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.	FILED PUBLIC UTILITIES COMMISSION FEBRUARY 16, 2012 SAN FRANCISCO, CALIFORNIA RULEMAKING 12-02-009

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

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1. Summary

We open this rulemaking pursuant to Senate Bill 790 (Leno), Stats 2011, ch. 599, which 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. Below, we propose rules of conduct and enforcement procedures pursuant to the Legislature's direction. Opening comments are due March 26, 2012, and reply comments are due April 16, 2012.

2. Background

Senate Bill (SB) 790 added Section 707 to the Public Utilities Code, which states as follows:

> (a) Not later than March 1, 2012, the commission shall institute a rulemaking proceeding for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of the electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2. The code of conduct, associated rules, and enforcement procedures, shall do all of the following:
>
> (1) Ensure that an electrical corporation does not market 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.

(2) Limit the electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer-funded divisions, and ensure that the electrical corporation's independent marketing division is allocated costs of any permissible support services from the electrical corporation's ratepayer-funded divisions on a fully allocated embedded cost basis, providing detailed public reports of such use.

(3) Ensure that the electrical corporation's independent marketing division does not have access to competitively sensitive information.

(4) (A) Incorporate rules that the commission finds to be necessary or convenient in order to facilitate the development of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers.

(B) It is the intent of the Legislature that the rules include, in whole or in part, the rules approved by the commission in Decision 97-12-088 and Decision 08-06-016.

(C) This paragraph does not limit the authority of the commission to adopt rules that it determines are necessary or convenient in addition to those adopted in Decision 97-12-088 and Decision 08-06-016 or to modify any rule adopted in those decisions.

(5) Provide for any other matter that the commission determines to be necessary or advisable to protect a ratepayer's right to be free from forced speech or to implement that portion of the federal Public Utility Regulatory Policies Act of 1978 that establishes the federal standard that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising (16 U.S.C. Sec. 2623(b)(5)).

(b) The commission shall ensure that the code of conduct, associated rules, and enforcement procedures are implemented by no later than January 1, 2013.

> (c) This section does not limit the authority of the commission to require that any marketing against a community choice aggregation plan shall be conducted by an affiliate of the electrical corporation, or to require that marketing against a community choice aggregator not be conducted by a marketing division of the electrical corporation, subject to affiliate transaction rules to be developed by the commission.

In addition, SB 790 amended and added to Pub. Util. Code § 366.2(c). In particular, it:

1. amended § 366.2(c)(9) to direct that the Commission exercise its enforcement authority when it finds that an electrical corporation has violated its obligation to cooperate fully with community choice aggregators that investigate, pursue, or implement community choice aggregation programs;
2. added § 366.2(c)(10) to require that the Commission consider the impact of an electrical corporation's violation of § 366.2 upon community choice aggregators; and
3. added § 366.2(c)(11) to require that the Commission proactively expedite the complaint process for disputes regarding an electrical corporation's violation of its obligations pursuant to § 366.2.

Below, we propose rules of conduct and enforcement procedures. Pursuant to the Legislature's direction, the proposed rules of conduct include rules approved by the Commission in Decision (D.) 97-12-088 (the Affiliate Transactions Rulemaking decision)[1] and D.08-06-016 (decision approving settlement between Pacific Gas and Electric Company and San Joaquin Power Authority) with limited exceptions. We modify the Affiliate Transactions rules

[1] We note that the Affiliate Transactions rules adopted by D.97-12-088 were modified by D.98-08-035 and D.06-12-029, and invite comment on whether those modifications should be applied to these rules of conduct.

to apply in the context of an electrical corporation's electric services marketing activities, and omit many of the Affiliate Transactions rules because they appear to be inapplicable to this context. The proposed rules indicate their source (e.g., from D.97-12-088, App. A, Part I.D). We have also added several rules to track those Ordering Paragraphs in Resolution E-4250 that are relevant to electric corporations' conduct relative to the consideration, formation, and implementation of community choice aggregation programs.

We invite comment, as described more fully below, on the proposed rules of conduct, proposed enforcement procedures, and anything else necessary to fully, efficiently and equitably implement these provisions. Opening comments are due March 26, 2012, and reply comments are due April 16, 2012. Comments shall be filed and served on the official service list of the proceeding.

3. Proposed Rules

3.1. 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. This does not include 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, nor 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.)

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.)[2]

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, App. 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.[3] (*See* Pub. Util. Code § 707(a)(1).)

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[2] The language from D.08-06-016, Appendix A has been modified to cover the conduct of electrical corporations relative to consideration and formation of community choice aggregation programs, as required by § 707(a).

[3] In the case of a holding company that owns two or more regulated utility entities (e.g., Sempra Energy), one regulated utility cannot market in the service area of the other utility, except as provided for in this paragraph (e.g., through an independent

Footnote continued on next page

3) 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, App. A, Part V.H.5.)

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

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

6) 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, App. A, Part III.B.1.)

7) 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,

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marketing division funded exclusively by shareholders and separate from ratepayer-funded divisions).

planning or strategic reports, to its independent marketing division. (*See* D.97-12-088, App. A, Part III.E.)

8) An electric corporation shall not offer or provide customers advice or assistance with regard to the services of community choice aggregators, except through its independent marketing division. (*See* D.97-12-088, App. A, Part IV.E.)

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

10) 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, App. A, Part V.C.)

11) An electric corporation and its independent marketing division may make joint purchases of good 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, App. A, Part V.D.)

12) 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, App. A, Part V.E.)

13) An electric corporation shall not allow advertising for its electricity in utility billing envelopes or any other form of utility customer written communication unless it provides access to community choice aggregators on the same terms and conditions. (*See* D.97-12-088, App. A, Part V.F.3.)

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

15) 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, App. 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, App. A, Part V.G.2.c.)

16) Neither electric corporations nor their marketing divisions can offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, 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 No. 4.)

17) 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 No. 3.)

18) 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 No. 5.)

19) 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 3 advice letter served on all parties to this proceeding whenever there is a proposed substantive change in the compliance plan for any reason. Nonsubstantive changes shall be submitted by Tier 2 advice letter. Energy Division may reject the Tier 2 advice letter and require resubmission as a Tier 3 advice letter if Energy Division believes the change is substantive.

    b. An electrical corporation that does not intend to lobby or market against any community choice aggregation program shall, instead of filing the Tier 1 advice letter referred to above, make an information-only filing with the Commission's Energy Division no later than March 31, 2013, stating that it does not intend to engage in any such lobbying or marketing. 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 3 advice letter with Energy Division. (*See* D.97-12-088, App. A, Part VI.A.)

20) 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, App. A-1, Part VI.C.)

3.2. 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 and prepared testimony supporting the complaint.[4]

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) 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.)

4. Comments

4.1. Generally

Persons may comment on the above proposed rules of conduct and proposed enforcement procedures. Comments may include different or additional rules and procedures to facilitate the development of community choice aggregation programs, foster fair competition, and protect against cross-subsidization by ratepayers of actions that impede the development of community choice aggregation programs or fair competition.

Proposals are not limited to being based on the referenced decisions and resolutions. Persons may also propose different, additional or other recommended rules and procedures to enable the expeditious resolution of

[4] Service by complainant will help expedite the proceeding. The Commission will also perform service, as required by Pub. Util. Code § 1704. (*See* also Rule 4.3 of the Commission's Rules of Practice and Procedure.).

complaints. Comments should also include anything else reasonably necessary to fully, efficiently, and equitably implement the necessary rules and procedures. Factual assertions shall be verified, and unverified factual assertions will be given only the weight of argument. (Rule 6.2 of the Commission's Rules of Practice and Procedure.)

4.2. Specific Issues

In addition, persons are asked to comment on the following specific issues.

4.2.1. Electrical Corporations

The rules proposed herein govern the conduct of electrical corporations relative to community choice aggregators and community choice aggregation programs. All Commission-jurisdictional electrical corporations are subject to these rules. Parties are asked to comment on:

a. Whether or not any electrical corporations should be excluded from any portion these rules?

b. If so, which specific electrical corporations (by exact name), which specific rules, and why?

4.2.2. Affiliate of the Electrical Corporation

Pub. Util. Code § 707(c) says:

> This section does not limit the authority of the Commission to require that any marketing against a community choice aggregation plan shall be conducted by an affiliate of the electrical corporation, or to require that the marketing against a community choice aggregator not be conducted by a marketing division of the electrical corporation, subject to affiliate transaction rules to be developed by the commission.

Given this provision, should the Commission:

a. Require that any marketing or lobbying against a community choice aggregation plan be conducted by an

affiliate of the electrical corporation, and not be conducted by a marketing division of the electrical corporation?

b. If yes, is the application of existing affiliate transaction rules (D.97-12-088, D.98-08-035, D.06-12-029, D.08-06-016) sufficient or do other rules need to apply?

c. If other rules need to apply, what are those rules and why are they needed? To be useful, credible and convincing, a commenter must propose specific rules (with the exact language proposed by the commenter) with clear explanation and justification of the need.

4.2.3. Expedited Complaint Proceeding

The Commission must proactively expedite the complaint process for disputes regarding an electrical corporation's violations of its obligations to fully cooperate with community choice aggregators and, with limited exceptions, must resolve all such complaints in no more than 180 days. (Pub. Util. Code § 366.2(c)(11).) This is a very limited amount of time given that the Commission's complaint process which, as a practical matter, requires at least 60 days for resolution of a complaint after a party's appeal of, or a Commissioner's request to review, the Presiding Officer's Decision. (Pub. Util. Code § 1701.2, and Rule 14.4 of the Commission's Rules of Practice and Procedure.) This explains, for example, the proposed requirement that the complaint include documentary evidence and prepared testimony with the complaint, and that defendant's answer do the same. Parties are asked to comment on the following given the need to expedite the complaint process while providing adequate due process.

a. Should complainant and defendant have the opportunity to supplement their testimony? If so, should it be by written proposed testimony served a short time before the hearing (e.g., one day), or orally from the witness stand?

b. Should complainant have the opportunity to file prepared rebuttal testimony? If so, state a specific timeframe when this should occur.

c. Are there any provisions of the Commission's process for arbitrating interconnection disputes between telecommunications carriers that might reasonably be applied here to expedite the process while also providing a just, fair, efficient and equitable process? (*See* Resolution ALJ-181.)

4.3. Common Outline and Joint Comments

All persons intending to file comments are encouraged to coordinate with other persons and agree to a common outline for comments and reply comments. This promotes understandability, consistency, and completeness. Persons with similar interests are encouraged to coordinate and file joint comments. The filing of joint comments does not limit any person from also filing limited additional comments in support of joint comments, or to address areas of differences.

5. Preliminary Scoping Memo

5.1. Determination of Category and Need for Hearing

Our preliminary determination is that this proceeding is quasi-legislative, as that term is defined in Rule 1.3(d) of the Commission's Rules of Practice and Procedure. It is anticipated that the record for this proceeding will be developed through filed comments and reply comments, and our preliminary determination is that hearings are not needed. Any person who objects to these preliminary determinations shall state their objections in their opening comments.

Pursuant to Rule 7.3(b) of the Commission's Rules of Practice and Procedure, if no timely request for hearing is filed, the assigned Commissioner has the discretion not to issue a final scoping memo in the proceeding. A request

for hearing must be made by written motion. The motion must state: (a) the specific disputed fact or expert opinion in a pleading (e.g., comment, reply comment) for which hearing is sought; (b) justification for hearing (e.g., why the fact or opinion is disputed and material), including citation to any authorities that would require a hearing to be conducted; (c) what the moving party would seek to demonstrate through hearing; (d) a proposed schedule; and (e) anything else necessary for the purpose of making an informed ruling on the motion. A response to any such motion may be filed and served, and will be due on the date in the adopted schedule. If motion for hearing is made and granted, the schedule will be modified as necessary.

5.2. Preliminary Scope of Issues

The issues in this proceeding are preliminarily identified as follows:

(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 community choice aggregators, or any other provision of Pub. Util. Code § 366.2 or § 707?

The scope of issues may be changed by the assigned Commissioner's Scoping Memo, if any, or by ruling of the ALJ, if there is no Scoping Memo.

5.3. Preliminary Schedule

Opening comments on the proposed rules are due March 26, 2012, and reply comments are due April 16, 2012. Motions for hearing must be filed by April 23, 2012, and responses by April 30, 2012. It is the Commission's intent to have a proposed decision on the Commission's agenda by December 2012. In any event, it is anticipated that this proceeding should be resolved within 18 months of the date the Scoping Memo is issued or, if the assigned Commissioner does not issue a Scoping Memo, within 18 months of the date this order is issued (subject to adjustment pursuant to Pub. Util. Code § 1701.5). (*See* Pub. Util. Code § 1701.5 and Rule 7.3(b) of the Commission's Rules of Practice and Procedure.)

6. Service and Official Service List

All Commission-jurisdictional electrical corporations shall be served with this Order Instituting Rulemaking, and the rules adopted in this rulemaking shall be applicable to all Commission-jurisdictional electrical corporations.

A service list has been established for this proceeding, which is attached (*See* Attachment A) and posted on the Commission's website. The service list is composed of:

- All persons on the official service lists for
  - Rulemaking 03-10-003 (Rulemaking to Implement Portions of Assembly Bill 117 Concerning Community Choice Aggregation) and
  - Rulemaking 05-10-030 (Rulemaking Concerning Relationship Between California Energy Utilities and Their Holding Companies and Non-Regulated Affiliates), and to the extent not included on those lists
- All Commission-jurisdictional electrical corporations
- All Commission-registered community choice aggregators
- All Commission-registered electric service providers

At the present time, all persons shall be entered on the official service list for this proceeding as "information only," with the exception of those in state service. State service participants from prior lists shall remain in the state service category.

In addition, any person not on the official service list contained in Attachment A may request being added to the official service list in the "information only" category. (*See* Rule 1.9(f) of the Commission's Rules of Practice and Procedure.) The request should be sent to the Commission's Process Office by e-mail (Process_Office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102). The request must include an e-mail address to receive service of electronically served documents. (*See* Rule 1.10(b) of the Commission's Rules of Practice and Procedure.) The request should be made as soon as possible in order to ensure receipt of service from others of their opening comments. It is the responsibility of each person to notify the Process Office of his or her current postal service mailing address, current electronic-mail address, and any changes or corrections. (Rule 1.9(e) of the Commission's Rules of Practice and Procedure.) A person may ask to be removed from the information only portion of the service list at any time by request to the Process Office.

Persons shall be made parties to the proceeding, and moved from the "information only" section to the "parties" section of the official service list, upon the filing of comments or reply comments. After the time for filing comments and reply comments, a person may seek party status by oral motion at either a prehearing conference or hearing, if any, or by the filing of a written motion. (*See* Rule 1.4(a)(2) of the Commission's Rules of Practice and Procedure.)

While any person who files comments or reply comments will become a party to the proceeding (and will be added to the official service list as a party upon such filing), persons not already on the office service list who intend to file comments and become a party should nevertheless ask to be added to the official service list as "information only" as soon as possible. This will not only ensure receiving service of the opening comments of others, it will facilitate smooth transition to the party category upon the filing of comments.

Commission practice is to allow only one person to formally represent each party. (*See* Commission's form for "Addition/Change to Service List.")[5] To assist with efficient execution of this practice, persons should clearly identify the lead person to be placed in party status, and the names with other necessary information (e.g., e-mail addresses) for anyone else to be placed into information only, in an easy to identify section of comments.

Comments and reply comments shall be served on the official service list, including all those in the information only category (as updated on the Commission's website at the time of filing comments and reply comments). The Commission encourages electronic filing and e-mail service in this rulemaking. Information about electronic filing may be found at http://www.cpuc.ca.gov/PUC/efiling. E-mail service is governed by Rule 1.10 of the Commission's Rules of Practice and Procedure. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur. Those persons using e-mail service must also serve a

[5] *See* http://docs.cpuc.ca.gov/published/service_lists/sl_index.htm.

paper copy on the assigned Commissioner and ALJ. (*See* Rule 1.10(e) of the Commission's Rules of Practice and Procedure.) The paper copy should be printed on both sides of the page. Questions about the Commission's filing and service procedures should be directed to the Commission's Docket Office by telephone at (415) 703-2121, by e-mail at efile-help@cpuc.ca.gov, or by letter to Docket Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

7. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco by telephone at (415) 703-2074 or (866) 849-8390, or by e-mail at public.advisor@cpuc.ca.gov. The Public Advisor's office in Los Angeles may be reached by telephone at (213) 576-7055 or (866) 849-8391, or by e-mail at public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825. Written communication may be sent to Public Advisor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

8. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation no later than 30 days after the date for filing reply comments. Parties are encouraged to use the standardized form attached to the Intervenor Compensation Program Guide, which may be found at: http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/index3.htm. Questions may be directed to the Commission's Public Advisor.

9. *Ex Parte* Communications

Communications with decisionmakers and advisors in this rulemaking are governed by Article 8 of the Rules of Practice and Procedure. Specifically, Rule 8(a) allows *ex parte* communications without restriction or reporting requirement in quasi-legislative proceedings.

IT IS ORDERED that:

1. In accordance with Rule 6.1 of the Commission's Rules of Practice and Procedure, the Commission institutes this Order Instituting Rulemaking pursuant to Senate Bill 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.

2. Each Commission-jurisdictional electrical corporation shall be subject to the code of conduct, rules, and enforcement procedures adopted in this proceeding by the Commission governing the conduct of an electrical corporation relative to the consideration, formation and implementation of community choice aggregation, unless determined otherwise by the Commission.

3. This order shall be served on all persons on the official service lists for Rulemaking 03-10-003 (Rulemaking to Implement Portions of Assembly Bill 117 Concerning Community Choice Aggregation) and Rulemaking 05-10-030 (Rulemaking Concerning Relationship Between California Energy Utilities and Their Holding Companies and Non-Regulated Affiliates) and, to the extent not on these two service lists, on all Commission-jurisdictional electrical corporations, all Commission-registered community choice aggregators, and all Commission-registered electric service providers.

4. This proceeding is preliminarily determined to be a quasi-legislative proceeding.

5. It is preliminarily determined that hearings are not needed.

6. It is preliminarily determined that the scope of issues is:

   a. 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?

   b. 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 community choice aggregators, or any other provision of Pub. Util. Code § 366.2 or § 707?

7. Opening comments on the proposed rules are due by March 26, 2012, reply comments by April 16, 2012, motions for hearing by April 23, 2012, and responses to motions for hearing by April 30, 2012, unless changed by the assigned Commissioner or assigned Administrative Law Judge. It is the Commission's intent to have a proposed decision on the Commission's agenda by December 2012. In any event, this proceeding shall be resolved within 18 months of the date the Scoping Memo is issued or, if the assigned Commissioner does not issue a Scoping Memo, within 18 months from the date this order is issued.

8. Pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure, persons shall include in comments any objections they have regarding the category, need for hearing, issues to be considered, or schedule. These

objections, if any, shall be stated in a separate, clearly identified section of the comments. Factual assertions, if any, shall be verified. Objections in opening comments regarding the need for hearing must be supported by the filing of a motion for hearing no later than the date for such motions in the adopted schedule.

9. All persons on the official service list for Rulemaking 03-10-003 (Rulemaking to Implement Portions of Assembly Bill 117 Concerning Community Choice Aggregation), all persons on the official service list for Rulemaking 05-10-030 (Rulemaking Concerning Relationship Between California Energy Utilities and Their Holding Companies and Non-Regulated Affiliates) and, to the extent not on those service lists, all Commission-jurisdictional electrical corporations, all Commission-registered community choice aggregators, and all Commission-registered electric service providers shall be placed on the official service list for this proceeding as "information only," with the exception of those in state service on prior service lists (who shall remain in the state service category). (*See* Attachment A.) Other persons wishing to be placed on the service list in "information only" should do so by contacting the Commission's Process Office as soon as possible.

10. A person shall be moved from information only to the party section of the official service list upon the filing of comments or reply comments pursuant to Rule 1.4(a)(2) of the Commission's Rules of Practice and Procedure. A person filing a comment or reply comment who was not previously on the service list shall be added in the party category upon the filing of the comment or reply comment. Persons shall clearly identify within comments or reply comments the one lead person to represent the party in the party category, and the names of all other persons to be added to the information only category. After the date for

filing reply comments, a person may be added to the party section of the service list by oral motion at either a prehearing conference or hearing, if any, or by written motion. A person may be removed from the "information only" section of the official service list upon request to the Commission's Process Office.

11. A person expecting to file an intervenor compensation claim for participation in this proceeding shall file a notice of intent to claim intervenor compensation no later than 30 days after the filing of reply comments.

This order is effective today.

Dated February 16, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners