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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Southern California Edison Company (U338E) and Pacific Gas and Electric Company (U39E) for an Order Granting Limited Exemptions from the Commission's Affiliate Transaction Rules.

Application 11-11-019  
(Filed November 29, 2011)

**DECISION GRANTING LIMITED EXEMPTIONS FROM THE  
COMMISSION'S AFFILIATE TRANSACTION RULES**

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## **DECISION GRANTING LIMITED EXEMPTIONS FROM THE COMMISSION'S AFFILIATE TRANSACTION RULES**

### **1. Summary**

In this decision, we approve the joint application of Southern California Edison (SCE) and Pacific Gas and Electric Company (PG&E) (the Joint Utilities) for an order granting specified limited exemptions from the Commission's Affiliate Transaction Rules (ATR) set forth in Decision (D.) 06-12-029.<sup>1</sup> These rules govern the relationship between Commission-regulated gas and electric utilities and certain of their corporate affiliates. The ATR creates nondiscrimination, disclosure and information, and separation standards aimed at fostering competition and protecting consumers' interests. We conclude, however, that limited exemptions from these rules, as specified and discussed below, are in the public interest.

The Joint Utilities, together with five other nuclear power plant operators, plan to establish a limited liability corporation named the STARS Alliance, which will constitute a new affiliate for PG&E and SCE. The limited exemptions granted herein are warranted in order to enable the Joint Utilities to achieve ratepayer benefits through their participation and ownership interests in the STARS Alliance. The objective of STARS Alliance is to increase efficiency and to reduce costs related to operation of members' nuclear power generation facilities. Other anticipated benefits include making nuclear power more competitive with other electric generation sources, more efficiently coordinating the purchase and location of assets necessary to ensure effective responses to potential disruption

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<sup>1</sup> D.06-12-029 amended the Commission's ATRs that are applicable to large California energy utilities.

in operations, and collectively to achieve the safest and most efficient generation of electricity from nuclear units.

STARS Alliance members will perform functions such as sharing resources, jointly procuring selected goods and services, and, possibly, consolidating certain internal accounting and management functions related to members' nuclear generation facilities. STARS Alliance members also intend to engage in cooperative activities focused on enhancing operational performance, joint planning and coordination regarding nuclear safety, and obtaining license approvals. The synergies gained through the STARS Alliance are intended to reduce the cost to consumers of nuclear power generation, make nuclear power more competitive with other forms of electric generation for customers of STARS Alliance's members, and enhance the ability of STARS alliance members to efficiently coordinate purchasing and location of assets necessary to ensure effective responses to potential disruption in its operations.

Because the Joint Utilities' ownership interest in the STARS Alliance is expected to exceed a 5% threshold, STARS Alliance would be an affiliate subject to the ATRs under D.06-12-029. Without specified exemptions from ATRs, the Joint Utilities will not be able to participate in providing the full range of services for which the STARS Alliance was formed. We grant the requested exemptions, however, provided that the Joint Utilities comply with the conditions specified below. These conditions are designed to ensure that ratepayers benefit from the Joint Utilities' participation in the STARS Alliance. We thus grant the requested exemptions based on our findings that the Joint Utilities participation in the STARS Alliance will benefit their respective retail customers, reducing customers' cost of service and enhancing efficiency and coordination of service.

## **2. Procedural Background**

The Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) ((Joint Applicants) and (Joint Utilities)) filed their application on November 29, 2011, and concurrently served the application on the Commission's Chief Administrative Law Judge (ALJ). Protests to the application were originally due on January 3, 2012. Via electronic mail, the assigned ALJ Thomas R. Pulsifer granted an extension for filing of protests to January 24, 2012. The only protest filed was that of the Commission's Division of Ratepayer Advocates (DRA). DRA did not request hearings or the opportunity to submit testimony, but sought more time to complete the review of the application to ensure that granting the proposed exemptions would constitute sound policy and be in ratepayers' interests.

The Joint Applicants filed a response to DRA on February 3, 2012. On February 17, 2012, the Joint Utilities filed an amended application, revising their proposed template for use in reporting cost savings to the Commission and incorporated DRA's input. The Joint Utilities represented that DRA had reviewed the revised reporting template and had determined that it satisfied DRA's concerns. DRA informally confirmed with the ALJ that DRA does not plan to provide further comments on the application.

Due to the large range of issues contained within the application, DRA believes that potential interested parties in the results of this proceeding may include electric generation market participants, as well as anyone who may be concerned about any potential antitrust issues, including participants of the nuclear, electric procurement, and General Rate Cases (GRC) of each of the Joint Utilities. In its protest, DRA identified no specific market power, antitrust, or anti-competitive concerns or objections to the application. Nevertheless, out

of an abundance of caution, DRA argues that the Commission should ensure that non-utility market participants have an opportunity to comment on the request for an exemption from the Commission's Affiliate Transaction Rules (ATR). DRA believes that it is important for market participants to be fully informed of the instant proceeding.

We conclude that potential interested parties have received reasonable notice concerning the Joint Utilities' application. Although not required by Commission rules, the Joint Utilities served the application on November 29, 2011 on the Rulemaking 05-10-030 service list, which is the Commission's most recent rulemaking on ATRs. Notice of the application was published in the Commission's daily calendar and website on December 1, 2011, further providing notice to members of the public. Given these actions to provide notice of the application and opportunity to be heard regarding the issues therein, we conclude that sufficient notice of the application to potentially interested parties has been provided.

By Resolution ALJ 176-3286, dated December 15, 2011, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that no hearings were necessary. Because the record supporting the application is now complete, and no party, including DRA, contests the application, no prehearing conference is necessary. A prehearing conference had been initially scheduled for March 7, 2012, but was subsequently cancelled by the assigned ALJ. We affirm that no hearings are necessary. This decision is issued based on the submitted written record.

### **3. Summary of Joint Applicants' Requested Relief**

The Joint Utilities seek limited exemptions from certain ATRs as adopted in Decision (D.) 06-12-029 in order to allow them to participate in planned

activities of the STARS Alliance as equity owners, to achieve cost savings and other benefits. Without the Commission's order granting the specified limited exemptions, the Joint Utilities contend that the ATRs would preclude them from implementing proposed plans to achieve these benefits that are anticipated through the STARS Alliance.

The STARS Alliance objective is to increase efficiency and reduce costs in a manner that improves the operational and organizational effectiveness of its members' nuclear units. Equity members are needed for the limited liability corporation (LLC) to secure clearance from the Antitrust Division of the Department of Justice (DOJ) that the activities of the STARS Alliance are not anti-competitive.

The STARS Alliance will be formed by five equity and two non-equity members,<sup>2</sup> each of whom owns and/or operates nuclear reactors. While only five of the seven nuclear operators will be equity members, all seven will share equally in the management, with equal rights in the governance of the STARS Alliance. SCE and PG&E (the Joint Utilities) each plan to be a member and equity owner of the STARS Alliance,<sup>3</sup> with each owning 20% of the STARS Alliance (with an equity contribution of \$1,000 each). Whenever PG&E

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<sup>2</sup> Non-equity memberships are being created so that two of the STARS Alliance members, the South Texas Project Nuclear Operating Company and the Wolf Creek Nuclear Operating Company, can comply with state law requirements unique to their organizations.

<sup>3</sup> The STARS Alliance members (and their associated nuclear units) are Ameren (1 unit), Arizona Public Service (3 units) Luminant (2 units), PG&E (2 units), SCE (2 units), South Texas Project Nuclear Operating Company (2 units), and Wolf Creek Nuclear Operating Company (1 unit).

and/or SCE (or its holding company or a subsidiary) has 5% or more controlling interest in an entity, the ATRs apply. The Joint Utilities thus seek limited exemptions to remove restrictions that they claim prevent implementation of beneficial programs possible through the STARS Alliance. Specifically, the Joint Utilities seek limited exemption from the following rules adopted in D.06-12-029:

- Rule III.A., to the extent that the services provided by SCE or PG&E to the STARS Alliance are considered preferential treatment;
- Rules III.B.2. and III.B.6., to the extent they limit or condition the information, supplies, and services that SCE or PG&E may make available to the STARS Alliance;
- Rules III.E., IV.B., and IV.D., to the extent they further restrict or condition information sharing between SCE or PG&E and the STARS Alliance;
- Rules V.C., V.D. and V.E., to the extent they restrict the sharing of plant, facilities, cost, equipment, personnel, and information as well as restrict joint purchases;
- Rule V.F., to the extent it restricts the STARS Alliance from referring to either SCE or PG&E in materials it distributes in California;
- Rule V.G., to the extent it restricts the sharing of employees; and
- Rule V.H.5. and V.H.6., to the extent they apply to the pricing of goods and services between SCE or PG&E and the STARS Alliance.

### **3.1. STARS Alliance Purposes and Functions**

The STARS Alliance has historically functioned as an informal entity and subset of the Utilities Services Alliance (USA), an electric operative engaged in many of the activities contemplated by the STARS Alliance. These activities include the sharing of resources, joint procurement of goods and services, and consolidation of internal functions. The USA was organized to provide the

opportunity for operators of nuclear generation units at single sites to achieve the economies of scale available to utilities that own large fleets of nuclear units operating at multiple sites. The Joint Utilities are current members of the USA.

Certain members of the STARS Alliance, however, recently determined to form a legal entity, separate and distinct from the USA, to focus on improving overall performance without diluting its existing resources. The USA represents most nuclear operators that are not part of corporate fleets. The total of nuclear units that are part of corporate fleets total substantially more than half of the operating nuclear units in the country. In contrast, STARS Alliance members operate nuclear units at single sites with one-to-three units that are thus relatively smaller than other nuclear owners or operators that have large fleets. Consequently, individual STARS Alliance members do not wield the buying power of large fleet operators. The USA does not allow the STARS Alliance leadership to drive STARS Alliance-specific performance improvements. The STARS Alliance members can coordinate more optimally as compared to coordinating among the larger number of members in the USA. In addition, the nuclear generating stations owned or operated by STARS Alliance members share certain common characteristics that are not necessarily shared by the generating stations owned by the other members of the USA.

Collectively, the seven STARS Alliance members own or operate a total of 13 nuclear generating units, and thus expect to be able to replicate economies of scale of the larger nuclear utilities with several operating nuclear reactors by jointly procuring selected goods and services. Participation and formation of STARS Alliance represents an opportunity for SCE and PG&E to engage in the type of activities that they have been undertaking as part of the USA, but with the potential for achieving additional cost savings and other benefits.

The STARS Alliance plans to engage in resource sharing activities focused on enhanced operational performance that goes beyond activities previously performed under the auspices of the USA, but which is also considered to be pro-competitive. For example, the STARS Alliance plans to coordinate the sharing of best practices relating to nuclear plant operations among its members for purposes of improving nuclear safety and plant performance.

The stated purposes for the new STARS Alliance include:

- 1) sharing existing resources including personnel, parts, equipment, tools, and expertise;
- 2) jointly procuring selected goods and services where economies of scales can be achieved; and
- 3) coordinating joint planning and operational activities, including sharing of project experience for significant plant modifications or licensing activities such as obtaining license renewal and associated plant aging management programs.

Consistent with the prior practice of the USA, STARS Alliance members will continue to share existing resources, including personnel, parts, equipment, tools, and expertise to the extent feasible. Members are expected to reciprocate under the same terms and provide resources when other members require additional resources. Such an arrangement results in efficiencies and better utilization of skilled employees among members of the STARS Alliance. STARS Alliance members also intend to engage in cooperative activities focused on enhancing operational performance, joint planning and coordination regarding nuclear safety, and obtaining license approvals from the United States Nuclear Regulatory Commission

### **3.2. Conditions on Approval of Applications**

The Joint Utilities voluntarily agree to comply with certain conditions as the basis for an order granting the limited exemptions sought, as modeled on conditions adopted in D.05-09-006, in a proceeding similar to this one where PG&E had requested exemptions from certain ATRs. The ATRs that were the basis of proceeding (Application (A.) 04-11-013) were subsequently revised by the Commission in D.06-12-029. Although the currently effective rules (as adopted in D.06-12-029) are slightly different from those applied in D.05-09-006, the Joint Utilities in this Application seek a limited exemption from generally the same rules. The Joint Utilities believe that the conditions placed upon PG&E in D.05-09-006 are reasonable for use in this proceeding, and agree to similar conditions for approval of the present application.

In that previous proceeding (A.04-11-013), PG&E and two other utilities jointly formed and owned Fuelco, expressly created to assist in transactions to secure nuclear products and services for use at the member utilities' nuclear power generators. PG&E had a 4% interest in Fuelco through its wholly-owned affiliate, Pacific Energy Fuels Company (PEFCO). PG&E's ownership interest in Fuelco was below the 5% threshold at which the ATRs take effect, but PG&E sought to increase its ownership interest and thus requested the limited exemptions from the ATRs. Through a settlement with DRA, PG&E agreed to the following three conditions as a basis for approval:

- PG&E would report in its annual Energy Resource Recovery Account (ERRA), and in the format laid out in Appendix A to the Settlement Agreement, on the activities and operating costs associated with the interaction between PG&E/PEFCO and Fuelco;
- PG&E's ratepayers would receive 100% of any net nuclear fuel cost savings generated by Fuelco for PG&E; and

- PG&E's ratepayers would receive the PG&E/PEFCO share of any net proceeds on the sale or dissolution of Fuelco, except to the extent that PG&E/PEFCO had infused capital for which it had not sought recovery (if any).

In D.05-09-006, the Commission adopted these three conditions and also imposed the following two additional conditions:

- Upon issuance by the DOJ, PG&E would provide to the Commission a copy of the anti-trust safe harbor ruling for Fuelco; and
- PG&E would expand the information reported in Appendix A to the Settlement Agreement to include any activities undertaken outside the scope of Fuelco's general purposes so that the Commission could monitor the full impact on ratepayers of PG&E's participation in Fuelco.

#### **4. Discussion**

The Joint Applicants have the burden to demonstrate that circumstances warrant an exemption from the ATRs. D.97-12-088 and D.98-08-035 originally adopted the ATRs governing the relationship between Commission-jurisdictional energy utilities and their affiliates, as noted by DRA, the Commission has previously provided few and cautious exemptions to the ATRs that govern the relationship between California's regulated utilities and their non-regulated affiliates. DRA stated that the ATRs set transparencies and processes important to the well-being of California ratepayers.

Based on the Joint Utilities' showing, we conclude that they have met their burden of proof. In view of the potential ratepayer benefits derived through the activities of the STARS Alliance, we conclude the Joint Utilities' request for limited exemptions from the ATRs is reasonable and should be granted, subject to the adopted conditions outlined below. As the basis for our conclusion, we summarize the purpose of each rule for which Joint Utilities seek limited

exemptions, noting the claimed problems or inefficiencies each rule would entail in connection with the STARS Alliance. We also consider how the requested exemptions will provide a suitable remedy. Based on this analysis, we thus grant the Applicants' request for a limited exemption from specified ATR rules, as identified and discussed below.

#### **4.1. Affiliate Transaction Rules Subject to Limited Exemption**

##### **4.1.1. No Preferential Treatment Regarding Provision of Services (Rule III.A.)**

Rules III.A.1. and 2., in pertinent part, provide that "a utility shall not represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies" nor "provide its affiliates any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility."

An exemption from these rules is needed because the Joint Utilities will treat the STARS Alliance members differently from other unaffiliated companies that do not have the same interest or purpose. Given the shared characteristics of the STARS Alliance members, the Joint Utilities do not expect that they could receive from unaffiliated companies the reciprocal benefits they expect to receive from other STARS Alliance members. Without this exemption from the Rules, the Joint Utilities will not be able to engage in transactions contemplated under the STARS Alliance relating to the sharing of employees, best practices and other information and equipment under mutually beneficial terms for the STARS Alliance members.

We conclude this exemption will not disadvantage other market participants nor result in customer harm. The preferential treatment will benefit the Joint Utilities' customers to the extent that the preferential treatment is intended to reduce operating costs and improve safety at the Joint Utilities' nuclear units. The reciprocal sharing of employees and information will be limited to the members of the STARS Alliance who have a common interest and who will mutually benefit from this exchange.

**4.1.2. Contemporary Provision of Supply, Capacity, Services, or Information (Rule III.B.2.)**

Rule III.B.2., in pertinent part, provides that "[i]f a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates."

The Joint Utilities envision the potential sharing of personnel, parts, equipment, tools, information and expertise which would be reciprocal among the STARS Alliance's members. Given the composition of the STARS Alliance's members and the fact that the STARS Alliance does not intend to be a for-profit enterprise, the Joint Utilities expect that the reciprocal sharing of supply, capacity, services, or information likely would not be beneficial if undertaken with entities outside of the Alliance.

We agree that the requested exemption is reasonable. STARS Alliance members' receipt of information or services would only be in the context of the Alliance and not for the purpose of providing a competitive advantage by means of such information or services. As such, there is no need to provide such information to other "market participants," given that any cost saving achieved

as a result of STARS Alliance activities will flow back to the Joint Utilities' respective customers.

**4.1.3. Processing Requests for Services Provided by the Utility (Rule III.B.6.)**

Rule III.B.6. requires a utility to "process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers."

We agree that exemption from this rule is appropriate in order to achieve the benefits of the STARS Alliance. The Joint Utilities will be providing specialized services only to other STARS Alliance members, and thus will not be offering these services to other potential market participants (if any). Because the other market participants are typically large fleet operators of nuclear plants, they are not disadvantaged by the Joint Utilities providing certain nuclear related services and support to STARS Alliance on a preferential basis. The Joint Utilities' customers receive any benefits generated from this preferential access to utility services provided to the STARS Alliance members.

**4.1.4. Restrictions on Information Provided to Utility Affiliates (Rules III.E., IV.B., and IV.D.)**

We agree that the restrictions imposed by Rules III.E., IV.B., and IV.D. would significantly reduce, if not fully eliminate, the Joint Utilities' customers benefits received from the STARS Alliance. Rule III.E. lists various restrictions on a utility's ability to share information with its affiliates. Several of these prohibitions pose impediments for transactions between STARS Alliance and the Joint Utilities, including the prohibition against: (1) providing leads to an affiliate; (2) acquiring information for affiliates; and (3) sharing market analyses and other proprietary reports with an affiliate.

The Joint Utilities also seek an exemption from Rule IV.B. to the extent it would apply to transactions between the STARS Alliance and the Joint Utilities. Rule IV.B. permits a utility to "make non-customer specific non-public information including, but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services and electricity related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection." The Rule provides a limited exemption and allows the non-public information to be shared with an affiliate on a preferential basis if the affiliate's use of such information is "in conjunction with the permitted corporate support services, and is not permitted for any other use."

To the extent that Rule IV.B. would require the Joint Utilities to keep non-public information provided to the STARS Alliance "open to public inspection," this is contrary to idea that non-public information should be protected and that customers may be harmed by the release of such information.

Rule IV.D. requires written authorization from any unaffiliated supplier prior to providing any non-public information about the supplier to the STARS Alliance. As discussed above, one of the STARS Alliance's primary objectives is to discover or develop opportunities for joint procurement of nuclear related products and services. The Joint Utilities may, in the ordinary course of their business, acquire information regarding nuclear products or services that the Joint Utilities would want to provide to the STARS Alliance for the purposes of a joint procurement. To maximize the benefits and expertise that the STARS Alliance may provide to the Joint Utilities, the Joint Utilities should be able to

provide such "leads" and other information, including proprietary information, about the nuclear goods and services, as well as related markets, to STARS Alliance without restriction. Accordingly, we grant the Joint Utilities' request for this limited exemption from Rule III.E.

With respect to Rule IV.D., the terms and conditions of the Joint Utilities' release of suppliers' non-public information to the STARS Alliance will vary and may or may not require an exemption. Rather than adhering to an inflexible rule, the Joint Utilities should be permitted to release such information to the STARS Alliance pursuant to the terms and conditions they have negotiated with suppliers.

One of the significant benefits of the STARS Alliance is the free flow of information about best practices, supplies and other aspects of nuclear plant operations. The Joint Utilities envision that, in some instances, this may involve the need for STARS Alliance members to share non-public information with another STARS Alliance member. Absent this sharing of information, the Joint Utilities may not benefit from being members of the STARS Alliance.

Non-public nuclear operations information is currently only shared under very limited circumstances. Thus, withholding such information from other potential market participants should not negatively impact the market. Absent the Joint Utilities' ownership in the STARS Alliance, the Joint Utilities could provide nonpublic information to any member of the STARS Alliance, protected through a nondisclosure agreement. Given that the STARS Alliance is to be a support entity for the Joint Utilities and not a for-profit affiliate at the holding company level, exemption from specific ATRs is appropriate.

**4.1.5. Sharing of Plant, Facilities, Equipment or Costs, Personnel, and Joint Purchases (Rules V.C. through V.E.)**

Rule V.C. precludes a utility from sharing office space and equipment, and information systems with an affiliate. Rule V.D. prohibits the joint purchase of goods and services associated with the traditional utility merchant function. Rule V.E. permits a utility to share personnel with its affiliates as long as the "shared support [is] priced, reported and conducted in accordance with the Separation and Information standards as well as other applicable Commission pricing and reporting requirements."

We agree that without exemption from these Rules, the STARS Alliance could not function as envisioned or achieve its objectives. As indicated previously, the STARS Alliance envisions the sharing of personnel, parts, equipment, tools, and expertise among its members.

An employee of a STARS Alliance member may be "loaned" to one of the Joint Utilities. To the extent that such an employee is considered to be a staff of the STARS Alliance, the Joint Utilities will likely need to provide this employee office space, equipment, etc. Also, the pricing of the loaned employee (hourly rate, overtime rate, and *per diem* rate) will be determined based upon a mutual agreement between the affected STARS Alliance members. In addition, many of the services that the STARS Alliance members will be sharing go beyond the types of shared support allowed in Rule V.E. and may include engineering and system operations as they relate to nuclear power plant operations.

The STARS Alliance envisions the joint procurement of goods and services to replicate the same economies of scale enjoyed by large fleet nuclear utilities with operating reactors at multiple sites. Unless exempted, the envisioned joint

procurements associated with the utility merchant function would be prohibited by Rule V.D. Such joint procurement of goods and services should result in lower costs to customers to the extent the Joint Utilities will be able to replicate the economies of scale enjoyed by larger fleet nuclear utilities. Since 100% of the net cost savings generated by the STARS Alliance for the Joint Utilities will flow to their respective customers, any monetary savings achieved as a result of the Joint Utilities' participation in the STARS Alliance will benefit retail customers.

**4.1.6. Corporate Identification and Advertising  
(Rule V.F.)**

Rule V.F. sets forth various requirements to eliminate customer confusion regarding the utility and its affiliates. While the STARS Alliance will not be marketing its services to retail customers or companies beyond its members, exemption from Rule V.F. will help minimize STARS Alliances compliance costs. For example, Rule V.F.1. requires that a disclaimer be used if an affiliate uses the utility's name or logo in materials that it distributes within California. There may be circumstances where STARS Alliance identifies its member companies in materials that are distributed within California. Without an exemption from Rule V.F., the STARS Alliance will need to make sure that it complies with the disclaimer requirements. Because the STARS Alliance will not be selling or offering its services beyond its members, there is no need to worry about customers being potentially confused on the relationship between STARS Alliance and the Joint Utilities.

**4.1.7. Proscription against Joint Employees and  
Officers (Rule V.G.)**

Rule V.G. provides that "a utility and its affiliates shall not jointly employ the same employees." This Rule prohibiting joint employees also applies to corporate officers except in certain limited circumstances. For the reasons

discussed above, the Joint Utilities requests an exemption from this Rule to enable the Joint Utilities' employees to work temporarily or on an on-going basis for the STARS Alliance. One of the primary objectives of the STARS Alliance is the sharing of employees on a temporary basis. Without an exemption from Rule V.G., the Joint Utilities will not be able to reciprocate in kind when other members lend them employees.

Without an exemption to this rule, the Joint Utilities would likely not be able to participate in the STARS Alliance as equity owners. Rule V.G. does not restrict the Joint Utilities from benefiting from the expertise of employees from other STARS Alliance members who are loaned to the Joint Utilities. However, if the Joint Utilities cannot reciprocate and share their employees and their expertise with other STARS Alliance members, the fundamental purpose of an "alliance" will not be met.

Employees or officers of the Joint Utilities may be asked to be officers of STARS Alliance to provide governance of the LLC. Without an exemption from Rule V.G., officers of the Joint Utilities would be prohibited from being officers of STARS Alliance. In addition, limiting employees' time working for STARS Alliance to no more than 30% of their chargeable time in a calendar year as set forth in Rule V.G.2.e, may also diminish the benefits of the STARS Alliance. Given the reciprocal sharing of employees and the pricing for such sharing, the Joint Utilities' customers would benefit from the mutual sharing of employees between STARS Alliance members.

**4.1.8. Pricing of Services between Utilities and STARS Alliance (Rule V.R.5. through V.R.6.)**

Rule V.H.5. requires that the transfer of services from the utility to the affiliate be priced at "fully loaded cost plus 5% of direct labor costs." Rule V.H.6.

requires that transfers of services from the affiliate to a utility be priced at the "lower of fully loaded cost or fair market value." In both of these cases, the Joint Utilities seek an exemption because they believe that any such transfer (either from the utility to STARS Alliance or STARS Alliance to the utility) should be "at cost" and not at "[f]ully loaded cost" (Section Rule V.H.6.) or "[f]ully loaded cost plus 5% of direct labor cost." Also, the pricing of the loaned employee (hourly rate, overtime rate, and per diem rate) will be determined based upon a mutual agreement between the affected STARS Alliance members. Finally, given the reciprocal nature of the sharing of ideas and employees among the STARS Alliance members, their customers should not be harmed by granting an exemption from Rules V.H.5. and V.H.6. The Joint Utilities expect that they will be both providing and receiving resources from the STARS Alliance or its members.

#### **4.2. Conditions on Approval of the Application**

We conclude that the conditions adopted in D.05-09-006, as summarized previously, provide an appropriate framework for conditions applied in approving the Joint Utilities' application here. These conditions will provide assurance that any savings in costs of service resulting from the Joint Utilities' participation in the STARS Alliance are accurately tracked and reported in the ERRRA proceedings. In addition, the adopted conditions will provide for customers to receive all of these cost savings through reductions in their rates.

In their application, the Joint Utilities included, as Appendix A, a proposed template for reporting cost savings associated with STARS Alliance activities based upon a format approved in D.05-09-006. In its protest to the application, DRA had recommended that the Joint Utilities expand and improve the reporting template as originally submitted. On February 17, 2012, the

Joint Utilities submitted a revision to their reporting template. The Joint Utilities represented that DRA agreed that the revised template satisfies DRA's concerns, and is flexible enough to allow for adjustments in the future as the Commission deems necessary.

We agree with parties' consensus that the amended version of the reporting template, as set forth in Appendix A of the amended application, provides a suitable basis for reporting and tracking cost savings in connection with the STARS Alliance.

DRA, in its protest, also initially suggested that the applicants' GRC filings may be the best proceeding to incorporate the reporting requirements associated with nuclear operation and maintenance cost savings impacts of STARS Alliance activities. The Joint Utilities, however, argue that the ERRA proceeding is the more appropriate place to submit reports on STARS Alliance activities for Commission review. The information provided in GRC applications generally relate to costs forecast for a future test year.

We agree with the Joint Utilities. The STARS Alliance cost savings report will provide a retrospective estimate of costs that were avoided as a result of STARS Alliance activities. Such retrospective review is typically performed in annual ERRA filings.

We thus adopt the following requirements that the Joint Utilities must meet as conditions of approval of the limited exemptions from the ATRs, as requested. These adopted conditions are as follows:

- The Joint Utilities shall report in their respective annual ERRA applications the respective activities and operating costs associated with the interaction between them and the STARS Alliance. The reporting form shall follow the format set forth in Appendix A of this decision;

- The Joint Utilities' respective customers shall receive 100% of any net cost savings generated by the STARS Alliance for the Joint Utilities;
- The Joint Utilities' respective customers shall receive the Joint Utilities' share of any net proceeds on the sale or dissolution of the STARS Alliance, except to the extent that the Joint Utilities had infused capital for which they had not sought recovery (if any);
- Upon issuance by the DOJ of its Business Review Letter, the Joint Utilities shall provide the Commission a copy of any anti-trust safe harbor ruling for the STARS Alliance; and
- Using the reporting form in Appendix A of the this decision, the Joint Utilities shall include information on any activities undertaken outside the scope of the STARS Alliance's general purposes so that the Commission can monitor the full impact on customers of the Joint Utilities' participation in the STARS Alliance.

#### **5. Waiver of Comment Period**

Pursuant to Rule 14.6(c)(2) of the State of California Public Utilities Commission Rules of Practice and Procedure, since the ALJ's proposed decision in this uncontested matter grants the relief requested, the Commission waives the period for public review and comments on the proposed decision.

#### **6. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The Commission adopted ATRs, the latest version of which are set forth in D.06-12-029.
2. The Joint Applicants, together with five other nuclear power plant operators, plan to establish an LLC entity named the STARS Alliance, constituting a new affiliate for PG&E and SCE.
3. The Joint Utilities are currently members of the USA, an electric operative engaged in many of the same activities contemplated by the STARS Alliance, including the sharing of resources, the joint procuring of goods and services, and the consolidating of internal functions.
4. The current USA does not allow the STARS Alliance leadership to drive STARS Alliance-specific performance improvements, or to optimize coordination efforts among the seven STARS Alliance members.
5. The stated functions for the STARS Alliance include sharing existing resources, jointly procuring selected goods and services to achieve economies of scales, and coordinating joint planning and operational activities.
6. The STARS Alliance stated objective is to increase efficiency and reduce costs in a manner that improves the operational and organizational effectiveness of its members' nuclear units.
7. Equity members are needed for the LLC to secure clearance from the Antitrust Division of the DOJ that the activities of the STARS Alliance are not anti-competitive.
8. The STARS Alliance would be an affiliate subject to the ATRs under D.06-12-029 since each of the Joint Utilities' ownership interest in the STARS Alliance is expected to exceed 5%.

9. Without an exemption from the ATRs, the Joint Utilities will not be able to engage in many of the transactions contemplated under the STARS Alliance including the sharing of employees, best practices and other information and equipment under mutually beneficial terms for the STARS Alliance members.

10. Under Rules III.A.1. and 2., a utility must not represent, as a result of an affiliation, that its affiliates or customers of affiliates will receive different treatment by the utility than that provided to other, unaffiliated companies. Likewise, the utility must not provide its affiliates any preference over non-affiliated suppliers or their customers in the provision of utility-provided services.

11. Without an exemption from Rules III.A.1. and 2., the Joint Utilities will not be able to engage in many of the transactions contemplated under the STARS Alliance including the sharing of employees, best practices and other information and equipment under mutually beneficial terms for the STARS Alliance members.

12. Given the unique composition of the STARS Alliance's members and because the STARS Alliance does not intend to be a for-profit enterprise, the reciprocal sharing of supply, capacity, services, or information would be unlikely to be beneficial if undertaken with entities outside of the Alliance.

13. The restrictions imposed by Rules III.E., IV.B., and IV.D. would significantly reduce, if not eliminate, the benefits Joint Utilities' customers may receive from the STARS Alliance.

14. To the extent that Rule IV.B. would require the Joint utilities to keep non-public information provided to the STARS Alliance open to public inspection, the result would be problematic and contrary to idea that non-public

information should be protected and that customers may be harmed by the release of such information.

15. With respect to Rule IV.D., the terms and conditions of the Joint Utilities' release of suppliers' non-public information to the STARS Alliance will vary and may or may not require an exemption.

16. Rule V.C. precludes a utility from sharing office space and equipment, and information systems with an affiliate. Rule V.D. prohibits the joint purchase of goods and services associated with the traditional utility merchant function. Rule V.E. permits a utility to share personnel with its affiliates as long as the "shared support [is] priced, reported and conducted in accordance with the Separation and Information standards . . . as well as other applicable Commission pricing and reporting requirements."

17. Without exemption from Rules V.C. and V.E., the STARS Alliance could not function as envisioned or achieve its objectives regarding the sharing of personnel, parts, equipment, tools, and expertise among its members.

18. The STARS Alliance envisions the joint procurement of goods and services to replicate the same economies of scale enjoyed by large fleet nuclear utilities with operating reactors at multiple sites. Unless exempted from Rule V.D., such joint procurement would not be permitted

19. While the STARS Alliance will not be marketing its services to retail customers or companies beyond its members, exemption from Rule V.F. will help minimize STARS Alliance compliance costs. Rule V.F. prescribes requirements to eliminate customer confusion regarding the corporate identification and advertising.

20. Without an exemption from Rule V.G., officers of the Joint Utilities would be prohibited from being officers of STARS Alliance.

21. Limiting employees' time working for STARS Alliance to no more than 30% of their chargeable time in a calendar year as set forth in Rule V.G.2.e, could diminish the benefits of the STARS Alliance.

22. The Joint Applicants have agreed, upon approval of their application, to comply with the conditions set forth in their application and set forth in Ordering Paragraph 2 of this decision.

23. The ERRA proceeding is the appropriate forum to submit the report on STARS Alliance activities for Commission review.

24. The reporting template set forth in Appendix A of this decision, reflecting the amended proposed template proposed in the application, provides a reasonable format for reporting and tracking savings relating to the STARS Alliance activities.

### **Conclusions of Law**

1. The Joint Application should be granted providing an order exempting the Joint Utilities from the ATRs as set forth in the Ordering Paragraphs 2 and 3 below.

2. The ATRs set forth in D.06-12-029 govern the relationship between Commission-jurisdictional energy utilities and their affiliates, and are designed to ensure that key utility and holding company officers understand their obligations to ratepayers, to provide greater security against the sharing within the corporate family, through improper conduits, of competitively-significant, confidential information, and to ensure a utility's financial integrity is protected from the riskier market ventures of its unregulated affiliates and holding company parent.

3. Granting the limited exemptions from the ATRs in accordance with the Ordering Paragraphs below will not compromise the protections provided to ratepayers under the existing rules.

4. The limited exemptions from ATRs granted below should be conditioned on compliance with the requirements set forth in Ordering Paragraph 3 of this decision. These conditions are necessary to provide assurance that customers receive all cost savings resulting from the activities of the Joint Utilities in connection with their participation and ownership interests in the STARS Alliance, LLC.

5. Potentially interested parties in this application have received reasonable notice and opportunity to participate or to be heard.

6. No evidentiary hearings are necessary, and the written record provides a sufficient basis to resolve this application.

7. Because the Joint Utilities have addressed DRA's Concerns, this application is now unopposed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Joint Application 11-11-019 is hereby granted in accordance with the conditions specified in Ordering Paragraphs 2 and 3 below.

2. The Joint Applicants, Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) are hereby granted a limited exemption from the Affiliate Transaction Rules as set forth in Decision 06-12-029, to the limited extent specified as follows:

- a. Rule III.A., to the extent that the services provided by SCE or PG&E to the STARS Alliance are considered preferential treatment
- b. Rules III.B.2. and III.B.6., to the extent they limit or condition the information, supplies, and services that SCE or PG&E may make available to the STARS Alliance;
- c. Rules III.E., IV.B., and IV.D., to the extent they further restrict or condition information sharing between SCE or PG&E and the STARS Alliance;
- d. Rules V.C., V.D. and V.E., to the extent they restrict the sharing of plant, facilities, cost, equipment, personnel, and information as well as restrict joint purchases;
- e. Rule V.F., to the extent it restricts the STARS Alliance from referring to either SCE or PG&E in materials it distributes in California;
- f. Rule V.G., to the extent it restricts the sharing of employees; and
- g. Rule V.H.5. and V.H.6., to the extent they apply to the pricing of goods and services between SCE or PG&E and the STARS Alliance.

3. The limited exemptions from the Affiliate Transaction Rules specified in Ordering Paragraph 2 shall be effective only on the condition that Pacific Gas and Electric Company and Southern California Edison Company (the Joint Utilities) comply with the following conditions:

- a. The Joint Utilities shall report in their respective annual Energy Resource Recovery Account applications the respective activities and operating costs associated with the interaction between them and the STARS Alliance. The reporting shall follow the template format set forth in Appendix A of this decision;
- b. The Joint Utilities' respective customers shall receive 100% of any net cost savings generated by the STARS Alliance for the Joint Utilities;

- c. The Joint Utilities' respective customers shall receive the Joint Utilities' share of any net proceeds on the sale or dissolution of the STARS Alliance, except to the extent that the Joint Utilities had infused capital for which they had not sought recovery (if any);
  - d. Upon issuance by the U.S. Department of Justice of its Business Review Letter, the Joint Utilities shall provide the Commission a copy of any anti-trust safe harbor ruling for the STARS Alliance; and
  - e. Using the reporting form in Appendix A, the Joint Utilities shall include information on any activities undertaken outside the scope of the STARS Alliance's general purposes so that the Commission can monitor the full impact on customers of the Joint Utilities' participation in the STARS Alliance.
4. Application 11-11-019 is closed.

This order is effective today.

Dated May 10, 2012, at Fresno, California.

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

## **Appendix A**

**APPENDIX A**

**ANNUAL REPORT OF UTILITY ON THE ACTIVITIES OF  
STARS ALLIANCE, LLC  
RECORDED YEAR 20XX AND BUDGET YEAR 20XX**

(All Data in \$000s)

	Recorded Year 20XX	Budget Year 20XX
Total Common Costs (1)		
Labor, Benefits, & Bonus		
Contractor Support		
Vendor Services		
Travel Expenses		
Non-travel Meals		
Membership Dues		
Office Supplies & Expenses		
Building Lease/Utilities		
Communications		
Insurance		
Office Furniture & Equip.		
Computer Equipment		
Total STARS Alliance		
Utility Share (%)		
Utility Share (\$)		
Project Costs (2)		
License Renewal		
Risk Management		
Utility % (3)		
Utility \$ (3)		
Total Utility Share		

(1) Currently expensed on STARS Alliance books.

(2) Large common projects tracked on STARS Alliance books.

(3) Reflects composite participation in one or more projects. Allocations may be estimated if final participation in a special project is subject to change.

Allocations may reflect participation of non-members.

**UTILITY SAVINGS / AVOIDED COSTS BY STARS TEAM / PROJECT**

(All Data in \$000s)

<b>Team/Project (1)</b>	<b>Estimated Savings /Avoided Costs</b>
Plant Aging Management	
Regulatory Affairs Center of Business	
Tools & Equipment Sharing	
Supply Chain	
Labor Sharing	
Cyber Security	
Total Estimated Savings / Avoided Costs	

Teams/Projects are identified as examples only and may change annually based upon the needs of the Utility and STARS Alliance.

**(END OF APPENDIX A)**