



FILED

08-09-12

02:42 PM

MP1/JHE/gd2 8/9/2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Pursuant to Senate Bill No. 790 to Consider and Adopt a Code of Conduct, Rules and Enforcement Procedures Governing the Conduct of Electrical Corporations Relative to the Consideration, Formation and Implementation of Community Choice Aggregation Programs.

Rulemaking 12-02-009
(Filed February 16, 2012)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S
SCOPING MEMO AND RULING**

1. Summary

Pursuant to Rule 7.3(a)¹ of the Commission's Rules of Practice and Procedure, this scoping memo and ruling sets forth the categorization, need for hearing, issues, schedule and assignment of the Presiding Officer for this proceeding, Rulemaking 12-02-009. Opening comments on Attachment 1 to this ruling shall be filed and served by August 24, 2012, with reply comments due by September 7, 2012. The assigned Commissioner or Administrative Law Judge may modify the scope and schedule adopted herein as necessary for the reasonable and efficient conduct of this proceeding.

¹ Unless otherwise stated, all references to a "Rule" or to "Rules" are to the Commission's Rules of Practice and Procedure.

Parties can appeal this ruling only as to the category of this proceeding under the procedures in Rule 7.6.

2. Background

Senate Bill (SB) 790 (Leno), Stats 2011, ch. 599, directs the Commission to consider and adopt a code of conduct, rules and enforcement procedures governing the conduct of electrical corporations relative to the consideration, formation and implementation of community choice aggregation programs. On February 16, 2012, the Commission initiated Rulemaking (R.) 12-02-009 to implement this legislation. That Order Instituting Rulemaking (OIR) proposed rules of conduct and enforcement procedures pursuant to the direction in SB 790, and provided the opportunity for parties to comment on those proposed rules and procedures. Seventeen parties² individually or jointly filed a total of eight sets of timely opening comments on March 26, 2012, and 15 parties³ individually or jointly filed a total of six sets of timely reply comments on April 16, 2012. The OIR also established a due date of April 23, 2012, for parties to file motions for hearing. One party, Women's Energy Matters (WEM), filed a

² Eight sets of opening comments were filed by 17 parties: The Marin Energy Authority, City of Santa Cruz, The Climate Protection Campaign, Direct Energy LLC, Direct Access Customer Coalition, South San Joaquin Irrigation District, Constellation NewEnergy Inc, San Joaquin Valley Power Authority, Alliance for Retail Energy Markets, and Noble Americas Energy Solutions LLC (filing jointly as the CCA Alliance); WEM; Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E); Pacific Gas and Electric Company (PG&E); Shell Energy North America L.P. (Shell); the City and County of San Francisco (CCSF); Local Power, Inc. (Local Power).

³ Six sets of reply comments were filed by 15 parties or groups: Coalition of California Utility Employees (CCUE); PG&E, CCSF; SCE; WEM; CCA Alliance (made up of 10 parties listed in footnote 2).

timely motion for hearing on a limited set of issues related to the effect of utility Energy Efficiency (EE) marketing on Community Choice Aggregators (CCAs). In addition, two parties suggested that workshops might be useful in resolving the issues raised in the OIR. Pursuant to Rule 7.2(b), because the OIR made a preliminary determination, confirmed in Section 3, below, that hearings will not be needed in this case, it is not necessary to hold a Prehearing Conference.

3. Categorization and Need for Hearings

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. The Commission preliminarily categorized this OIR as quasi-legislative, as defined in Rule 1.3(d). The OIR anticipated that the record for this proceeding would be developed through filed comments and reply comments, and found that evidentiary hearings (EHs) would not be needed. The OIR directed any party objecting to these preliminary determinations to state its objections in opening comments on the OIR, and required parties asserting the need for hearings to file a motion explaining the specific disputed fact on which hearings would be appropriate, along with other information in support of the request. No parties objected to the categorization of this proceeding as quasi-legislative, and only one party, WEM, filed a motion for hearings in this proceeding. As discussed below, the issues raised in the WEM request for hearings are outside the scope of this proceeding or can be addressed without the need for hearings.

This scoping memo confirms the Commission's preliminary categorization of this proceeding as quasi-legislative. This determination is appealable under the provisions of Rule 7.6. This scoping memo also confirms the preliminary determination that hearings will not be needed in this proceeding.

4. Scope

The preliminary scope for this proceeding established in the OIR included the following issues:

- (1) What rules governing the conduct of electrical corporations relative to community choice aggregation programs should be adopted for purposes of facilitating the development of community choice aggregation programs, fostering fair competition, and protecting against ratepayer subsidization of actions that impede the development of community choice aggregation programs and fair competition?
- (2) What enforcement procedures should be adopted to enable the expeditious resolution of complaints filed pursuant to the provisions of Pub. Util. Code § 366.2(c)(11) brought by an existing or potential community choice aggregation program for alleged violations by an electrical corporation of its duty to cooperate fully with CCAs, or any other provision of Pub. Util. Code § 366.2 or § 707?

This ruling confirms that these are the issues within the scope of this proceeding. The ruling also identifies the issues proposed by parties in their comments that are already within this scope (Section 4.1), and addresses which proposed issues are not within the scope of this proceeding (Section 4.2). Finally, this ruling proposes some modifications to the draft rules included within the OIR and sets a schedule for comments on those modified rules.

4.1. Issues within the Scope of this proceeding

In adopting the two issues above, this scoping ruling affirms the preliminary scoping memo in the OIR. The scope of this proceeding includes the development of rules and a code of conduct for electrical corporations in relation to CCAs. This proceeding will also develop appropriate mechanisms for pursuing complaints of violations of the adopted rules by electric corporations and imposing sanctions for violations of those rules.

As discussed in Section 4.2, below, issues beyond the scope of this proceeding include cost allocation, the effect on CCAs of the structure of EE programs, utilities' role as administrator of those EE programs, and methods for promoting CCA development.

4.2. Issues Beyond the Scope of this Proceeding

In opening and reply comments, several parties suggest that the scope of this proceeding should be expanded to include additional issues. Specifically, various parties advocate for including cost allocation issues and the effects on CCAs of utility EE marketing within this proceeding. At least one party also suggests that SB 790 requires the Commission to encourage and enhance CCA opportunities, and advocates that the scope of the proceeding should be changed to ensure that any rules adopted here achieve that goal.

CCSF, the CCA Alliance, and Shell advocate for expanding the scope of this proceeding to include cost allocation issues related to CCAs. These parties suggest that cost allocation issues should be addressed in a second, later phase of the proceeding. We are not persuaded that cost allocation issues belong within the scope of this proceeding. The stated purpose of this proceeding is to implement SB 790 through development of a Code of Conduct, rules, and enforcement procedures governing relations between CCAs and electrical utilities. Issues related to costs and rates, and particularly those related to the cost allocation mechanism adopted previously by the Commission, are more appropriately addressed in other Commission proceedings that directly address costs and rates. For these reasons, issues related to costs and cost allocation are outside the scope of this proceeding.

Shell suggests that the preliminary scope of this proceeding and the draft rules proposed in the OIR do not go far enough to ensure that the Commission supports and enhances the development of CCAs. SB 790 specifically requires that the Commission develop rules and procedures that:

facilitate the development of community choice aggregation programs,... foster fair competition, and... protect against cross-subsidization paid by ratepayers.⁴

We interpret the legislation's direction to "facilitate the development of" CCA programs to require us to develop rules and procedures that allow CCAs to compete on a fair and equal basis with other load serving entities (LSEs), and prevent utilities (or other LSEs) from using their position to gain unfair advantages. The rules developed in this proceeding will affirmatively implement this provision by ensuring that existing and potential CCAs are not at a disadvantage compared with other LSEs in communicating with or competing for customers, and have recourse to an expedited complaint procedure if necessary. It is not necessary to expand or change the scope of the proceeding established in the OIR to accomplish this.

WEM seeks to expand the scope of this proceeding and requests hearings to explore its assertion that the utilities' existing role as the providers of Commission-authorized EE services provides the utilities with marketing opportunities that give them an advantage over CCAs that could undermine CCA formation or operation. WEM specifically states its view that:

⁴ SB 790, Section 2(h), and Public Utilities Code Section 707(a)(4)(A).

PG&E's role as monopoly EE program administrator provides virtually unlimited opportunities for interactions with customers and local governments. Most of these interactions occur behind closed doors, and therefore cannot be monitored or controlled...Energy efficiency at PG&E overlaps with customer service, marketing and lobbying, and is intertwined with public affairs, community events, governmental affairs, regulatory affairs, and corporate relations.⁵

To address these concerns, WEM recommends that any rules adopted in this proceeding clearly define what constitutes marketing against a CCA, and suggests that this proceeding explore what actions may be required to ensure that the management of EE programs does not provide an unfair advantage. WEM suggests that it may be necessary to remove administration of EE programs from the utilities in order to eliminate any potential advantage that responsibility gives to utilities.

WEM's suggestion that any rules adopted in this proceeding should clearly specify definitions of relevant terms in order to facilitate compliance with and enforcement of rules is already within the scope of this proceeding. For example, the draft rules already contain a proposed definition of the term "marketing." The rules adopted in this proceeding will apply to utility management of EE programs as well as other activities including more general marketing and outreach. Similarly, the complaint procedures developed through this proceeding will apply to complaints related to communications or interactions under these rules, whether related to EE administration or other

⁵ WEM opening comments, March 26, 2012, at 2.

activities. Because of this, a specific focus within this proceeding on interactions related to EE program administration is not necessary at this time.

Structural and programmatic aspects of Commission-authorized EE programs traditionally have been addressed in the Commission's ongoing EE policy, program, and budget proceedings. Given the Commission's existing proceedings dedicated to EE,⁶ issues related to the structure and administration of utility EE programs, such as the appropriate entity to administer these programs, are more efficiently and appropriately addressed in those proceedings.

For all of these reasons, WEM's request that this proceeding explore issues related to EE is denied; such issues are outside the scope of this proceeding.

4.3. Modified Proposed Rules

As noted above, parties have filed opening and reply comments on a set of proposed rules that were included within the OIR. Based on our review of those comments, we have made limited modifications to the originally proposed rules. These revised draft rules are attached to this ruling as Attachment 1. As noted above, the intention of these rules is to ensure that existing and potential CCAs are not at a disadvantage compared with other LSEs in communicating with or competing for customers, and have recourse to an expedited complaint procedure if necessary. The modifications to the rules support that goal.

The proposed rules have been modified in several ways. First, the definitions of marketing and lobbying have been clarified to ensure that both

⁶ Ongoing Commission proceedings related to EE include R.09-11-014 and Application 12-07-001, et al.

utilities and CCAs are able to provide truthful and responsive answers to specific inquiries. Similarly, a new rule has been added that requires utilities and the CCAs within their service territory jointly to produce and distribute a neutral, complete, and accurate comparison of their tariffs, sample bills under those tariffs, and generation portfolio contents. This requirement will provide customers with a source of balanced and accurate information.

Additional changes have been made to the rules to clarify the application of utility tariffs to CCAs and their customers, and to streamline and track communications between utilities and CCAs. Also, the proposed expedited complaint process has been modified to ensure that parties and the Commission receive the information necessary for processing the complaint in an efficient and expedited manner. Comments on these modified proposed rules shall be filed as provided in the schedule section, below.

5. Schedule

The following schedule is adopted for the remainder of this proceeding:

Date	Event
February 16, 2012	OIR adopted
March 26, 2012	Opening comments filed and served
April 16, 2012	Reply comments filed and served
April 23, 2012	Motions for EHs due
August 9, 2012	Scoping memo with updated rules issued
August 24, 2012	Comments on updated rules due
September 7, 2012	Reply comments on updated rules due
November 2012	Proposed Decision (expected)

Consistent with the schedule above and the requirements of SB 790, it is the Commission's intent to have a proposed decision resolving the issues within the scope of this proceeding on the Commission's agenda by December 2012. In any event, pursuant to the authorization conferred by Pub. Util. Code § 1701.5(b), we anticipate that this proceeding will be resolved within 18 months of the date of this Scoping Memo.

The assigned Commissioner and/or Administrative Law Judge (ALJ) may modify the scope and schedule provided herein as necessary for the reasonable and efficient conduct of this proceeding.

6. Assignment of Proceeding and Presiding Officer

Michael R. Peevey is the assigned Commissioner and Jessica T. Hecht is the assigned ALJ in this proceeding. Pursuant to Rule 13.2(c), the assigned Commissioner is the Presiding Officer in a quasi-legislative proceeding.

7. Ex Parte Communications

Pursuant to Rule 8.2(a), ex parte communications will be allowed in this quasi-legislative proceeding without restriction or reporting requirements.

8. Intervenor Compensation

Any party intending to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 was required to file a notice of intent (NOI) to claim intervenor compensation by May 16, 2012.⁷ Parties may file an amended NOI not later than 15 days after the issuance of this scoping memo.

⁷ See OIR ordering paragraph 11; also see Pub. Util. Code § 1804(a)(1) and Rule 17.1(a)(2).

Parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time entry. To be considered sufficient to support a request for intervenor compensation, the description must contain more detail than the activity (e.g. "review correspondence" or "research" or "attend meeting"), and shall include references to specific issues and/or documents. In addition, intervenors must classify time by issue.

As reflected in the provisions set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

9. Rulings on Procedural Motions

The assigned ALJ granted party status to Local Power via an electronic mail ruling on April 6, 2012. That ruling is confirmed here.

Also, WEM filed a motion for permission to late-file its NOI to claim intervenor compensation, which it submitted for filing on May 21, 2012. WEM's motion to late-file explains that the NOI was late due to changes to WEM's legal representation, along with the illness of its representative. No parties have objected to the motion to late-file, and the motion is granted. The NOI submitted on May 21, 2012, is filed effective May 21, 2012.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

IT IS RULED that:

1. The Commission's preliminary categorization of this proceeding as quasi-legislative and preliminary determination that hearings will not be needed are confirmed. The determination of category only is appealable pursuant to Rule 7.6.
2. The scope of this proceeding and the issues to be addressed are as set forth in the body of this ruling.
3. The assigned Administrative Law Judge and assigned Commissioner may make any revisions or provide further direction regarding the scope and issues within this proceeding and the manner in which issues shall be addressed, as necessary for a full and complete development of the record.
4. The initial schedule of this proceeding is as set forth in Section 5 of this ruling. Specifically, opening comments on Attachment 1 to this ruling shall be filed and served by August 24, 2012, with reply comments due by September 7, 2012.
5. The assigned Administrative Law Judge and assigned Commissioner may modify the schedule adopted herein as necessary for the reasonable and efficient conduct of this proceeding.
6. Michael R. Peevey is the assigned Commissioner and Presiding Officer for this proceeding. Jessica T. Hecht is the Administrative Law Judge assigned to this proceeding.
7. Pursuant to Rule 8.2(a), ex parte communications will be allowed in this quasi-legislative proceeding without restriction or reporting requirements.
8. The Administrative Law Judge's electronic mail ruling granting party status to Local Power, Inc. is confirmed.

9. The motion of Women's Energy Matters to late-file its notice of intent to claim intervenor compensation is granted, and that document is filed effective May 21, 2012.

10. The requirements for filing, service, and other procedural matters established in Rulemaking 12-02-009 that are not specifically addressed in this scoping ruling remain unchanged.

Dated August 9, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ JESSICA T. HECHT

Jessica T. Hecht
Assigned Administrative Law Judge

ATTACHMENT 1

1.1. Rules of Conduct for Electrical Corporations Relative to Community Choice Aggregation Programs

1) The following definitions apply for the purposes of these rules:

a) “Market” means communicate with customers, whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), regarding the electric corporation’s and community choice aggregators’ energy supply services and rates.

Marketing under this definition does not include the following:

i) Communications provided by the electric corporation throughout all of its service territory to its retail electricity customers that do not reference community choice aggregation programs.

ii) Communications that are authorized or approved by the California Public Utilities Commission (CPUC) as part of a specific program, including but not limited to customer energy efficiency, demand response, SmartMeter™, and renewable energy rebates such as the California Solar Initiative and other similar CPUC-approved or authorized programs. (See D.08-06-016, Appendix A.)

iii) Provision of factual answers about utility programs or tariffs, including but not limited to rate analyses, in answer to the questions of individual customers.

b) “Lobby” means to communicate whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), with public officials or the public or any portion of the public for the purpose of convincing a government agency not to participate in, or to withdraw from participation in, a community choice aggregation program. (Cf. D.08-06-016,

Appendix A.) Lobbying under this definition does not include:

- i) Provision of factual answers about utility programs or tariffs, including but not limited to rate analyses, in answer to questions from a government agency or its representative.
- ii) Provision of information to potential CCAs related to Community Choice Aggregation program formation rules and processes.

c) "Promotional or political advertising" means promotional or political advertising as defined in 16 U.S.C. Sec. 2625(h).

d) "Competitively sensitive information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services. This includes, without limitation, information about which customers have or have not chosen to opt out of community choice aggregation service. (See D.97-12-088, Appendix A, Part I.D.)

2) No electrical corporation shall market or lobby against a community choice aggregation program, except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders and that is functionally and physically separate from the electrical corporation's ratepayer-funded divisions. (See Pub. Util. Code § 707(a)(1).)

3) Not later than March 31, 2013, and annually thereafter, each electrical corporation and any CCA or CCAs within its service territory shall prepare and distribute to the customers within the CCA boundaries a neutral, complete, and accurate comparison of their tariffs, sample bills under those tariffs, and generation portfolio contents. This comparison shall be distributed with the relevant customers' bills and posted on each entity's Web site. The electrical corporation and CCA(s) shall share equally the costs of preparation and distribution of this comparison.

4) The cost of an electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer-funded divisions shall be allocated to the independent marketing division on a fully allocated embedded cost basis, supported by detailed public reports of such use. For this purpose, fully allocated embedded cost basis means a fully loaded cost basis

(i.e., the sum of all direct costs and all appropriately allocated indirect costs and overhead costs; transfers from the utility to its independent marketing division of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded costs plus 5% of direct labor cost). These calculations shall be supported by public reports of such use. These reports shall be filed quarterly with the Commission's Energy Division as an information only filing, no later than one month after the end of each quarter, and shall be made available on the utility's website at the same time. (*See* § 707(a)(2), D.97-12-088, Appendix A, Part V.H.5.)

5) An electrical corporation's independent marketing division shall not have access to competitively sensitive information. (*See* § 707(a)(3).)

6) No electrical corporation shall recover the costs of any direct or indirect expenditure by the electric utility for promotional or political advertising, including advertising distributed in billing envelopes or by other means, from any person other than the shareholders or other owners of the utility. (*See* Pub. Util. Code § 707(a)(5).)

7) An electric corporation shall provide access to utility information, rates and services to community choice aggregators on the same terms as it does for its independent marketing division. (*See* D.97-12-088, Appendix A, Part III.B.1.)

8) An electric corporation shall not provide access to market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, to its independent marketing division. (*See* D.97-12-088, Appendix A, Part III.E.)

9) An electrical corporation shall refrain from: 1) speaking on behalf of a CCA program; 2) giving any appearance of speaking on behalf of any CCA program; or 3) making any statement relating to the community choice aggregator's rates or terms and conditions of service that is untrue or misleading, and that is known, or that, by the exercise of reasonable care, should be known, to be untrue or misleading.

10) An electric corporation and its independent marketing division shall keep separate books and records. (*See D.97-12-088, Appendix A, Part V.B.*)

11) An electric corporation shall not share office space equipment, services, and systems with its independent marketing division, nor shall an electric corporation access the computer or information systems of its independent marketing division or allow its independent marketing division to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions. Physical separation required by this rule shall be accomplished by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. (*See D.97-12-088, Appendix A, Part V.C.*)

12) An electric corporation and its independent marketing division may make joint purchases of goods and services, other than purchases of electricity for resale. The electric corporation shall insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the portions of such purchases made by the utility and its independent marketing division, and in accordance with these rules. (*See D.97-12-088, Appendix A, Part V.D.*)

13) As a general principle, an electric corporation may share with its independent marketing division joint corporate oversight, governance, support systems and support personnel; provided that support personnel shall not include any persons who are themselves involved in marketing or lobbying. Any shared support shall be priced, reported and conducted in accordance with applicable Commission pricing and reporting requirements. As a general principle, such joint utilization shall not allow or provide a means for the transfer of competitively sensitive information from the electric corporation to the independent marketing division, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the independent marketing division. (*See D.97-12-088, Appendix A, Part V.E.*)

14) An electrical corporation shall apply tariff provisions in the same manner to the same or similarly situated entities if there is discretion in the application of the provision.

15) Except as permitted in Paragraph 13, employees of the independent marketing division shall not otherwise be employed by the electric corporation. (See D.97-12-088, Appendix A, Part V.G.1.)

16) All employee movement between the independent marketing division and other divisions of the electric corporation shall be consistent with the following provisions:

a) An electric corporation shall track and report to the Commission all employee movement between the independent marketing division and other divisions of the electric corporation. The electric corporation shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

b) Once an employee of an electric corporation becomes an employee of the independent marketing division, the employee may not return to another division of the electric corporation for a period of one year. In the event that such an employee returns to another division of the electric corporation after the one year period, such employee cannot be retransferred, reassigned, or otherwise employed by the independent marketing division for a period of two years. Employees transferring to the independent marketing division are expressly prohibited from using competitively sensitive information gained from the electric corporation, to the benefit of the electric corporation or to the detriment of community choice aggregators. Any electric corporation employee transferring to the independent marketing division shall not remove or otherwise provide information to the independent marketing division which the independent marketing division would otherwise be precluded from having pursuant to these rules. An electric corporation shall not make temporary or intermittent assignments, or rotations to its independent marketing division. (See D.97-12-088, Appendix A, Part G.)

c) When an employee of a utility is transferred, assigned, or otherwise employed by the independent marketing division, the independent market division shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is

appropriate for the class of employee included. This transfer payment provision will not apply to clerical workers. (D.97-12-088, Appendix A, Part V.G.2.c.)

17) Neither electric corporations nor their marketing divisions can offer to provide, or provide, any goods, services, or programs to a local government on the condition that the local government not participate in a community choice aggregation program, or for the purpose of inducing the local government not to participate in a community choice aggregation program. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction also applies to any plan whereby the utility would pay someone else to provide such goods, services, or programs.) (See Resolution E-4250, Ordering Paragraph 4.) This restriction does not apply to optional rates, programs, and services authorized or approved by the Commission that are only available to bundled service customers.

18) An electrical corporation shall not, through a tariff provision or otherwise, discriminate between its own customers and those of a CCA in matters relating to any product or service that is subject to a tariff on file with the Commission. An electrical corporation shall not condition or tie the provision of any product, service, or rate agreement to a customers' participation or non-participation in a CCA program. This restriction does not apply to optional rates, programs, and services authorized or approved by the Commission that are only available to bundled service customers.

19) Electric corporations shall not make available to their customers any mechanism for opting out of community choice aggregation program service before the commencement of the statutorily mandated notification period. (See Resolution E-4250, Ordering Paragraph 3.)

20) Electric corporations may not refuse to make economic sales of excess electricity to a community choice aggregation program, nor refuse in advance to deal with any community choice aggregation program in selling electricity because it is a community choice aggregation program. (See Resolution E-4250, Ordering Paragraph 5.)

21) The electric corporation must bill charges submitted by the CCA on the subsequent customer bill unless other arrangements have been made and agreed to in writing by the CCA and the electric

corporation.

22) The electric corporation shall maintain a log of all new, resolved, and pending issues submitted in writing relating to services provided for the CCA and CCA customers. The log shall be subject to review by the CCA and the Commission, and shall include the date each issue was received; the customer's name, address, and Service Account ID number if the issue is in relation to a specific customer; a written description of the complaint; and the resolution of the complaint, or the reason why the complaint is still pending.

23) No later than March 31, 2013, each electrical corporation shall submit a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its independent marketing division that is prohibited by these rules, and is in all other ways in compliance with these rules. The electrical corporation shall submit its compliance plan as a Tier 1 advice letter to the Commission's Energy Division and serve it on the parties to this proceeding. The electrical corporation's compliance plan shall be in effect between the submission and Commission disposition of the advice letter.

a) An electrical corporation shall submit a revised compliance plan thereafter by Tier 2 advice letter served on all parties to this proceeding whenever there is a proposed change in the compliance plan for any reason. Energy Division may reject the Tier 2 advice letter and require resubmission as a Tier 3 advice letter if Energy Division believes the change requires an additional level of review.

b) An electrical corporation that does not intend to lobby or market against any community choice aggregation program shall file a Tier 1 advice letter no later than March 31, 2013, stating that it does not intend to engage in any such lobbying or marketing.

(i) If such an electrical corporation thereafter decides that it wishes to lobby or market against any community choice aggregation program, it shall not do so until it has filed and received approval of a compliance plan as described above, with its compliance plan filed as a Tier 2 advice letter with Energy Division. (See D.97-12-088, Appendix A, Part VI.A.)

c) Any CCA alleging that an electrical corporation has
1) violated the terms of its filed compliance plan or 2) has
engaged in lobbying and/or marketing after filing an advice
letter stating that it does not intend to conduct such activities,
may file a complaint under the expedited complaint procedure
authorized in Pub. Util. Code § 366.2(c)(11).

24) No later than March 31, 2013, and every other year thereafter,
the Commission's Energy Division shall have audits prepared by
independent auditors verifying that each electrical corporation is in
compliance with the rules set forth herein. The Energy Division
shall have the auditor serve a copy on each party to this proceeding,
and publish the audit at the same time on the Commission's website.
The Energy Division shall send an invoice to each electrical
corporation for payment of auditor expenses, and the cost of the
audits shall be at shareholder expense. (See D.06-12-029, Appendix
A-1, Part VI.C.)

1.2. Rules Regarding Enforcement Procedures

1) A complaint filed pursuant to Pub. Util. Code § 366.2(c)(11) by
an existing or prospective community choice aggregator or
community choice aggregation program alleging a violation of an
electrical corporation's obligation to cooperate fully with community
choice aggregators or community choice aggregation programs, or
any other provision of Pub. Util. Code § 366.2 or § 707, shall be
resolved in no more than 180 days following the filing of the
complaint. This deadline may only be extended under either of the
following circumstances:

- a. Upon agreement of all of the parties to the complaint.
- b. The commission makes a written determination that the
deadline cannot be met, including findings for the reason for
this determination, and issues an order extending the deadline.
A single order pursuant to this subparagraph shall not extend
the deadline for more than 60 days.

2) The complaint shall be filed pursuant to Commission rules for
complaints (Article 4 of the Commission's Rules of Practice and
Procedure), except to the extent provided otherwise herein. The
complainant shall serve the complaint on the defendant electrical
corporation, and the complaint shall be accompanied by

documentary evidence, prepared testimony supporting the complaint, and a declaration affirming that the complainant has met and conferred with the defendant electrical corporation in an attempt to resolve the dispute informally.

3) Answers to complaints shall be filed and served within 15 days of the date the complaint is filed, and shall be accompanied by documentary evidence and prepared testimony supporting the answer.

4) The assigned Commissioner or Administrative Law Judge (ALJ) shall set the matter for evidentiary hearing for 30 to 45 days after the initiation of the proceeding or as soon as practicable after the Commission makes the assignment.

5) Unless otherwise directed by the assigned ALJ, three business days before the scheduled beginning of hearings, parties shall file a joint case management statement. This statement shall include any agreements or stipulations by the parties that narrow the issues since the filing of testimony, an updated discussion of the issues to be resolved, a proposed order of witnesses for hearing, any other information parties believe the Commission would find useful for the efficient disposition of the case, and any other information that may be required by the assigned ALJ.

6) In its expedited adjudication of the complaint, the Commission may impose fines, injunctive relief, or grant any other appropriate remedy without the initiation of a separate Order Instituting Investigation. (Pub. Util. Code § 366.2(c)(9), § 366.2(c)(10), §§ 366.2(c)(11), 701, 702, 2100-2109.)

(END OF ATTACHMENT 1)

ATTACHMENT 1

1.1. Rules of Conduct for Electrical Corporations Relative to Community Choice Aggregation Programs

1) The following definitions apply for the purposes of these rules:

a) “Market” means communicate with customers, whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), regarding the electric corporation’s and community choice aggregators’ energy supply services and rates.

Marketing under this definition does not include the following:

i) Communications provided by the electric corporation throughout all of its service territory to its retail electricity customers that do not reference community choice aggregation programs.

ii) Communications that are authorized or approved by the California Public Utilities Commission (CPUC) as part of a specific program, including but not limited to customer energy efficiency, demand response, SmartMeter™, and renewable energy rebate, or tariffed programs such as the California Solar Initiative and other similar CPUC-approved or authorized programs.
(See D.08-06-016, Appendix A.)

iii) Provision of factual answers about utility programs or tariffs, including but not limited to rate analyses, in answer to the questions of individual customers.

b) “Lobby” means to communicate whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), with public officials or the public or any portion of the public for the purpose of convincing a government agency not to participate in, or to withdraw from participation in, a community choice aggregation program. (Cf. D.08-06-016,

Appendix A.) Lobbying under this definition does not include:

- i) Provision of factual answers about utility programs or tariffs, including but not limited to rate analyses, in answer to questions from a government agency or its representative.
- ii) Provision of information to potential CCAs related to Community Choice Aggregation program formation rules and processes.

c) "Promotional or political advertising" means promotional or political advertising as defined in 16 U.S.C. Sec. 2625(h).

d) "Competitively sensitive information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services. This includes, without limitation, information about which customers have or have not chosen to opt out of community choice aggregation service. (See D.97-12-088, Appendix A, Part I.D.)

2) No electrical corporation shall market or lobby against a community choice aggregation program, except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders and that is functionally and physically separate from the electrical corporation's ratepayer-funded divisions. (See Pub. Util. Code § 707(a)(1).)

3) Not later than March 31, 2013, and annually thereafter, each electrical corporation and any CCA or CCAs within its service territory shall prepare and distribute to the customers within the CCA boundaries a neutral, complete, and accurate comparison of their tariffs, sample bills under those tariffs, and generation portfolio contents. This comparison shall be distributed with the relevant customers' bills and posted on each entity's Web site. The electrical corporation and CCA(s) shall share equally the costs of preparation and distribution of this comparison.

4) The cost of an electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer-funded divisions shall be allocated to the independent

marketing division on a fully allocated embedded cost basis, supported by detailed public reports of such use. For this purpose, fully allocated embedded cost basis means a fully loaded cost basis (i.e., the sum of all direct costs and all appropriately allocated indirect costs and overhead costs; transfers from the utility to its independent marketing division of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded costs plus 5% of direct labor cost). These calculations shall be supported by public reports of such use. These reports shall be filed quarterly with the Commission's Energy Division as an information only filing, no later than one month after the end of each quarter, and shall be made available on the utility's website at the same time. (*See* § 707(a)(2), D.97-12-088, Appendix A, Part V.H.5.)

5) An electrical corporation's independent marketing division shall not have access to competitively sensitive information. (*See* § 707(a)(3).)

6) No electrical corporation shall recover the costs of any direct or indirect expenditure by the electric utility for promotional or political advertising, including advertising distributed in billing envelopes or by other means, from any person other than the shareholders or other owners of the utility. (*See* Pub. Util. Code § 707(a)(5).)

7) An electric corporation shall provide access to utility information, rates and services to community choice aggregators on the same terms as it does for its independent marketing division. (*See* D.97-12-088, Appendix A, Part III.B.1.)

8) An electric corporation shall not provide access to market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, to its independent marketing division. (*See* D.97-12-088, Appendix A, Part III.E.)

9) An electrical corporation shall refrain from: 1) speaking on behalf of CCA a program; 2) giving any appearance of speaking on behalf of any CCA program; or 3) making any statement relating to the community choice aggregator's rates or terms and conditions of service that is untrue or misleading, and that is known, or that, by the exercise of reasonable care, should be known, to be untrue or misleading.

10) An electric corporation and its independent marketing division shall keep separate books and records. (*See D.97-12-088, Appendix A, Part V.B.*)

11) An electric corporation shall not share office space equipment, services, and systems with its independent marketing division, nor shall an electric corporation access the computer or information systems of its independent marketing division or allow its independent marketing division to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions. Physical separation required by this rule shall be accomplished by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. (*See D.97-12-088, Appendix A, Part V.C.*)

12) An electric corporation and its independent marketing division may make joint purchases of goods and services, other than purchases of electricity for resale. The electric corporation shall insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the portions of such purchases made by the utility and its independent marketing division, and in accordance with these rules. (*See D.97-12-088, Appendix A, Part V.D.*)

13) As a general principle, an electric corporation may share with its independent marketing division joint corporate oversight, governance, support systems and support personnel; provided that support personnel shall not include any persons who are themselves involved in marketing or lobbying. Any shared support shall be priced, reported and conducted in accordance with applicable Commission pricing and reporting requirements. As a general principle, such joint utilization shall not allow or provide a means for the transfer of competitively sensitive information from the electric corporation to the independent marketing division, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the independent marketing division. (*See D.97-12-088, Appendix A, Part V.E.*)

14) An electrical corporation shall apply tariff provisions in the same manner to the same or similarly situated entities if there is discretion in the application of the provision.

15) Except as permitted in No. 13, employees of the independent marketing division shall not otherwise be employed by the electric corporation. (See D.97-12-088, Appendix A, Part V.G.1.)

16) All employee movement between the independent marketing division and other divisions of the electric corporation shall be consistent with the following provisions:

a) An electric corporation shall track and report to the Commission all employee movement between the independent marketing division and other divisions of the electric corporation. The electric corporation shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

b) Once an employee of an electric corporation becomes an employee of the independent marketing division, the employee may not return to another division of the electric corporation for a period of one year. In the event that such an employee returns to another division of the electric corporation after the one year period, such employee cannot be retransferred, reassigned, or otherwise employed by the independent marketing division for a period of two years. Employees transferring to the independent marketing division are expressly prohibited from using competitively sensitive information gained from the electric corporation, to the benefit of the electric corporation or to the detriment of community choice aggregators. Any electric corporation employee transferring to the independent marketing division shall not remove or otherwise provide information to the independent marketing division which the independent marketing division would otherwise be precluded from having pursuant to these rules. An electric corporation shall not make temporary or intermittent assignments, or rotations to its independent marketing division. (See D.97-12-088, Appendix A, Part G.)

c) When an employee of a utility is transferred, assigned, or otherwise employed by the independent marketing division, the independent market division shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. This transfer

payment provision will not apply to clerical workers.
(D.97-12-088, Appendix A, Part V.G.2.c.)

17) Neither electric corporations nor their marketing divisions can offer to provide, or provide, any goods, services, or programs to a local government on the condition that the local government not participate in a community choice aggregation program, or for the purpose of inducing the local government not to participate in a community choice aggregation program. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction also applies to any plan whereby the utility would pay someone else to provide such goods, services, or programs.) (See Resolution E-4250, Ordering Paragraph 4.) This restriction does not apply to optional rates, programs, and services authorized or approved by the Commission that are only available to bundled service customers.

18) An electrical corporation shall not, through a tariff provision or otherwise, discriminate between its own customers and those of a CCA in matters relating to any product or service that is subject to a tariff on file with the Commission. An electrical corporation shall not condition or tie the provision of any product, service, or rate agreement to a customers' participation or non-participation in a CCA program. This restriction does not apply to optional rates, programs, and services authorized or approved by the Commission that are only available to bundled service customers.

19) Electric corporations shall not make available to their customers any mechanism for opting out of community choice aggregation program service before the commencement of the statutorily mandated notification period. (See Resolution E-4250, Ordering Paragraph 3.)

20) Electric corporations may not refuse to make economic sales of excess electricity to a community choice aggregation program, nor refuse in advance to deal with any community choice aggregation program in selling electricity because it is a community choice aggregation program. (See Resolution E-4250, Ordering Paragraph 5.)

21) The electric corporation must bill charges submitted by the CCA on the subsequent customer bill unless other arrangements have been made and agreed to in writing by the CCA and the electric corporation.

22) The electric corporation shall maintain a log of all new, resolved, and pending issues submitted in writing relating to services provided for the CCA and CCA customers. The log shall be subject to review by the CCA and the Commission, and shall include the date each issue was received; the customer's name, address, and Service Account ID number if the issue is in relation to a specific customer; a written description of the complaint; and the resolution of the complaint, or the reason why the complaint is still pending.

23) No later than March 31, 2013, each electrical corporation shall submit a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its independent marketing division that is prohibited by these rules, and is in all other ways in compliance with these rules. The electrical corporation shall submit its compliance plan as a Tier 1 advice letter to the Commission's Energy Division and serve it on the parties to this proceeding. The electrical corporation's compliance plan shall be in effect between the submission and Commission disposition of the advice letter.

a) An electrical corporation shall submit a revised compliance plan thereafter by Tier 2 advice letter served on all parties to this proceeding whenever there is a proposed change in the compliance plan for any reason. Energy Division may reject the Tier 2 advice letter and require resubmission as a Tier 3 advice letter if Energy Division believes the change requires an additional level of review.

b) An electrical corporation that does not intend to lobby or market against any community choice aggregation program shall file a Tier 1 advice letter no later than March 31, 2013, stating that it does not intend to engage in any such lobbying or marketing.

(i) If such an electrical corporation thereafter decides that it wishes to lobby or market against any community choice aggregation program, it shall not do so until it has filed and received approval of a compliance plan as described above, with its compliance plan filed as a Tier 2 advice letter with Energy Division. (See D.97-12-088, Appendix A, Part VI.A.)

c) Any CCA alleging that an electrical corporation has
1) violated the terms of its filed compliance plan or 2) has
engaged in lobbying and/or marketing after filing an advice
letter stating that it does not intend to conduct such activities,
may file a complaint under the expedited complaint procedure
authorized in Pub. Util. Code § 366.2(c)(11).

24) No later than March 31, 2013, and every other year thereafter,
the Commission's Energy Division shall have audits prepared by
independent auditors verifying that each electrical corporation is in
compliance with the rules set forth herein. The Energy Division
shall have the auditor serve a copy on each party to this proceeding,
and publish the audit at the same time on the Commission's website.
The Energy Division shall send an invoice to each electrical
corporation for payment of auditor expenses, and the cost of the
audits shall be at shareholder expense. (See D.06-12-029, Appendix
A-1, Part VI.C.)

1.2. Rules Regarding Enforcement Procedures

1) A complaint filed pursuant to Pub. Util. Code § 366.2(c)(11) by
an existing or prospective community choice aggregator or
community choice aggregation program alleging a violation of an
electrical corporation's obligation to cooperate fully with community
choice aggregators or community choice aggregation programs, or
any other provision of Pub. Util. Code § 366.2 or § 707, shall be
resolved in no more than 180 days following the filing of the
complaint. This deadline may only be extended under either of the
following circumstances:

- a. Upon agreement of all of the parties to the complaint.
- b. The commission makes a written determination that the
deadline cannot be met, including findings for the reason for
this determination, and issues an order extending the deadline.
A single order pursuant to this subparagraph shall not extend
the deadline for more than 60 days.

2) The complaint shall be filed pursuant to Commission rules for
complaints (Article 4 of the Commission's Rules of Practice and
Procedure), except to the extent provided otherwise herein. The
complainant shall serve the complaint on the defendant electrical
corporation, and the complaint shall be accompanied by

documentary evidence, prepared testimony supporting the complaint, and a declaration affirming that the complainant has met and conferred with the defendant electrical corporation in an attempt to resolve the dispute informally.

3) Answers to complaints shall be filed and served within 15 days of the date the complaint is filed, and shall be accompanied by documentary evidence and prepared testimony supporting the answer.

4) The assigned Commissioner or Administrative Law Judge (ALJ) shall set the matter for evidentiary hearing for 30 to 45 days after the initiation of the proceeding or as soon as practicable after the Commission makes the assignment.

5) Unless otherwise directed by the assigned ALJ, three business days before the scheduled beginning of hearings, parties shall file a joint case management statement. This statement shall include any agreements or stipulations by the parties that narrow the issues since the filing of testimony, an updated discussion of the issues to be resolved, a proposed order of witnesses for hearing, any other information parties believe the Commission would find useful for the efficient disposition of the case, and any other information that may be required by the assigned ALJ.

6) In its expedited adjudication of the complaint, the Commission may impose fines, injunctive relief, or grant any other appropriate remedy without the initiation of a separate Order Instituting Investigation. (Pub. Util. Code § 366.2(c)(9), § 366.2(c)(10), §§ 366.2(c)(11), 701, 702, 2100-2109.)

(END OF ATTACHMENT 1)