactions for goods and/or services it provided to each affiliated entity under;

- 1) The appropriate column heading for that affiliated entity; and,
- 2) The row corresponding to the appropriate USOA account category.

8. The following information shall be reported in the corresponding cells of Table II-C-1;

- o The total transfer price assigned to this USOA account for any goods or services provided by the affiliated entity to the utility;
- o The allocated cost, if different from the transfer price, as calculated by the affiliated entity as the cost for any goods or services provided to the utility;
- o The fair market value of the goods and service provided, if determined;
- o Allocated costs as a percentage of total recorded costs for the USOA account;

9. At the end of each row, each utility shall briefly list the applicable methodology used to determine allocated cost and transfer price as well as any calculations and reviews utilized to determine fair market value.

10. In addition to the information requested in Table II-C-1, each utility shall provide, as a separate document, a brief narrative description for any USOA account that had recorded over \$10,000 in goods and services provided by an affiliated entity. This narrative description will describe in greater detail the types of goods and services provided, as well as the methodologies used to calculate their transfer price and a summary of all methodologies and calculations used to determine fair market value.

11. For any USOA account classification containing greater than \$25,000 in reported transactions, the utility shall provide as an addendum to Table II-D-1 any comparisons performed by the utility of the cost of goods or services provided by the affiliated entities with other providers not affiliated with the utility.

E. TRANSFERS OF TANGIBLE ASSETS

1. The utility shall report the sale or transfer of any tangible asset (including personal property and real property such as land). This includes sales from the utility to an affiliated entity or vice-versa. The sale or transfer of goods already reported in sections II-C and II-D need not be reported again here.

2. The requirements of this section apply to the transfer of any tangible asset of the utility regardless of whether or not considered by the utility to be necessary or useful in the performance of its public utility obligations.

3. For each tangible asset transferred from the utility to an affiliated entity (or vice-versa), the utility shall provide the following information;

- o Affiliated entities involved in the transfer;
- o Description of the asset;
- o Price at which the asset was originally purchased;
- o Price and terms at which the asset was sold or transferred;
- o Methods used to determine the selling price of the asset;
- o Copies of all appraisals done to determine the fair market value of the asset upon sale;
- o Results of any competitive bidding or competing offers to purchase the asset;

4. If the tangible asset is being transferred from the utility to an affiliated entity, the utility shall also submit the following information in addition to that required above;

- o The length of time the utility has held the asset;
- o Utility account in which the asset was held;
- o Amount of time, if any, the asset was held in "Plant Held for Future Use"; and,
- o Value at which the asset was carried on the utility's books.

5. If the tangible asset being transferred is land and/or real property, the utility, in addition to the above requirements, shall also provide the following;

- o Amount of time, the affiliated entity had either expressed interest in acquiring the property or had conducted feasibility/marketing studies on the property's use; and,

- o Other properties located within the area that are owned or leased, or under option to any affiliated entity.

6. Any cumulative transfer of employees, utility assets (including goods) and property, etc. that collectively results in a transfer of an independent business entity from the utility to an affiliated entity shall be reported in this section. For each such cumulative transfer, the utility shall include in its annual report any valuations of the new business entity. This shall include any valuations done using as the value of the transfer the market value of the independent entity as a stand-alone company as well as any valuations using commonly utilized valuation methods such as price-earning multiples, comparable sale evaluations, discounted cash-flow analyses, etc.

7. For purposes of section II-E, the lease of any tangible asset is considered a transfer and is subject to the reporting requirements of #3-5 above.

F. TRANSFERS OF INTANGIBLE AND INTELLECTUAL PROPERTY

1. For all intangible assets transferred from the utility to any of its affiliated entities, the utility shall provide the following information;

- o Affiliated entities involved in the transaction;
- o Description of the asset, including patent/copyright numbers if applicable;
- o The price at which the asset was originally acquired, if purchased; or,
- o The estimated cost of development if the asset was developed by the utility;
- o The price and terms at which the asset was sold or transferred to the affiliated entity;
- o The estimated fair market value, if determined, of the intangible asset to be transferred; and,
- o Methods used to determine the selling price.

2. Software purchased from third-parties and transferred between the utility and its affiliated entity should be reported under Sections II-C and II-D (Transfer of Goods and/or Services) of the annual report as long as the software has a purchase price of under \$20,000.

3. An affiliated entity which has access to any intangible assets or intellectual property of the utility such as marketing data, data bases, customer lists, marketing or feasibility studies, leads and prospects for future business opportunities, trade secrets, etc. must meet the reporting requirement of #1 above.

4. All transfers of intangible assets from the utility to an affiliated entity must be reported in #1 above even if the utility received no compensation for the transfer.

G. FINANCIAL TRANSACTIONS

1. The utility shall report the guarantee of all notes, debentures, debt obligations, or other securities of any affiliated entity and also shall cite the applicable Commission decision, if any, authorizing the guarantee.
2. The requirements of #1 above will apply as well to any guarantee of under 12 months in length not requiring Commission approval as well as any cash infusion agreements through both loans and/or equity investments.
3. The transfer of funds for investment between the utility and its affiliated entities under a cash management system are not required to be reported, except as noted in #4 below. However, any costs of bookkeeping, management fees, etc. associated with transfers of these funds shall be reported under Sections II-C and/or II-D as appropriate.
4. Each utility shall report the length of time and the dollar amount that a negative cash balance has existed in the intercompany accounts of any affiliated entity during the period to be reported
5. Each utility shall specify the procedures used to allocate tax liabilities and responsibilities between the utility and its regulated subsidiaries and affiliated entities.
6. Each utility shall specify the procedures used to internally transfer funds between the utility and its affiliated entities to reimburse the utility for services provided to the affiliated entities. These procedures shall include the number of days that elapse between when a bill is presented to the affiliated entity for payment and when the funds are acutally transferred to the utility. The proceedures shall also include the applicable carrying charges and interest rates, if any, that are applied to outstanding balances owed to the utility by an affiliated entity.
7. Each utility will submit to the Commission the following information:
 - a. The quarterly and annual financial statements of the utility's controlling corporation, including consolidating workpapers of the controlling corporation and its subsidiaries (both regulated and unregulated);

- b. The balance sheets and income statements of the non-consolidated subsidiaries of the controlling corporation (unless legally precluded from providing them);
- c. All periodic reports filed by the controlling corporation with the Securities and Exchange Commission; and
- d. An annual report of the utility's proportionate share of the controlling corporation's i) total assets; ii) total operating revenues; iii) operating and maintenance expense; and iv) number of employees.

If a utility does not have a controlling corporation but instead carries out non-regulated activities through other subsidiaries or affiliates of the utility, then that utility shall be considered as the controlling corporation for complying with the requirements of #7.

H. TRANSFER OF EMPLOYEES

1. The utility shall report any employee who transferred from the utility to any of its affiliated entities during the period covered by the annual report. For calendar years 1989 through 1992 the utility must only report utility employees who commenced employment for an affiliated entity within six months after leaving the utility.

2. The utility shall provide, in tabular form, the following information on all non-clerical employees who retire, resign, transfer, are reassigned, or otherwise leave the utility and subsequently commence employment in any capacity (including intermittent, part-time or consulting) with any of the utility's affiliated entities;

- o Last title and position held at the utility;
- o Last division assigned to within the utility;
- o Final salary with the utility;
- o Years employed by the utility;
- o Affiliated entity at which the employee has commenced employment;
- o Job classification and title at the affiliated entity;
- o Whether the employee's expected tenure at the affiliate entity is permanent (six months or longer) or temporary;
- o Any pension, benefit, or reinstatement rights that the employee may retain with the utility; and,
- o A brief description of the level and extent of utility efforts to recruit new employees assigned to the same position within the utility

3. To protect the confidentiality of employees, the utility is not required to list names but shall assign either a letter (e.g. A,B,C etc.) or number (e.g. 1,2,3) to each employee subject to the reporting requirements of #2 above.

4. If a Commission decision requires the utility to collect a "fee" for any employee transferred to an affiliated entity, the utility shall report the amount of the fee collected for each employee.

III. AUDITING COMPLIANCE

1. Commission staff may investigate and audit all transactions between the utility and its affiliated entities and between affiliated entities necessary to ensure compliance with these reporting requirements and PU Code Section 587.
2. Commission staff shall be provided with all information, including but not limited to records, accounts, corporate books, timesheets, contracts, workpapers, computer programs, etc. used to create the annual reports.
3. If requested by Commission staff, each utility shall provide the above information within 15 working days following receipt of a written request from Commission staff.
4. In carrying out its review of the above items, the Commission may utilize the services of independent agents not employed by the Commission but retained by the Commission under contract. The independent agents retained by the Commission shall have the same rights and privileges as Commission staff.
5. Further, Commission staff or the Commission's agent may investigate and audit any transaction of the utility and its affiliated entities either in the course of its general responsibilities for regulatory oversight or in connection with formal dockets, and are not restricted in the timing and scope of such investigations because of the utilities' requirements to file annual reports under this Order.

(END OF APPENDIX A)