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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the)
 Commission's Own Motion to Adopt)
 Reporting requirements for Electric)
 Gas, and Telephone Utilities)
 Regarding Their Affiliate)
 Transactions.)

FILED
 PUBLIC UTILITIES COMMISSION
 SAN FRANCISCO OFFICE
 AUGUST 11, 1992
 R.92-08-008

ORDER INSTITUTING RULEMAKING
AND ADOPTING INTERIM REPORTING REQUIREMENTS

Purpose

By today's order, the Commission adopts interim reporting requirements, effective immediately, covering transactions between electric, gas, and telephone utilities, on the one hand, and their subsidiaries, affiliates and/or controlling corporations, on the other. The Commission is implementing these reporting requirements through its statutory authority under Public Utilities (PU) Code Section 587 and other sections of the PU Code.

Under these reporting requirements (attached as Appendix A), utilities will be required to file annual reports detailing the business and financial interactions of the utilities with their subsidiaries, affiliates and controlling corporations (collectively known as affiliated entities). The attached reporting requirements will apply to calendar years 1989, 1990, and 1991 and will remain in effect for calendar years 1992 and beyond unless changed by the Commission, as discussed below. Annual reports for calendar years 1989, 1990, and 1991 are due on December 31, 1992. Annual reports for calendar years 1992 and beyond will be due on May 1 of the following year. Each utility must submit an electronic copy of its annual report along with hard copies. (Appendix C identifies Commission-compatible software.)

The purpose of the annual reports is to:

- o Allow the Commission to track, monitor, and audit transactions between a utility and its affiliated entities;
- o Meet the Commission's statutory obligations under Sections 587 and 797 of the Public Utilities Code; and,
- o Begin the standardization of the current reporting requirements already required of many utilities.

Most if not all of the information required in the annual reports should be readily obtainable as utilities should have in place already the accounting and procedural safeguards necessary to monitor and report utility-affiliate transactions.

By today's order, the Commission also institutes a rulemaking proceeding for purposes of codifying the interim reporting requirements into a Commission General Order. For purposes of this rulemaking, the reporting requirements contained in Appendix A should also be considered as the proposed General Order.

After the receipt of the annual reports for 1989-1991 and their subsequent review by Commission staff and other interested parties, the Commission will offer all parties an opportunity to comment on the proposed General Order.

After reviewing the comments, the Commission will modify the reporting requirements as appropriate, establish auditing requirements, and codify the reporting requirements into a Commission General Order. Appendix B contains a proposed timetable for the rulemaking proceeding.

Background and Legislative Mandate

The Commission always has been concerned that utilities do not misuse their business dealings with affiliated entities to impose either higher costs or financial risks upon ratepayers and utility investors. Over the past years, the Commission has instituted a number of proceedings and investigations into the issue of utility-affiliate relationships¹ and on several occasions has imposed disallowances upon utilities. A common theme in all of these proceedings has been the development of sufficient accounting, financial, and procedural safeguards to ensure that there are no abuses of the utility-affiliate relationship.

In addition to the Commission's own concerns regarding potential abuse of the utility-affiliate relationship, the Commission is statutorily required to develop reporting requirements under Sections 587 and 797 of the PU Code. With the passage of Senate Bill 1822 (Rosenthal) in 1988, the California Legislature required that:

587. 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. (Statutes 1988, Ch. 759.)

¹ The term "utility-affiliate relationship" is used generically to describe relations between the utility and its subsidiaries, affiliates, and/or controlling corporations.

797. The Commission shall periodically audit all significant transactions, as specified by the Commission, between an 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. (Statutes 1988, Ch. 759.)

Both the interim reporting requirements and the proposed General Order are designed to meet the requirements of PU Code Sections 587 and 797. They establish for each utility the transactions to be reported as well as requiring the reporting of the transfer price, cost allocation, and terms and conditions applicable to each transaction. As discussed further below, the Commission in this rulemaking defines "significant transaction" as required under PU Code Section 587.

The Need for Utility-Affiliate Reporting Requirements

As the Commission has stated previously:

In dealing with unregulated ventures by utilities, the Commission has recognized its duty to protect the financial integrity of the regulated entity, to prevent any subsidization by the regulated entity and its ratepayers of the unregulated business, to avoid the potential for anti-competitive activities by the utility, and to ensure that (for electric utilities) the utility's avoided costs are not artificially inflated. (Finding of Fact 33, Decision (D.) 89-01-047, 30 CPUC2d 686, p. 699)

During the Senate Hearings on SB 1822, the staff of the Senate Committee on Energy and Public Utilities described some of the ways in which a utility could unfairly subsidize its affiliated entities:

When utilities diversify, the potential exists for "cross-subsidization" which favors non-utility operations at the expense of utility ratepayers. Utility cross-subsidy abuses include utilities purchasing goods and services from affiliates at prices above competitive rates, utility property sold to affiliates at less than fair market value, utility personnel providing services to affiliates without reimbursement, and utilities providing credit support to affiliates which results in unreasonable risk for ratepayers.

Other potential examples of cross-subsidization include a utility that grants preferential rates to its affiliates, charges the costs of plant built primarily to benefit the affiliate to the utility's rate base, and transfers sensitive market information to the affiliate without compensation when it is appropriate to do so.

Improper utility-affiliate relations can occur even in cases where there is no "cross-subsidy" between a utility and its affiliates. For example, over the past ten years the Commission has realized the benefits to ratepayers of increased competition within the utility sector and has sought to create competitive frameworks for the purchase of gas, electricity and some telephone services.²

2 Starting with the OIR2 decision in 1982 (D.82-01-103) and continuing through to the Commission's recent decision in the Biennial Resource Planning Update (D.92-04-045) the Commission has sought to increase competition in the electric generation sector. The Commission has adopted similar pro-competitive policies in the natural gas industry starting with D.86-03-057 and continuing through to the recent capacity brokering

(Footnote continues on next page)

Under these frameworks, there would be no cross-subs¹, and no short-term harm to ratepayers, if given a choice between two suppliers offering the same goods at the same price, the utility consistently chose to purchase from the supplier that was a utility affiliate. Over the long-term, however, such actions could hinder the development of a truly competitive market and thus harm ratepayer interests.

Finally, a utility may use its affiliates to escape regulatory oversight by the Commission. A utility, for example, could attempt to use its affiliates to engage in activities that the Commission prohibited the utility itself from engaging in.

The Need to Standardize Utility-Affiliate Reporting Requirements

Another purpose of this rulemaking is to begin the process of standardizing the various reporting requirements that the Commission already imposes upon utilities. The benefits of standardization will include improvements in staff and utility productivity, a uniform reporting format for all utilities, and a reduction in the amount of time spent on affiliate-related discovery issues in Commission proceedings.

(Footnote continued from previous page)

decision in D.92-07-025. The Commission's Alternative Regulatory Framework for local exchange companies (D.89-10-033) was designed to ultimately increase competition for a variety of telecommunication services.

The utility-affiliate relations of almost all utilities that the Commission regulates are already subject to some form or review through either Commission established reporting requirements or as part of Commission rate-making proceedings. For example, the Commission has established annual reporting requirements for affiliate transactions of Southern California Edison (D.88-01-063), Pacific Bell, and General Telephone (D.89-10-033). Additionally, the Commission almost always examines affiliate transactions in each utility's General Rate Case (GRC) and in reasonableness and prudence reviews.³ The Commission has supplemented the GRC process by authorizing separate financial and/or management audits of utility-affiliate relations for Pacific Bell (D.87-12-067), Pacific Gas & Electric (D.89-12-057) and Southern California Gas (Commission Resolution G-2736).⁴ Finally, the Commission will soon be considering the adoption of utility-affiliate reporting requirements for facilities-based cellular telephone companies (I.88-11-040).⁵

3 For example, the Commission is currently reviewing Pacific Gas & Electric's purchase of natural gas from its PGT/A&S affiliates in A.91-04-003, and is reviewing Southern California Edison's purchase of electric energy from its affiliated Qualifying Facilities (QFs) in A.88-02-016 and related proceedings.

4 The Commission also has recently completed an audit of Southern California Edison's affiliate transactions. Unlike the other audits, this audit was not performed as part of the GRC process but was carried out as a requirement of the Edison holding company decision (D.91-05-020).

5 The proposed reporting requirements were placed as Item 1, July 22, 1992 Commission Agenda, and were held until Sept. 2, 1992.

The interim reporting requirements and the proposed General Order issued today are based in large part on these already adopted Commission requirements, particularly those applicable to Southern California Edison, Pacific Bell, and General Telephone. The usefulness of these requirements was recently confirmed by the Commission Advisory and Compliance Division (CACD) which reviewed Pacific Bell's and General Telephone's existing reporting requirements and recommended their continued use.⁶ Today's rulemaking, however, will require the reporting of additional information beyond that currently required in order to further improve the usefulness of the required reports.

As previously mentioned, one of the goals of this rulemaking is to begin to standardize the reporting requirements that each utility is subject to. Currently, there are significant variations between utilities. For example, Southern California Edison is required to file yearly reports on its affiliate transactions while other utilities are only examined in their triennial GRC. Differences also exist between utilities in the items to be reported, the level of detail required, and the format used in supplying information.

The reporting requirements adopted today should simplify the work requirements and improve the productivity of both utility and Commission staff by establishing a single repository and standard format for information on utility-affiliate relationships.

⁶ The CACD review, entitled "New Regulatory Framework Monitoring Report Assessment" (dated May 1, 1992), was requested by the Commission in D.91-07-56.

In order to make the reports as thorough and complete as possible, portions of the interim reporting requirements and proposed General Order may require the reporting not only of significant transactions (pursuant to PU Code 587) but also of other information that the Commission may require under its other authority.⁷

The ultimate adoption of periodic and standardized reporting requirements should lessen the time spent on affiliate-related discovery issues in Commission proceedings. It will allow the Commission an opportunity to review these issues outside of the normal reasonableness and prudence reviews (such as ECAC proceedings and General Rate Cases) which currently serve as less than optimal forums for review. As the Commission noted in its decision regarding the proposed merger of Southern California Edison and San Diego Gas & Electric (D.91-05-028):

The Commission's pre-merger experience is that the ECAC has not been an ideal forum for adjudicating contested affiliate issues... (Finding of Fact 325, D.91-05-028, mimeo at p. 162);

and that:

...The ECAC procedure's rapid schedule, its resource intensive nature, its reliance on the good faith provisions of utility/holding company information, and its focus on fuel

⁷ The Commission already possesses substantial regulatory oversight of utility-affiliate relations through PU Code Sections 314(a) (inspection of utility books and accounts); 314(b) (inspection of affiliate books and accounts); 451 (just and reasonable rates); 581-584 (access to complete information), 701.5 (prohibitions against pledging utility credit or assets for affiliates), 816-819 (issuance of stocks and bonds), and 851 (sale or disposition of utility property).

costs...to the exclusion of other significant affiliate related issues...make the ECAC an unsuitable forum to mitigate the adverse impacts (of utility-affiliate relations) identified in this decision. (Finding of Fact 324, D.91-05-028, mimeo at p. 162, see also discussion at p. 92)

Similar complaints could be made with regard to many of the on-going proceedings that the gas and telephone utilities are participants in.⁸

The Criteria Used to Establish the Interim Reporting Requirements and Proposed General Order

The following summarizes the common elements of the rules that the Commission has already adopted for transactions between affiliates and utilities. In general, the Commission has required each utility that has captive ratepayers and/or substantial market power to meet the following guidelines:

- o Develop policies and procedural guidelines to regulate utility-affiliate transactions;

⁸ Even in cases where the Commission has used separate proceedings to expedite its review of utility-affiliate transactions, the resolution of discovery issues has often resulted in significant delays. The audit of Pacific Telesis' utility-affiliate transactions, for example, required almost three years to complete instead of the three months initially scheduled. At one time, almost 1,000 documents were in dispute. (D.91-11-023 mimeo. p. xviii-xxii).

- o Keep utility books in accordance with USOA⁹ accounts, and the books of affiliates in accordance with GAAP¹⁰ or USOA guidelines;
- o Charge affiliates the fully-loaded cost for any goods or services the utility provides to the affiliate;¹¹
- o Pay its affiliates the lesser of actual cost or fair market value for any goods or services that the utility purchases from the affiliate;
- o Transfer any property to its affiliates at fair market value;
- o Require the affiliates to compensate the utility for new business leads generated by the utility;
- o Pay appropriate compensation for the transfer of patents, legal rights, marketing or technological data; and,
- o Report the transfer of employees between the utility and its affiliates.¹²

9 Uniform System of Accounts.

10 Generally Accepted Accounting Principles.

11 The Commission has required some utilities to mark-up these charges by an additional 5-10% to provide a further guarantee that the reimbursement provided by the affiliate exceeds the utility's cost.

12 Pacific Telesis must also pay a "search fee" to Pacific Bell for any employee hired from Pacific Bell. This fee, equal to 25% of the employee's first year salary, is designed to equal the employee search fees that Telesis would otherwise have incurred to locate a qualified employee.

Additionally, the Commission must approve any long-term debt incurred by the utility, including any debt issued for the benefit of a utility's affiliate.¹³

The interim reporting requirements adopted today and the proposed General Order are both designed to allow the Commission to determine the extent to which each utility meets the above guidelines. This information will assist the Commission in identifying if additional rules governing utility-affiliate transactions may be needed for some utilities.

Each utility that has either captive customers or substantial market power shall be required to submit information on the following aspects of its utility-affiliate transactions:

- o The organizational and contractual relationships;
- o The procedural, budgeting, and accounting safeguards;
- o The provision of goods and services;
- o Financial transactions;
- o The sale or transfer of property;
- o The transfer of intangible properties such as patents, marketing information, etc.; and,
- o The exchange of personnel.

13 PU Code 701. 5, 817-830.

The Commission considers all of the electric and gas utilities, and in the telecommunications industry all of the local exchange carriers (LECs), facilities-based cellular telephone companies,¹⁴ and AT&T, the dominant inter-exchange carrier (IEC), as being utilities that possess either captive customers or substantial market power. These utilities will be subject to the above reporting requirements.

Reporting Requirements for Utilities that do not
have Captive Customers or Substantial Market Power

One of the concerns of the legislature in adopting PU Code 587 was to prevent utilities from "cross-subsidizing" their affiliates. One of the main ways that cross-subsidization occurs is when a regulated utility is able to pass along to its captive ratepayers the costs of the utility's unregulated affiliates.

Cross-subsidization of non-utility activities is most likely to occur in circumstances where the utility has either substantial market power or captive customers who are dependent upon the utility and have no alternatives. In a competitive market, utilities are "price-takers" having to match the market price in order to sell their product.

14 As the Commission recognized in D.90-06-025, as modified by D.90-10-047, facilities-based cellular carriers are in a position to cross-subsidize their retail cellular operations with wholesale revenues and the Commission ordered hearings to modify the Uniform System of Accounts to mitigate such cross-subsidization.

Utilities in a competitive market that tried to pass on any cross-subsidization through higher prices to their customers could find those customers leaving the utility to take service from the utility's competitors. In contrast, utilities that still have a monopoly on the provision of service can pass along the higher costs of cross-subsidization to their customers, as the customers have no alternative to utility service.

Accordingly, the Commission is adopting different reporting requirements under PU Code Section 587 for "competitive" utilities that lack either captive customers or substantial market power. Reporting requirements for competitive utilities will consist of filing information on:

- o The organizational structure of each utility; and,
- o Financial transactions.

The interim reporting requirements and the proposed General Order define all Non-Dominant Inter-Exchange Carriers (NDIECs) as determined in D.84-06-011, all cellular telephone resellers, and all radiotelephone utilities as being competitive utilities subject to the above requirements.

NDIECs are considered competitive utilities due to the Commission adopting, in D.84-06-11, a "dominant/non-dominant" form of regulation for interexchange (IEC) telecommunications companies. This decision concluded that the dominant interexchange carrier (AT&T) exerted significant market power and would therefore be subject to rate base/rate of return regulation. For all other IECs, called non-dominant IECs (NDIECs) the Commission determined that these carriers possessed too small of a market share to be able to engage in either cross-subsidization or predatory pricing and had to set their prices according to the dictates of the marketplace.

Cellular resellers are defined as competitive utilities since the Commission has determined that cellular resellers not affiliated with FCC licensed radio-based carriers are non-dominant carriers (D.90-06-025). This conclusion was based, in part, on cellular resellers' lack of market power.

Finally, the radio paging industry is not subject to rate base/rate of return regulation and is extremely competitive. Thus, it appears that radiotelephone utilities lack both market power and opportunities for cross-subsidization. Accordingly, radiotelephone companies are defined as competitive utilities.

Specification of "Significant Transaction"

PU Code 587 requires that the Commission specify what constitutes a "Significant Transaction" subject to the reporting and auditing requirements of PU Code Sections 587 and 797.

In defining a "Significant Transaction" we look for any transaction between a utility and any of its affiliated entities which has the potential to result in any harm to either ratepayers or the financial integrity of the regulated utility. This includes all transactions that pose any threat of the regulated utility subsidizing either a competitive regulated service or a non-regulated service, as well as any transactions that might harm the long-term interests of ratepayers by inhibiting competition where the Commission has sought to encourage same.

This guideline for defining significant transaction is complementary to the fundamental purpose of Commission regulation of public utilities; namely ensuring that utility rates are reasonable and that utility management exercises the appropriate level of fiduciary responsibility towards their investors.¹⁵

¹⁵ For example, in cases where a utility holding company does not own 100% of a utility, the other stockholders of the utility are protected from the diversion of utility assets towards the holding company's other subsidiaries or affiliates. The dual protection of both investor and consumer interests is analogous to the purposes of the federal Public Utility Holding Company Act of 1935 (15 USC 79 et seq.).

The Commission has long realized that a utility's transactions with its affiliated entities should be subject to a stricter standard of scrutiny. As the Commission noted in one of its reviews of Pacific Bell's affiliate transactions:

A special burden must be borne by the applicant in a rate case to demonstrate conclusively not only that affiliated intercompany transactions are reasonable in that they do not create a burden on the consumer, but that the affiliated relationships afford the maximum gains in efficiency or productivity and the greatest savings in costs to the consumer (D.86-01-026, 20 CPUC2d 1, 264, citing D.81896, emphasis added.).

In previous decisions governing utility-affiliate transactions the Commission's basic policy was to ensure that there would be no harm to either ratepayers or the utility's financial integrity in the utility's dealings with its affiliates. Accounting and reporting requirements established in these decisions required the reporting by the utility of any transaction with its affiliates in order to to ensure that any potential harms would be discovered.

The legislative intent of PU Code Section 587 also supports a strict application of its requirements.¹⁶ Many of the potential cross-subsidization issues mentioned in the legislative analysis accompanying PU Code Section 587 (such as a utility

16 The importance that the Legislature places on preventing abuses of the utility-affiliate relationship is also emphasized by PU Code Section 798 (Statutes 1987, Ch. 798) which allows the Commission to impose treble damages for improper affiliate transactions.

providing goods and services to affiliates without reimbursement) concern recurring transactions that, although they may be small individually, in aggregate can impose significant costs upon the ratepayers.

Therefore, the Commission defines as significant transactions, pursuant to PU Code Section 587, all transactions that utilities are required to report under the interim reporting requirements and the proposed General Order. Additional transactions may be defined as significant in the future either as a result of this rulemaking process or by subsequent Commission decisions.

Non-significant transactions are those that occur between a utility and its affiliated entities where there is no potential for harms to either ratepayers or the financial integrity of the utility. Transactions between a utility and its Commission-regulated subsidiaries, and most transactions (except financial transactions) between competitive utilities and their affiliated entities are currently considered examples of non-significant transactions.

Definition of "Controlling Corporation",
"Subsidiary", and "Affiliate".

The interim reporting requirements and proposed General Order establish definitions for "Subsidiary", "Affiliate", and "Controlling Corporation"¹⁷ as these terms are used in PU Code Sections 587 and 797. The definitions are based in large part on similar definitions contained in the Public Utilities Holding Company Act of 1935 (PUHCA)¹⁸ and have been used by the Commission in previous decisions. For example, the definition of "Controlling Corporation" is almost identical to the PUHCA definition for "Holding Company" that Southern California Edison proposed, and the Commission accepted, in creating Edison's holding company structure. (D.88-01-063, 27 CPUC2d 347, p. 357.)

The definitions contained in PUHCA generally define a "Subsidiary" and an "Affiliate" as any corporation in which either a utility or its controlling corporation has a financial interest of 10% and 5% respectively. Although this level of financial interest may not be sufficient for the utility to "control" the affiliate, it is still a significant enough level of ownership that the utility might have an incentive to favor the subsidiary over competing non-affiliated companies. This is the same conclusion that the Federal Energy Regulatory Commission (FERC) recently reached in establishing reporting requirement between interstate gas pipelines and their gas marketing affiliates.¹⁹

17 For ease of use, we will use the term "Controlling Corporation" to mean any "corporation holding a controlling interest (in a utility)", which is the term used in PU Code Section 587.

18 15 USC 79b

19 FERC Order 497 Final Rule (Issued June 1, 1988) at pp. 14-15

PUHCA also classifies as an affiliate any company in which a utility has a substantial financial interest even if there is no direct utility ownership in that company. A company in which a utility had operating agreements whereby day-to-day management or operations would be carried out the by utility, or where the company's major assets were leased from the utility would be examples of this type of affiliate.

The Relation Between this Rulemaking and Current Reporting Requirements on Utility-Affiliate Relations

As previously mentioned, the interim reporting requirements adopted today and contained in the proposed General Order are based on reporting requirements that the Commission has already imposed upon some utilities. For these utilities compliance with this decision should be relatively simple. However, in situations where there is a conflict between the reporting requirements adopted today and those already contained within a Commission decision, the utility must meet both sets of requirements.

One of the questions that we are asking respondents to the rulemaking to consider is which current reporting requirements contained in existing Commission decisions may be superseded by the proposed General Order.

Auditing Requirements

PU Code Section 797 requires the Commission to periodically audit all significant utility-affiliate transactions.

Starting in calendar year 1992, the Commission intends to audit each utility that possesses either captive ratepayers or significant market power at least once every three years. This three-year cycle of review is consistent with the Commission's statutory requirement under PU Code Section 314.5 to inspect and audit a utility's books and records once every three years.

Ideally, the timing of the audits will coincide with the triennial GRC process that most utilities are subject to. This would allow the Commission to audit significant utility-affiliate transactions as part of the Commission's general audit of each utility's books and records. Scheduling utility-affiliate audits to coincide with each utility's GRC also improves the Commission's ability to utilize outside auditing experience if needed. PU Code Section 797 allows the Commission to "utilize the services of an independent auditor, who shall be selected and supervised by the Commission" to assist the Commission in conducting its audits. In past instances where the Commission has utilized outside auditing experience, it has usually done so as a result of the GRC process.²⁰ This has allowed the costs of the audit to be paid for by the utility and reflected in its revenue requirement.

20 For example the management audits of Pacific Gas & Electric and San Diego Gas & Electric and the affiliate audits of Pacific Bell and Pacific Gas & Electric were all authorized as part of each utility's GRC.

It will not be possible for the Commission to conduct all of its audits as part of the GRC process, however. Some utilities (such as telephone utilities under the Commission's Alternative Regulatory Framework) no longer have GRCs, while for other utilities waiting until their next GRC may result in needless delays. For example, a utility that has just completed its GRC would not be audited until its next GRC in 1995, at which time the audit would have to cover a period of six years (annual reports for 1989 to 1995). Accordingly, Commission staff is free to institute audits at its own discretion prior to the utility's next GRC. Auditing of "competitive" utilities should be done periodically on a schedule to be determined by Commission staff.

One issue on which the Commission will be seeking input during the rulemaking phase of this proceeding is the scope, detail, and level of thoroughness that each audit required under PU Code Section 797 should entail.

A second issue for which the Commission is also seeking input concerns the auditing requirements that should be applied to the annual reports submitted for calendar years 1989-1991 under the interim reporting requirements. While it is clear that significant utility-affiliate transactions for these years need to be audited, most if not all of the significant transactions may already have been reviewed either in previous Commission audits or through reviews conducted by Commission staff as part of a GRC or reasonableness proceeding.

For example, the Commission has recently completed an audit of Southern California Edison's affiliate transactions from 1988 through 1991 (authorized in D.91-05-020) and will soon complete (scheduled for late 1992) a management audit of Southern California Gas Company's utility-affiliate transactions (authorized by Commission Resolution G-2736). Accordingly, the Commission is asking each utility to report on the extent to which the

Commission, through its proceedings, may have already audited and/or reviewed the significant utility-affiliate transactions of each utility for calendar years 1989-1991.

Finally, it should be reiterated that nothing in either this rulemaking or PU Code Section 797 precludes Commission staff from initiating their own investigations into affiliate transactions at any time either in the course of their general responsibilities for regulatory oversight or in connection with formal dockets. Commission staff are not restricted in the timing and scope of such investigations because of the utilities' requirements to file annual reports.

Disclosure and Confidentiality Issues

The Commission intends that the annual reports submitted under the interim reporting requirements and proposed General Order should be open and available for public inspection to the maximum extent feasible. The Commission is concerned about utilities filing blanket confidentiality claims for information submitted to the Commission. Accordingly, the Commission is establishing the following procedure for reviewing confidentiality requests for any information submitted in the annual reports that the utility requests to remain confidential. Each request for confidentiality must clearly indicate the material for which confidentiality is being sought as well as a full description of why disclosure would lead to any harm. Each request for confidentiality will initially be reviewed by CACD as part of their review of each utility's annual report. All information for which confidentiality is being sought by the utility will remain confidential during the course of CACD's review. Upon completion of their review, CACD will forward to the Commission, via resolution, CACD's recommendations as to what information should be judged confidential. The Commission will then render final disposition as to what material remains confidential.

CACD and the Commission will review each utility's request using the existing standard of proof that the Commission currently requires a utility to meet to prevail in keeping information confidential (D.86-01-026, 20CPUC 2d. 237, p. 252):

Certainly there are times to be concerned about full public disclosure of proprietary data. Classic examples are customer lists, true trade secrets, and prospective marketing strategies where there is full blown - and not peripheral - competition. To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record (e.g. sealed exhibits, clearing the hearing room, or sealed transcripts), there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental. [The Utility] must understand that in balancing the public interest of having an open and credible regulatory process against its desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process.

Any party (other than Commission staff) that desires access to information contained in the annual reports that is ultimately deemed confidential by the Commission should first seek to enter into a non-disclosure agreement with the utility to review the confidential material. If the utility and the party are unable to reach mutual agreement, the party may seek recourse by petitioning the Commission as allowed under General Order 66-C.

Opportunity for Further Comment

Attached to this Order Instituting Rulemaking are the Commission's interim reporting requirements for utility-affiliate transactions (Attached as Appendix A). These reporting requirements are effective immediately.

The interim reporting requirements were drafted for this Rulemaking proceeding after staff analyzed comments on a draft resolution circulated in 1991. CACD's proposed resolution would have adopted reporting guidelines for utility-affiliate transactions. Comments were solicited from the gas, electric, and telephone utilities and other interested parties.

All comments filed in response to the Commission's proposed resolution were reviewed by the Commission in drafting today's rulemaking. All of the major issues raised by the utilities and other interested parties in their comments are discussed in the policy discussion accompanying this rulemaking.

Upon receipt of the reports required under the interim reporting requirements for calendar years 1989, 1990, and 1991, the Commission will offer a further opportunity for all interested parties to submit written comments. Comments may be addressed to any aspect of the proposed General Order. However, since the reporting requirements contained in the proposed General Order are the same as those of the interim reporting requirements, we would expect both the utilities and other interested parties to focus their comments on issues identified in preparing and reviewing the 1989-1991 reports.

The following are some of the areas for which comments are especially solicited:

1. Does the proposed General Order meet the statutory requirements of PU Code Section 587?
2. Are there additional significant utility-affiliate transactions that are not currently required to be reported under the proposed General Order?
3. The reporting requirements in the proposed General Order are descriptive, requiring only that the utility describe which cost allocation and transfer pricing method that it used to value transactions with their affiliates. Should the proposed General Order adopt prescriptive reporting requirements, specifying the cost allocation and transfer pricing methods each utility shall use to value utility-affiliate transactions in future years?
4. How useful are the annual reports to Commission staff and other interested parties? What level of utility resources and staff time is necessary to comply with the reporting requirements?
5. What improvements to the reporting requirements may be needed to clarify their meaning, increase their usefulness, and identify and resolve difficulties in collecting the needed information?
6. To what extent may the proposed General Order replace the existing reporting requirements which many utilities already are subject to? In answering this question, utilities are requested to describe the existing requirements to which that they are already subject.
7. What is the appropriate scope, detail, and level of thoroughness with which the annual reports should be audited?

8. To what extent has the Commission, through its on-going proceedings, already audited and/or reviewed significant utility-affiliate transactions for calendar years 1989-1991 as required by PU Code Section 797?
9. What is the need for additional auditing of significant utility-affiliate transactions for calendar years 1989-1991?
10. Do the confidentiality requirements of the proposed General Order balance the public's right-to-know with the utility's need to protect confidential information?

Parties filing comments who desire changes to the proposed General Order are strongly urged to suggest alternate language.

As previously mentioned, it is the intent of the Commission to ultimately codify the interim reporting requirements into a General Order based upon the input and comments received through this rulemaking. The final version of the General Order may differ from the interim reporting requirements. The final order may include more or less detailed reporting requirements than the proposed order. In addition, the final order may exclude transactions and/or entities that would be covered by the proposed order, or the final order may cover transactions and/or entities that would be exempt from the reporting requirements of the proposed order.

THEREFORE, IT IS ORDERED that:

1. All electric, gas, and telephone utilities operating within the State of California are subject to the reporting requirements attached as Appendix A to this rulemaking.

2. All electric, gas, and telephone utilities operating within the State of California shall file their annual reports or annual statements (as required under Appendix A) for calendar years 1989, 1990 and 1991 by December 31, 1992, and their annual reports or annual statements for subsequent calendar years on May 1 following the calendar year for which the annual report is being submitted.

3. All electric, gas, and telephone utilities operating within the State of California are directed to separately track and monitor the cost and staff time needed to prepare the annual reports for calendar years 1989, 1990, and 1991 required under Appendix A and shall be prepared to present the results of this monitoring to the Commission by March 31, 1993.

4. Pursuant to Article 3.5 of the Commission's Rules of Practice and Procedure, a rulemaking proceeding is instituted, on the Commission's own motion, for the purpose of adopting a General Order requiring electric, gas, and telephone utilities to file reports on their affiliate transactions.

5. All electric, gas, and telephone utilities operating within the State of California subject to the jurisdiction of the Commission are made respondents to this rulemaking and are invited to submit their comments on the proposed General Order (attached as Appendix A).

6. Other parties are invited to submit comments on the proposed General Order as further ordered below.

7. In order to participate in the formulation of the final General Order, parties must submit comments on the proposed General Order. While copies of all papers filed in this proceeding will be available for public inspection at the Commission's office, only those parties filing comments will receive copies of comments, or any further notices, rulings, or filings relating to this proceeding prior to the final decision in this proceeding. The final decision in this proceeding will be served on all electric, telephone, and gas utilities as well as any other parties filing comments.

8. Pursuant to Rule 7 of the Rules of Practice and Procedure, an original and twelve (12) copies of each party's comments shall be filed with the Commission Docket Office no later than March 31, 1993. If factual matters are asserted in the comment, the document must be verified.

9. After March 31, 1993, the assigned Administrative Law Judge (ALJ) shall serve commenting parties with a list of all parties who have filed comments (the Service List). This Service List will be accompanied by a ruling specifying the precise dates for compliance with Ordering Paragraph 10.

10. No later than ten (10) days after the date that the Service List is mailed, all parties who have filed comments shall serve their comments on all other parties on the Service List provided by the ALJ.

11. No later than May 28, 1993, any commenting party may file with the Docket Office an original and twelve copies of a response to the comments of other parties. Any party filing reply comments shall simultaneously serve them on all other parties appearing on the Service List.

12. No later than June 11, 1993, any party that believes evidentiary hearings are needed in this proceeding, shall file a Request for Hearing with the Docket Office (serving all parties on the Service List). The Request for Hearing shall include: 1) a statement specifying the issues on which hearing is needed; 2) a statement specifically identifying any material issue of fact that the party requesting hearing believes the Commission must resolve through hearing before adopting the General Order; and 3) an explanation as to why a hearing is required on the issues specified. To the extent there may be any right to a hearing in this proceeding, such right shall be waived unless the party timely requests and supports its request for a hearing in accordance with this Ordering Paragraph.

13. Except as otherwise ordered herein, or by the assigned ALJ, the provisions of Article 3.5 of the Commission's Rules of Practice and Procedure shall apply to this proceeding.

14. The Executive Director shall cause a copy of this Order Instituting Rulemaking to be sent by regular mail to all electric, gas, and telephone utilities subject to the jurisdiction of the Commission and on the intervenor groups listed in Appendix D.

This order is effective today.

Dated August 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

APPENDIX A

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

REPORTING REQUIREMENTS
FOR UTILITY-AFFILIATE TRANSACTIONS
AND
PROPOSED GENERAL ORDERRULES GOVERNING THE REPORTING OF TRANSACTIONS BY
ELECTRIC, GAS, AND TELEPHONE UTILITIES
WITH THEIR AFFILIATED ENTITIESAdopted August 11, 1992 Effective August 11, 1992.

R.92-08-008.

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III. AUDITING COMPLIANCE

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.

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, II-B, and II-G of this order as well as any supporting material and/or documents also required under those sections.

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 December 31, 1992.

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 Commission's Docket Office. The electronic copy must be submitted in a form compatible with Commission software and computer capabilities. The Docket Office will direct hard copies to the Director of the Advisory and Compliance Division (CACD), the Financial Reports Section of CACD, and the Director of the Division of Ratepayer Advocates (DRA). The electronic copy will be forwarded to the Director of CACD.

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" 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.

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).

II. REPORTING REQUIREMENTS

A. ORGANIZATIONAL STRUCTURE

1. Each utility shall list each affiliated entity (including regulated subsidiaries) that the utility had during the period covered by the annual report, and shall provide the following information for each affiliated entity;

- 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;

2. The utility shall prepare and submit a corporate organizational chart showing any and all corporate relationships between the utility and the affiliated entities 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.

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. 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 utility services provided to any of their affiliated entities. Instead, each telephone utility shall separately list, for each affiliated entity which purchased utility services from the telephone utility during the period covered in the annual report, the following information;

- o Each type of tariffed utility service provided;
and,
- o The total dollar amount paid for each type of service.

TABLE II-C-1

UTILITY NAME

Provision of Goods and Services
 From the Utility to its Affiliated Entities
 During the Calendar Year Ending December 31, XXXX

USOA ACCT.	ACCOUNT DESCRIPTION	HOLDING CO. NAME	SUBSIDIARY NAME #1#	SUBSIDIARY NAME #2	AFFILIATE NAME #1	AFFILIATE NAME #2	TOTAL	COST ALLOCATION METHOD/LOGY
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**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.

TABLE II-D-1
UTILITY NAMES

Provision of Goods and Services
From the Affiliated Entities to the Utility
During the Calendar Year Ending December 31, XXXX

USOA ACCT.	ACCOUNT DESCRIPTION	HOLDING CO. NAME	SUBSIDIARY NAME #1#	SUBSIDIARY NAME #2	AFFILIATE NAME #1	AFFILIATE NAME #2	TOTAL	COST ALLOCATION METHOD/LOGY
		\$	\$	\$	\$	\$	\$	

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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 proprietary information 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 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 actually transferred to the utility. The procedures 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;
 - b. The balance sheets and income statements of the nonconsolidated subsidiaries of the controlling corporation;

- 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.

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.

APPENDIX B

PROPOSED SCHEDULE

Dec. 31, 1992	Utilities file annual reports for 1989, 1990, 1991.
Dec. 31, 1992 to March 31, 1993	Commission staff and other interested parties review utility annual reports.
March 31, 1993	Parties file comments on proposed General Order.
April 10, 1993	ALJ provides commenting parties with service list.
May 28, 1993	Parties file reply comments.
June 11, 1993	Deadline for filing Request for Hearing
September, 1993	ALJ issues proposed decision
October, 1993	Commission adopts decision

(END OF APPENDIX B)