

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Metro Star Networks, Inc. for
Registration as an Interexchange Carrier
Telephone Corporation Pursuant to the
Provisions of Public Utilities Code Section 1013.

Application 13-01-009
(Filed January 23, 2013)

**DECISION GRANTING METRO STAR NETWORKS, INC.
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE
LIMITED FACILITIES-BASED INTEREXCHANGE SERVICE**

Summary

This decision grants Metro Star Networks, Inc. a certificate of public convenience and necessity (CPCN) to provide limited facilities-based interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background

Metro Star Networks, Inc., a California corporation, (Metro Star or Applicant) filed an application as a non-dominant interexchange carrier on January 23, 2013, for a registration license to provide voice and data telecommunications service as a facilities-based interexchange carrier in California. This application was filed pursuant to the registration process adopted in Decision (D.) 97-06-107, as modified by D.10-09-017 and D.11-09-026. While this application was filed pursuant to Pub. Util. Code § 1013, an expedited and ministerial registration process, questions regarding the nature of the services offered by the applicant led to a determination the application did not

qualify for the registration process. It was then assigned to an administrative law judge and removed from the registration track. It has therefore been evaluated as a certificate of public convenience and necessity under § 1001. There were no protests to the application.

Metro Star proposes to provide local interexchange services to business and residential customers via interconnection with AT&T pursuant to the terms of AT&T's standard Interconnection Agreement through Metro Star-owned equipment co-located in AT&T central offices.

Metro Star's principal place of business is located at 145 S Halcyon Rd Suite E, Arroyo Grande, CA 93420

2. Jurisdiction

Public Utilities Code Section 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Metro Star states in its application that initially it proposes to provide Internet access to end users who plan to apply for California Advanced Services Fund grants. Thereafter, Metro Star proposes to provide interexchange services to business and residential customers via interconnection with AT&T pursuant to the terms of AT&T's standard Interconnection Agreement through Metro Star-owned equipment co-located in AT&T central offices.

In response to a ruling requesting further information regarding the nature of Metro Star's proposed services, Metro Star's Chief Executive Officer attested that Metro Star is a common carrier as defined in Section 153 of the Federal Telecommunications Act of 1996 (Act) and is eligible to interconnect with the public switched telephone network pursuant to Sections 251 and 252 of the Act;

and further attested that if granted a Certificate of Public Convenience and Necessity, Metro Star will operate as a telephone corporation as defined in Section 234(a) of the California Public Utilities Code (Code) and obey the Code, and all of the Commission's rules, decisions, and orders applicable to telephone corporations.

Metro Star is a telephone corporation and a public utility subject to our jurisdiction.

3. Limited versus Full Facilities-Based CPCN

In its application, Metro Star requests authorization for a CPCN to provide facilities-based interexchange telecommunications services. A Proponent's Environmental Assessment (PEA) is required for a facilities-based CPCN, which applicant did not provide. Metro Star states that it will not be constructing any new facilities to provide services for which it seeks authority. Thus, the application supports a request for only a limited facilities-based CPCN.

The treatment of this application as a request for a limited facilities-based CPCN does not preclude Metro Star from filing an application at a later date to pursue a full facilities-based CPCN. Metro Star must not begin construction of facilities beyond those authorized by this decision until further approval is granted.

4. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Metro Star states that it does not intend to construct any facilities other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no

possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Metro Star must file for additional authority, and submit to any necessary CEQA review.

5. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities based interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.¹ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.² In the application, Metro Star demonstrated that it possesses a minimum of \$100,000 that is reasonably liquid and readily available to meet its start-up expenses as a facilities-based carrier. Metro Star stated it has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed services. Since Metro Star has provided such documentation, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

¹ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

² The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers (LEC) and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

6. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.³ Metro Star supplied biographical information on its management in its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Metro Star verified that no one associated with or employed by Metro Star as an affiliate, officer, director, partner, or owner of more than 10% of Metro Star was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Metro Star has demonstrated the required expertise to operate as an interexchange carrier.

7. Tariffs

Metro Star requested and is eligible for an exemption from tariffing requirements. In addition, Metro Star has agreed to observe the Commission's consumer protection rules adopted in D.98-08-031.

³ D. 95-12-056 at Appendix C, Rule 4.A.

8. Conclusion

We conclude that the application conforms to our rules for certification as an interexchange carrier. Accordingly, we grant Metro Star a CPCN to provide limited facilities-based interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Metro Star and corresponding obligations. Metro Star receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Metro Star is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Metro Star is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code Section 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

9. Categorization of Proceeding

In Resolution ALJ176-3309 adopted February 13, 2013 this proceeding was preliminarily categorized as ratesetting and it was preliminarily determined that hearings are not necessary. We confirm the preliminary categorization and the hearing determination

10. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

11. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Richard Clark is the assigned Administrative Law Judge for this proceeding.

Findings of Fact

1. The application was filed on January 23, 2013, and appeared in the Commission's Daily Calendar on January 25, 2013.
2. No timely protests to the application were filed.
3. Since Applicant will not be constructing new facilities, there is no possibility that granting this application will have an adverse impact on the environment. Before it can construct new facilities, Metro Star Networks, Inc. must file for additional authority, and submit to any necessary CEQA review.
4. Applicant was eligible for and requested an exemption from tariffing requirements.
5. Applicant agreed to observe the consumer protection rules adopted in D.98-08-031.

6. Applicant is a common carrier as defined in Section 153 of the Federal Telecommunications Act of 1996 (Act) and is eligible to interconnect with the public switched telephone network pursuant to Sections 251 and 252 of the Act.

7. If granted a Certificate of Public Convenience and Necessity, Applicant will operate as a telephone corporation as defined in Section 234(a) of the California Public Utilities Code (Code) and obey the Code, and all of the Commission's rules, decisions, and orders applicable to telephone corporations.

8. Applicant is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).

9. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

10. Applicant has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed services.

11. Applicant's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

12. No one associated with or employed by applicant as an affiliate, officer, director, partner, or owner of more than 10% of applicant was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for

any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

Conclusions of Law

1. Metro Star Networks, Inc. should be granted a CPCN to provide interexchange voice and data telecommunications services in California, subject to the terms and conditions set forth in the Ordering Paragraphs and Attachment B, C and D.
2. Once granted a CPCN, applicant should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
3. Applicant should be exempted from the requirement to file tariffs.

O R D E R**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Metro Star Networks, Inc. to operate as a limited facilities-based carrier to provide interexchange voice and data telecommunications services in California, subject to the terms and conditions set forth in Attachments B, C and D.
2. Applicant is assigned corporate identification number U-7248-C, which shall be included in the caption of all filings made with this Commission.
3. Applicant is exempt from the requirement to file tariffs.
4. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (*i.e.*, there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days

of acceptance of its certificate of public convenience and necessity authority, applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

5. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

6. In addition to all the requirements applicable to interexchange carriers included in Attachments B, C, and D to this decision, Applicant is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Applicant must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

8. Applicant must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is

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\$0. In accordance with Decision 13-05-035, Applicant must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater.

9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

10. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

11. Prior to initiating service, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact person(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at

<http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>

This information must be updated if the name or telephone number changes, or at least annually.

12. Applicant must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. Application 13-01-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENTS:

ATTACHMENT A - [Section Intentionally Left Blank]

ATTACHMENT B - Requirements Applicable to Competitive Local
Exchange Carriers and Interexchange Carriers

ATTACHMENT C - Annual Report

ATTACHMENT D - Calendar Year Affiliate Transaction Report

ATTACHMENT A

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END OF ATTACHMENT A

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, in this docket with reference to this decision number,⁴ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435. The minimum annual User Fee is \$100, as set forth in D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check

⁴ Written acceptance filed in this docket does not reopen the proceeding.

the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment. In accordance with Decision 13-05-035, Applicant must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater.

3. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (*i.e.*, there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of Certificate of Public Convenience and Necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications,

containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

4. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

6. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

7. Applicant must file a service area map as part of its initial tariff.

8. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints and Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact person(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at

<http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>.

This information must be updated if the name or telephone number changes, or at least annually.

9. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

10. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

11. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

12. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

13. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

15. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

16. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the

Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

18. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure.

19. Applicant is exempt from Pub. Util. Code §§ 816-830.

20. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

21. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

22. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
 7. Date operations were begun.
 8. Description of other business activities in which the utility is engaged.
 9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.

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10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must 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 and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

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

4. 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.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement 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.

(END OF ATTACHMENT D)