

Decision 14-08-043 August 28, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Registration of Third Party Natural Gas Procurement Service Providers, Known as "Core Transport Agents," pursuant to Public Utilities Code Sections 980-989.5 to Regulate non-rate matters, including Registration Standards, Complaint Resolution Practices, and Minimum Standards of Consumer Protection.

Rulemaking 14-03-002
(Filed March 13, 2014)

**DECISION ADOPTING REGISTRATION
STANDARDS FOR CORE TRANSPORT AGENTS**

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DECISION ADOPTING REGISTRATION STANDARDS FOR CORE TRANSPORT AGENTS

1. Summary

In this decision, we adopt registration standards for Core Transport Agents (CTAs) who supply residential and small commercial end-use customers (otherwise referred to as “core customers”) with natural gas.¹ With the passage of Senate Bill 656 (Stats. 2013, Ch. 604), Commission jurisdiction over CTAs is now set forth in Public Utilities Code §§ 980 through 989.5.²

Today’s decision adopts standards of financial viability and technical and operational ability for use in registering CTAs with the Commission. These new requirements are intended to ensure that core customers who purchase natural gas directly from third-party suppliers are protected from fraud and abuse.

In order to protect consumers from unfair or abusive marketing practices before permanent standards are approved, this decision adopts interim standards that all CTAs must meet. All entities that offer natural gas service to residential and small commercial customers within the service territory of a gas Corporation in California shall be required to register with the Commission within 90 days of the effective date of this decision.

The next phase of this proceeding will address, among other things, the notice requirements for CTAs pursuant to Section 986, complaint resolution, consumer information processes and opt-out list requirements consistent with Sections 983, 984, and 987, the security deposit/bond requirements set forth in

¹ Pub. Util. Code Section 980(a) provides that the term “Core gas customer” shall have the “same meaning as that specified in the tariff of the gas corporation whose territory the customer in question lies within.”

² All statutory references are to the Public Utilities Code unless otherwise stated.

Sections 981(a)(9) and 983.5(a), and the minimum service standards required by Section 985.

This proceeding remains open.

2. Background

Core Transport Agents (CTAs) are entities which procure natural gas on behalf of a group of customers, and then arrange for transportation of the gas by utilities and pipeline companies. Senate Bill (SB) 656, which became effective on January 1, 2014, established a regulatory framework for CTAs. Until SB 656 was signed, the Commission did not have jurisdiction over CTAs. CTAs were held to the standards of conduct set forth in the CTA's Service Agreement contracts with the utility.

Public Utilities Code Sections 981 (a)(9) and 981 (a)(10) require the Commission to publish proposed uniform standards of financial viability and technical and operational capability for public comment by June 30, 2014. On March 13, 2014, the Commission adopted an Order Instituting Rulemaking (OIR) (R.) 14-03-002, initiating this proceeding to implement SB 656. Due to the importance of the consumer protection rules and procedures we are considering, in order to meet the required timeline, the Commission included, proposed interim standards for proof of financial viability and proof of technical and operational ability for CTAs who plan to offer gas services to residential and small commercial customers in R.14-03-002 as well as a proposed registration form as Attachment B.

The OIR provided parties the opportunity to comment on the proposed rules and standards. Fourteen parties individually or jointly filed timely opening

comments to the ruling on April 18, 2014,³ and 10 parties filed a total of seven sets of timely reply comments on April 25, 2014.⁴

The Administrative Law Judge (ALJ) scheduled a workshop to be facilitated by the Commission's Energy Division on May 16, 2014. On May 23, 2014, the ALJ requested that the utilities provide additional information. The utilities responded to the ALJ's information request on May 30, 2014. Parties requested, and were granted permission to reply to the utilities' responses. Replies were filed by United Energy Trading (UET), Commerce Energy and Commercial Energy.

The OIR requested comment on three main topics: the proposed registration standards for CTAs; the proposed CTA registration application form; and other issues for consideration in the OIR. The OIR also acknowledged the time constraint imposed by the statute.

Today's decision is limited to adopting a registration form and establishing interim standards for financial, technical, and operational capability. These interim standards will be in effect until permanent standards are adopted. The

³ Ten sets of opening comments were filed by 14 parties: UET, Interstate Gas Supply (IGS), Commercial Energy, Commerce Energy, Shell, the School Project for Utility Rate Reduction (SPURR) and ABAG Publicly Owned Energy Resources (ABAG POWER) (filing jointly) the Center for Accessible Technology (CforAT), the Greenlining Institute (Greenlining) and The Utility Reform Network (TURN) and Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), San Diego Gas and Electric Company (SDG&E), and Southwest Gas (filing jointly and referred to herein as the "Joint Utilities" or "utilities").

⁴ Seven sets of reply comments were filed by ten parties: The Coalition of California Utility Employees, Commerce Energy, UET, IGS, Greenlining, TURN and the Joint Utilities.

record for this decision consists of written pleadings. No evidentiary hearings were held.

The next phase of the OIR will address, among other things, complaint resolution, minimum standards for consumer protections, the notice of terms and conditions, marketing practices, re-entry fee and the definition of involuntary return. The assigned Commissioner and assigned ALJ will set a prehearing conference to set a schedule and process for the next phase of the proceeding.

3. Core Transport Agent Registration Application Form

The first step in the Commission's regulation of CTAs is to register these entities. The OIR established that the Commission must propose uniform registration standards by June 30, 2014. Therefore, Attachment B to the OIR included a draft Core Transport Agent Registration Application Form for review and comment by the parties. Section 981 requires, as a precondition to registration, that the CTA registrant provide, under oath, declaration, or affidavit:

- (1) Legal name and any other names under which the core transport agent is doing business in California.
- (2) Current telephone number.
- (3) Current address.
- (4) Agent for service of process.
- (5) State and date of incorporation, if any.
- (6) Number for a customer contract representative, or other personnel for receiving customer inquiries.
- (7) Brief description of the nature of the service being provided.
- (8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner,

officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition a core transport agent shall furnish the commission with fingerprints for those owners, partners, officers and managers, of the core transport agent specified by any commission decision applicable to all core transport agents. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine a core transport agent's eligibility for registration. -

- (9) Proof of financial viability. The commission shall develop uniform standard for determining financial viability and shall publish those standards for public comment no later than June 30, 2014. In determining the financial viability of the core transport agent, the commission shall take into account the number of customers the potential registrant expects to serve, the number of therms of gas it expects to provide, and any other appropriate criteria to ensure that core gas customers have adequate recourse in the event of fraud or nonperformance.
- (10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than June 30, 2014.
- (11) A statement stating the following:
"Neither the applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) with more than 10 percent interest in the applicant, or anyone acting in a management capacity for

applicant has: (A) held one of those positions with a company that filed for bankruptcy, (B) been personally found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, (C) been convicted of a felony, (D) been (to his or her knowledge) the subject of a criminal referral by judge or public agency, (E) had a license of operating authority denied, suspended, or revoked, or limited in any jurisdiction, (F) personally entered into a settlement or held one of those positions with a company that has entered into a settlement, of criminal or civil claims involving violations of Chapter 4 (commencing with Section 17000) of Part 2 of, or Part 3 (commencing with Section 17500) of Division 7 of, the Business and Professions Code or any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, (G) be found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries, or (H) entered into any settlements or agreements, made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.”

The proposed Registration form included as Attachment B to the OIR was based on the Electric Service Provider (ESP) Registration Application Form adopted in Decision (D.) 03-12-015, revised to reflect the requirements of Sections 980-989.5.

The proposed Registration form is also revised to require proof of technical and operational ability as required in Section 981(a)(10), as well as proof of financial ability, including information about the relevant work experience of key personnel and of the other companies who may be performing metering or billing services on the CTA’s behalf.

In this decision, we adopt the proposed Registration form included as Attachment B to the OIR, as modified by the discussion and orders below. The revised Registration form is included in this decision as Appendix A.

Each CTA intending to provide core gas service to residential and small commercial customers shall submit a registration form to the Commission's Energy Division within 90 days of the effective date of today's decision. Instructions for completing the application are provided on the Registration form included in this decision as Appendix A.

Upon receipt of a CTA application, Energy Division staff shall have 45 days to review the application and approve it or recommend that the Executive Director deny the application as discussed below. If approved, the CTA will be entered into the Commission's database as a registered entity and the CTA will be provided a registration number. In addition, the Energy Division will notify the utility(s) for which the CTA provided a service agreement of the CTA's registration approval and number.

3.1. Denial, Suspension, and Revocation of Registration

3.1.1. Denial of Registration

Section 982(c)(1) provides that the Commission may deny an application for registration in accordance with subdivision (b) on the grounds that the core transport agent or any officer or director of the core transport agent has one or more of the following:

- (A) Been convicted of a crime as described in paragraph (8) of subdivision (a) of Section 981.
- (B) Failure to make a sufficient showing with respect to paragraphs (1) to (10) inclusive, of subdivision (a) of Section 981.

- (C) Knowingly made a false statement of fact in the application for registration.

However, Section 982 (c)(2) provides that the Commission may “deny registration pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties required to provide gas service to end use customers of gas or the false statement is material to the registration application.”

As noted above, the proposed Registration Form requires the registrant to disclose any criminal convictions having to do with consumer protection law or regulation within the 10 years immediately prior to registration, and any felony convictions of any kind, against the company or any of its officers or directors. Section 982(c) provides that the Commission may consider any such sanctions and may deny a CTA application for registration if the applicants or their officers or directors have any such criminal convictions or for failure to disclose them.

Section 982(b) contains fairly detailed procedures regarding the denial of an applicant’s request for a CTA registration number. Specifically, this section provides that a registration application will be deemed approved by the Energy Division and a registration number issued no later than 45 days after the required information has been submitted, unless there is evidence to support a finding that the “core transport agent has committed an act constituting grounds for denial of registration.”⁵ Upon such a finding by the Commission’s Executive Director, the applicant is to be notified in writing of the finding. Following this notification by the Executive Director, Section 982(b) then provides that the documents submitted by the applicant are to be filed as a formal application for

⁵ Section 982(a).

registration, and an expedited hearing is to be noticed, and a hearing is to be held within 30 days of the notification. Within 45 days after holding such a hearing, the Commission is required to issue a decision on the registration request based in the evidence presented at the hearing.

In order to verify the accuracy of information supplied by registrants, we require all CTAs to provide to the Commission a full set of fingerprints of their directors and officers. The fingerprints will be submitted to the Department of Justice for a state summary criminal history check, and to the Federal Bureau of Investigation for a national criminal history record check. Information provided pursuant to this requirement will be treated as highly confidential. The Commission's Executive Director shall develop internal safeguards to protect the confidential nature of this material and protect the individuals' privacy. This provision is waived for any individuals whose fingerprints are already on file at the Commission.

Greenlining suggests that the Commission narrowly tailor its consideration of any convictions or past actions to actions directly related to the business in which they wish to register, consistent with Section 982(c)(2), to avoid denying registration requests based on criminal convictions that are unrelated to the core transport agent business. Greenlining emphasizes that the Commission must use caution to avoid discrimination in issuing and denying registrations to CTA applicants. Greenling requests that the Commission note that while the Commission is not obligated to approve an application if mitigating information is provided, it may consider the mitigating information in the process of making its decision. Greenlining also recommends that the Commission develop a list of criminal convictions that the Commission has determined to negatively reflect on the qualifications, functions, or duties required to provide gas service to end use

customers of gas to provide potential registrants with advance knowledge of which criminal convictions may be problematic.

We order the Directors of the Energy Division and the Safety and Enforcement Division, the Executive Director and the Chief ALJ to develop the necessary procedures to implement Section 982 in a way that considers all information provided and ensures a fair and balanced result. To the extent possible, the procedures should be consistent with the procedures previously required by Section 394.1 concerning ESP registration.

3.1.3. Suspension and Revocation of Registration

Section 983.5 (a)(3) describes the procedures that apply to the suspension or revocation of a CTA's registration for conduct specified in 983.5(b).

Section 983.5 (a)(3) provides in pertinent part:

Upon a finding by the commission's executive director that there is evidence to support a finding that the core transport agent has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivisions (b), the commission shall notify the core transport agent in writing and notice an expedited hearing on the suspension or revocation of the core transport agent's registration to be held within 30 days of the notification to the core transport agent of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and conclusions of law relied upon."

The procedure contained in Section 983.5 (a)(3) is similar to the procedure for the denial of a CTA's registration as set forth in Section 982(c)(1). The procedure is also essentially the same as the procedures for denial and

suspension or revocation of an ESP's registration as set forth in Sections 394.25 (a) and 394.1(b) and adopted in D.98-03-072. As with the Commission's registration of ESPs, the Commission has developed internal processes to address the registration, denial, suspension or revocation of a CTA's registration.

We expect that the final procedures developed to implement Sections 983.5 (a)(3) and 982 (c)(1) for CTAs will be similar to those developed for the registration of ESPs. These procedures include coordination between the Energy Division and the Safety and Enforcement Division to gather the evidence upon which any finding would be based. Much of the work leading up to an Executive Director's finding will be left to the Energy and/or Safety and Enforcement Divisions. The Energy Division will be responsible for processing the registration applications, reviewing the applications for compliance, and recommending denial of registration as appropriate. The Safety and Enforcement Division, whose function is to protect consumers by ensuring that those companies subject to the Commission's jurisdiction are operating properly, will also gather evidence upon which any finding will be based, in coordination with the Energy Division and Consumer Services and Information Division, as necessary to obtain information. The Director of the Safety and Enforcement Division shall then recommend to the Executive Director whether a Section 983.5(a)(3) finding should be issued.

If the Executive Director believes that there is evidence to support a finding that the CTA has committed an act constituting grounds for suspension or revocation, the Executive Director shall notify the entity of the finding and of the expedited hearing. The Executive Director shall then cause the

Section 983.5.(a)(3) notice to be filed with the Commission's Docket Office as the initiating document to open a docket.

The Energy Division Director, the Safety and Enforcement Division Director, and the Chief ALJ shall develop the appropriate procedures as set forth in Section 983.5 (a)(3) and discussed above. The ALJ Division shall incorporate these procedures in our Rules of Practice and Procedure, as necessary.

Finally, if a CTA's registration is revoked, Section 981 (b) provides:

"Before reentering the market, a core transport agent whose registration has been revoked shall file a formal application with the commission that satisfies the requirements set forth in Section 982 and demonstrates the fitness and ability of the core transport agent to comply with all applicable rules of the commission."

Thus, if a CTA's registration is revoked by the Commission, the CTA must file an application with the Commission's Docket Office, which will be formally docketed as an application proceeding. The application must be approved in a Commission decision before the CTA's registration can be reinstated.

The determination of any necessary penalty, suspension or revocation of a CTA's registration would be on a case-by-case basis, based on the severity of the CTA violation, and would consider other options such as moratoriums on new signs ups as well as suspensions or revocations, as appropriate, consistent with Section 983.5(c).

As noted by the Joint Utilities, the Commission's authority to suspend or revoke a CTA's registration applies to the CTA regardless of whether the CTA has its own employees, or whether the CTA has third parties or independent agents performing marketing and sales activities and administering service agreements on the CTA's behalf.

3.1.2. Section 981(a)(11) Notice

As noted above, Section 981(a)(11) requires that, as a precondition to registration, the CTA shall provide, under oath, declaration, or affidavit, a statement stating the following:

“Neither the applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) with more than 10 percent interest in the applicant, or anyone acting in a management capacity for applicant has: (A) held one of those positions with a company that filed for bankruptcy, (B) been personally found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, (C) been convicted of a felony, (D) been (to his or her knowledge) the subject of a criminal referral by judge or public agency, (E) had a license of operating authority denied, suspended, or revoked, or limited in any jurisdiction, (F) personally entered into a settlement or held one of those positions with a company that has entered into a settlement, of criminal or civil claims involving violations of Chapter 4 (commencing with Section 17000) of Part 2 of, or Part 3 (commencing with Section 17500) of Division 7 of, the Business and Professions Code or any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, (G) be found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries, or (H) entered into any settlements or agreements, made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.”

The proposed Registration Form includes a notice that informs prospective CTAs of some of the requirements by which all registered CTAs must abide. The notice also includes a provision that the CTA must provide a signed statement per Section 981(a)(11). The proposed Registration Form requires that this statement be signed by the “highest ranking officer” of the CTAs.

Shell and other parties expressed concern that this requirement considers criminal history too broadly, and may disqualify CTA applicants over trivial and potentially decades-old offenses committed by some of their officers or management. Commenters also noted that requiring the highest ranking officer of the CTA to verify that all those “acting in a management capacity” for the CTA have never faced a very broad list of issues is inefficient and unworkable. Commerce Energy notes that the statement does not include a time frame, so if a manager or other names official at the CTA was “subject to a criminal referral by a judge or public agency,” even in his or her teenage years, or regarding an issue completely unrelated to the provision of natural gas service, the CTA would be unable to make the requisite verification and would be prohibited from registering. Commerce Energy recommends that the Commission add to the beginning of the statement, “Except as described in the Attachment,” to allow CTAs to explain if their officials deviate from any of the requirements.

We fully agree with and support the concept of protecting consumers by keeping bad actors out of the industry, at the same time, we note the requirements in Section 981(a)(11) are very broad. In particular, we note that many of the employees of a utility that filed bankruptcy, a utility that was subject to a finding of violation by the Commission, or a utility that entered into a settlement of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclosure, or misrepresentations to consumers or others could not verify that statement, nor could a CTA that hired a manager from such a utility for its own staff.

The Commission has discretion in applying the code and considering relevant information to ensure a fair and reasonable outcome. In that regard, we modify the requirement such that the application registration form only requires

the signature of an “officer” of the registrant, instead of the “highest ranking officer of the registrant” to provide more flexibility. We also modify the Registration Form to allow CTA registrants to include a statement providing additional information for the Commission to consider regarding any individuals for whom the CTA cannot verify the statement required by Section 981(a)(11).

3.1.4. Affiliate Information

The definition of “affiliate” provided in the “Notice” section of Attachment B is based upon the definition of an affiliate contained in the affiliate transaction, D.97-12-088. Section 11 of Attachment B to R.14-03-002 requires that if the type of ownership is a corporation, provide a listing of the name and address of all persons or entities that directly or indirectly own, control, or hold the power to vote ten percent or more of the outstanding voting securities of the registrant. In the alternative, attach any report required by the Securities and Exchange Commission which details such an interest. Section 12 of Attachment B to R.14-03-002 requires a CTA registrant to identify all of the affiliates the registrant owns, controls, or hold a five percent interest or more.

Shell objects to the requirement discussed on page 8 of the OIR and incorporated in Section 11, requiring corporate registrants to provide a listing of the name and address of all persons or entities that directly or indirectly own, control, or hold the power to vote ten percent or more of the outstanding voting securities of the registrant. Shell suggests that while the Section 12 requirement is consistent with the corresponding section of the ESP registration form, Section 11 is a new and overly burdensome requirement. However, we note that Section 11 and Section 12 of Attachment B to R.14-03-002 are both identical to the requirements approved in D.03-12-015 for ESP registrants. CTA registrants are

also required to disclose all affiliated entities. Both sections suggest that the applicant, may, in lieu of creating a new report, attach any report required by the Securities and Exchange Commission which details such an interest. As we noted in the OIR, we find that disclosure of ownership and affiliates will enhance the Commission's ability to determine technical and financial viability, monitor concentration of market power, and avoid entry into the market of suspect entities or persons.

4. Financial Viability and Technical, and Operational Ability

4.1. Financial Viability

Sections 981 (a)(9) and 981 (a)(10) provide that the Commission shall develop and adopt uniform standards of financial viability and technical and operational capability. SB 656 borrows heavily from language from Sections 394-396.5, which set forth similar standards of financial viability and technical and operational ability for ESPs subject the Commission's jurisdiction. These code sections were added by Assembly Bill (AB) 1890 (Stats. 1996, ch. 854) and amended by SB 477 (Stats. 1997, ch. 275), and were designed to establish consumer protections for customers of ESPs. As with the proposed registration form, in developing our proposed standards, we drew upon the consumer protections developed for customers of ESPs.

In accordance with Sections 981(a)(9) and (10), Attachment B to R.14-03-002 set forth the following proposed standards for proof of financial viability and proof of technical and operational ability for those CTAs who plan to offer gas services to residential and small commercial customers.

- (1) Before a CTA may apply for a CTA registration number CTAs are required to provide the Commission's Energy Division with a signed copy of their Utility Distribution Company (UDC)-CTA service agreements for each UDC in

whose service territory the CTA plans to do business, as well as a signed copy of their approved UDC credit application.

- (2) Prior to signing up and initiating service to any residential or small commercial customer, a CTA will be required to post with the Commission a minimum cash security deposit (cashier's check), financial guarantee bond, or open a customer trust account equal to the amount required to cover the UDC's administrative costs of returning CTA customers to utility service to ensure that residential and small commercial customers have adequate recourse in the event of the CTA's fraud or non-performance. The deposit, bond or trust account shall be established when the Section 986 notice is first tendered to the Energy Division and posted with the Commission.
- (3) The CTA registration application form shall contain a section which requests that applicant to name the key technical and operational personnel, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the CTA will be doing the metering, or billing on behalf of the CTA, the names of the companies providing those services and their experience shall be disclosed as well.
- (4) Each registered CTA is required to submit with its registration application form a copy of its Section 986 notice to the Commission's Energy Division.

Thus, in order to demonstrate financial viability, the CTAs would have to satisfy the creditworthiness standard of each of relevant UDC by complying with the requirements of the UDC's credit application contained in the UDC's

Commission-approved tariffs.⁶ In addition, in order to provide consumers with sufficient protection from fraud and abuse by ensuring adequate recourse is available, the CTA would be required to post a security deposit or bond of a minimum amount.

Each of the proposed financial viability standards are discussed in turn below.

4.1.1. Creditworthiness

The Joint Utilities support the proposal to require CTAs to provide a signed copy of the UDC-CTA service agreement and a signed copy of their approved UDC credit application. Each of the utilities has its own credit requirements and application, approval of which “confirms that the CTA has met the utility’s financial requirements.” The Joint Utilities state that the credit applications generally request:

- (1) CPA audited financial reports from a CTA and/or its parent guarantors during the last three years, or an alternative acceptable to the UDC;
- (2) Year-to-Date financial statements; and
- (3) Corporate affiliation information.

The Joint Utilities explain that if a CTA exhibits financial strength at investment-grade equivalent or above, the CTA will be granted an unsecured credit line. If not, the CTA would need to post collateral to secure its credit position. The Joint Utilities also utilize major credit rating agencies, such as Standard & Poor’s, Moody’s, Fitch or Dun and Bradstreet to assess a company’s

⁶ The individual credit evaluation processes are described in Pacific Gas and Electric Gas’ (PG&E) Rule 23 and Gas Rule 25; San Diego Gas & Electric (SDG&E) and Southern California Gas’ (SoCal Gas) Gas Rule 32; and, Southwest Gas’ Gas Rule 21.

credit quality. The Joint Utilities do not believe there is any need to standardize the CTA credit application form across the utilities.

Shell, UET, and Commercial Energy all recommend that existing CTAs who have already executed UDC-CTA service agreements should be seen to have demonstrated financial viability as well as technical operational capacity. TURN and other parties suggest that standardizing the credit application will ensure fairness. TURN recommends that the Commission consider this issue further in the next phase through a workshop process.

We agree with the Joint Utilities and other parties that requiring a CTA to have a signed UDC-CTA service agreement and an approved UDC credit application before it can file an application to register to serve residential and small commercial customers will reasonably screen out potential entities who may lack the financial resources to successfully operate as a CTA.

4.1.2. Security Deposit

As noted above, consistent with Section 981 (9), our proposed registration standards would require a CTA to post with the Commission a minimum cash security deposit or financial guarantee bond equal to the amount required to cover the UDC's administrative costs of returning CTA customers to utility service or the amount required to ensure that core customers have adequate recourse in the event of CTA fraud or nonperformance, whichever is greater, prior to signing up and initiating service to any residential or small commercial customer. In addition, Section 983.5(d) provides that, as a condition of its registration, a core transport agent shall post a bond or demonstrate insurance sufficient to cover any reentry fees. The OIR indicated that the methodology for calculating the appropriate amount for the security deposit or bond would be determined over the course of the proceeding. In comments, parties disagree as

to whether these requirements suggest that the Legislature intended that a mechanism be developed to ensure that customers have some ability to recover financial losses should a CTA defraud customers or go out of business.

The Commission has chosen to implement the nearly identical ESP statutory requirement by requiring ESPs to post a minimum bond of \$25,000,⁷ with bond sizes increasing in increments of \$25,000 based on the number of customers served. TURN, Commerce Energy, and other parties support adopting a similar approach for CTAs, noting that, as the Commission explained in D.99-05-034, the purpose of the increasing security deposit based on CTA customer number is that “as the number of customers grow, customers will have adequate recourse in the event of fraud or nonperformance.” Commerce Energy also notes that, to the extent reasonable and practical, the Commission should apply similar rules for ESPs and CTAs, given that some of the CTAs also operate as ESPs.

Other parties express concern regarding whether and how the proposed security deposit relates to the credit provisions in the utilities’ tariffs, the reentry fee, and “the amount required to ensure that core customers have adequate recourse in the event of fraud or nonperformance.” Shell argues that a customer’s recourse will be defined in the agreement between the CTA and the customer, the core aggregation tariffs, and general contract law and that no additional security is required other than that posted with the utilities under the terms of their UDC-CTA agreements. IGS suggests that the Commission should

⁷ D.99-05-034 at 26.

not adopt a uniform security deposit or bond formula for all CTAs and should instead examine each application on a case-by-case basis.

The Joint Utilities maintain that the amount of the security deposit or bond must provide sufficient funds for the CTA customers to seek recourse for financial damages they have incurred, the administrative costs of returning CTA customers, and the recovery of any incremental gas procurement costs due to the involuntary return of the CTA customers to utility bundled service. The Joint Utilities argue that the UDC-CTA service agreement and CTA credit application are intended to address the creditworthiness of the CTA and ensure that the CTA has sufficient funds to pay any amounts that might be owed to the utility in the event of default. The Joint Utilities argue that CTAs do not currently post any financial security with the utility to address reentry fees or cover the incremental procurement costs in the event of an unforeseen involuntary return of CTA customers. In order to calculate the appropriate security deposit, the utilities seek a definition of “involuntary return” of customers and a description of costs that would occur as a result of any involuntary return. The utilities recommend that the Commission require CTAs to post a security deposit or bond comprised of two components: (1) a re-entry fee to cover the administrative costs of \$5 per CTA customer meter, and (2) incremental gas procurement costs proportionate to the loads of the customers served by a CTA.

UET and other parties maintain that the Commission must first determine whether a reentry fee is necessary to avoid imposing costs on other customers of the gas corporation, and that any proposed fee or category of costs must be costs that are not already captured in the utilities’ rates. UET notes that the utilities have multiple forms of recourse available to reduce any potential costs of involuntary return, including seizing gas that CTAs must maintain in storage,

drawing on the credit line that must be established to receive allocated transportation capacity, or holding in escrow the collections of any outstanding customer payments. Shell and UET argues that any additional credit assurance would be duplicative.

We agree with the Joint Utilities that a security deposit posted with the UDC sufficiently protects the UDC, but does not necessarily provide customers with recourse should the CTA fail to perform unless the Commission has access to the credit facility posted by the CTA.

We find that requiring a security deposit would further demonstrate proof that the CTA is financially viable, and would ensure that adequate recourse will be available to residential and small commercial customers in the event of fraud or abuse, consistent with Section 981(9). However, the record does not provide sufficient evidence to support a calculation of the appropriate security deposit or bond at this time.

Therefore, in this decision we will adopt a requirement that CTAs provide a security deposit or performance bond, consistent with Section 981(9) and 983.5(d). However, since the record does not contain sufficient evidence to determine the appropriate amount of the security deposit or bond at this point, the amount of the security deposit contemplated by Sections 981(9) and 983.5(d), will be determined in the next phase of this proceeding, along with the issues concerning administrative costs, involuntary return and appropriate rate schedules for returning customers.

We will not suspend the registration process pending the determination of the appropriate amount of the security deposit or bond. CTAs that provide evidence of satisfactory compliance with the UDC-CTA service agreement and CTA credit application with their registration applications will be permitted to

continue operation or to begin operation pending the Commission's final decision of the necessary security deposit. During this interim period, satisfactory compliance with the UDC-CTA service agreement and CTA credit application will provide sufficient assurance of financial viability. Existing CTAs may file registration applications and continue operations pending satisfactory approval by the Commission. Similarly, new CTA applicants may file registration applications and begin service upon satisfactory approval of those applications by the Commission.

4.1.3. Section 986 Notice To Customers

The proposed Registration Form requires CTAs to include a draft "Section 986 Notice" to provide core gas customers with an explanation of the price, terms, and conditions of service when it submits an application for registration. The Commission is required to review the draft notice to ensure that the notice is understandable. Section 986(b) permits the Commission to assist in developing the notice.

Commerce cautions the Commission not to create a "chicken-and-egg" situation for currently registered CTAs, whereby they are unable to submit their registration forms because they have not had time to work with Energy Division to create a standard notice to customers. Commerce suggests that the Commission consider allowing existing CTAs to submit their registration applications first, and then provide time for the affected CTAs to work with Energy Division to create the standard notice. For new CTAs entering the market, Commerce agrees with the approach currently in the proposed Registration Form, which mirrors the practice used for ESPs, and requires that prior to signing up and initiating a direct access service request on behalf of any residential or small commercial customer, all registered CTAs serving such

customers are required to provide the potential customer with a written notice which describes the price, terms and conditions of service.

TURN also suggests that CTAs be required to provide customers a notice, similar to the Section 394.5 Notice for ESPs, prior to commencement of service. TURN recommends that the required notice include: a statement that it is a registered CTA and the registration number; a statement that the CTA's price does not include the charges that the customer is obligated to pay the existing utility company; a statement that the pricing could be more or less than the utility for any given month; the contractual period; a statement that the customer has the right to terminate the agreement earlier than the contractual arrangement and a statement of the early termination fee; a statement that the customer has the right to cancel the contract without fee or penalty until midnight of the third business day after the day the customer signed the contract; and a statement of all other prices, terms, and conditions.

The determination of the uniform format and information required in the Section 986 notice will be addressed in the next phase of this proceeding. As an interim measure, until the final notice is approved by the Commission, CTAs must provide Energy Division with a draft notice to customers describing the price, terms and conditions of service consistent with the proposed Registration Form. Energy Division will review and approve the draft notice for interim use.

Following a decision adopting the final format and data for the notice required by Section 986(a), CTAs shall submit an updated notice to the Energy Division. We agree with Commerce that existing CTAs who are otherwise in compliance with the registration standards should not be expected to cease operation pending Energy Division review of the Section 986 (a) notice, but shall

be required to submit the draft notice with their registration application and promptly submit any revised notice as required.

In addition, Section 984.5(a) requires, among other things, the Commission to compile and regularly update the names and contact numbers of a registered CTA, information to assist customers in making service choices, and the number of customer complaints against specific providers in relation to the number of customers served by those providers and the disposition of those complaints. This section also requires registered entities to file with the Commission information describing the terms and conditions of any standard service plan made available to core customers. The statute also requires the Commission to adopt a standard format for this filing.

Sections 984.5(b) and (c) further require the Commission to “issue public alerts and companies attempting to provide core transport service...in an authorized or fraudulent manner,” and to compile and post on its website easily understandable informational guides or tools to help customers understand core transport service options.

Therefore, in addition to providing a draft Section 986 notice with the registration application, a CTA must also include information regarding the terms and conditions of any standards service plans made available to residential and small commercial customers.

4.1.4. “Grandfathering” or Existing CTAs

Commerce Energy requests that the Commission develop a “fast track” for registered CTAs in good standing and with a proven track record of operation in California.⁸ Commerce notes that CTAs already serve hundreds of thousands of gas consumers in California, have approved credit with the utilities, and provide required collateral to each of the UDCs under those agreements. Commerce requests that the Commission ensure that existing CTAs are not required to provide duplicative collateral to the utilities as a result of the new rules.

Commerce notes that many customers “could have their service unreasonable disrupted unless the Commission adopts a rational and fair registration process.”

TURN and other parties object to this proposal, explaining that all CTAs should be subject to the same requirements, regardless of the date the CTA began operation. We agree. This OIR stems, at least in part, from the significant increase in complaints received regarding the behavior of existing CTAs, therefore we will require all CTAs to comply with the same registration process. This process should not result in duplicative collateral requirements. To the extent that CTA applicants have already complied with a UDC’s collateral requirements, they should not have to reapply or submit duplicate collateral.

4.2. Technical and Operational Ability

To a large extent, a CTA’s technical and operational ability will be demonstrated through the CTA-UDC service agreement. Requiring a signed UDC-CTA service agreement before it can file an application to register as a CTA will screen out entities that lack the necessary technical and operational skills to successfully operate as a CTA. Additional proof of technical and operational

⁸ Commerce Energy comments at 3.

ability will be demonstrated through the requirement to identify the names and experience of the key personnel involved in the technical and operational aspects of the business. Lines 16 (a) and 16 (b) of the Proposed Core Transport Registration Application Form require the CTA registrant to provide the names and titles of the key personnel involved in the technical and operational aspects of the business as well as a description of each key person's experience in the sale, procurement and billing of natural gas or similar products, including the time period of such experience. Although neither of these requirements is a guarantee of a CTA's capability, each contains provisions which require a CTA to have some level of technical and operational experience and proficiency. In this regard, the Commission does not adopt any additional technical and operational requirements at this time.

5. Additional Proposals

5.1. Section 989.1 Cancellation Rights

There is some lack of clarity and concern among parties regarding the provision in Sections 989.1 which states that "In addition to any other right to revoke an offer, core gas customers of gas service, have the right to cancel a contract core gas service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase." This language replicates the cancellation period provided to customers of ESPs in Section 395(a).

In their response to the OIR, Commercial Energy proposes that CTA customers be allowed the choice to waive their Section 989.1 cancellation rights. Commercial notes that natural gas is purchased differently from electricity and is often the subject of hedging. They contend that the three-day cancellation right will "make it impossible to hedge a gas contract offered to a CTA customer in a

timely manner due to the daily volatility in the natural gas commodity and futures markets.” Commercial further argues that this would result in higher priced contracts, and is unnecessary for business customers who understand the gas market. Therefore, Commercial suggests, the customer should be allowed to sign a separate waiver of the cancellation right along with their contract for CTA service.

The Joint Utilities, Greenlining, and TURN favor expanding the time frame during which a customer can cancel their CTA agreement. In their Response to the OIR, the Joint Utilities propose that CTA customers should be allowed to terminate their contract through verbal or written communication up until thirty days after signing. In their reply comments, Greenlining sides with the Joint Utilities. Greenlining notes that customers are unlikely to be able to understand the price of service after only three days. TURN also sides with the Utilities, stating in their Reply Comments that the Commission should set the number of cancellation days at no less than thirty. TURN cites aggressive marketing tactics and the lack of informative material provided by CTAs as reasons for expanding the cancellation period. In reply to Commercial’s suggestion of a waiver, the Joint Utilities suggest that this would allow aggressive marketers to pressure customers into giving up their cancellation rights.

The Issue of Section 989.1 Cancellation Rights can be resolved by creating separate cancellation right rules for residential and small commercial core gas customers. During the workshop held on May 16th, 2014, it became clear that Commercial Energy serves primarily commercial customers. In addition, Commercial Energy was the only company which expressed the desire to offer service without a cancellation right. Other CTAs present were not concerned

with the three day cancellation right, and even advocated expanding the cancellation period past thirty days.

Historically, the Commission has taken the view that large commercial customers are more informed on energy procurement issues than small commercial and residential customers. This was displayed on multiple occasions over the course of the ESP proceeding, R.07-05-024. In D.11-12-018 of that proceeding, the Commission found that “Residential and small commercial customers subscribing to DA, however, may not possess the same degree of business sophistication in terms of protecting themselves in the event of a breach by their ESP.” Later, in the same proceeding, D.13-01-021 ruled that ESP financial security requirements for incremental procurement costs would apply to both residential and small commercial customers, but not to medium or large commercial customers.

We find that while residential customers will be unlikely to have the energy sophistication necessary to knowingly sign a waiver of their Section 989.1 Cancellation Rights, commercial customers of any size will be more likely to make an informed business decision on such a waiver. Moreover, the majority of consumer protection issues have arisen from residential rather than commercial customers. We therefore do not expect aggressive marketers to target commercial customers for exploitation using the proposed waiver. We will allow CTAs to provide gas procurement service contracts with a waiver of Section 989.1 Cancellation Rights to customers who are currently receiving or would by default receive gas service under one of their IOU’s commercial customer classes.

Any waiver of Section 989.1 Cancellation Rights must be furnished to the customer in writing. This waiver must be a separate, stand-alone document. It

cannot be included with the standard customer contract. Verbal agreements to the waiver will not be considered valid. It will be the responsibility of the CTA to retain a copy of the waiver for purposes of settling any cancellation disputes. Companies who wish to provide commercial customers the option to waive their cancellation right must seek Commission approval of their waiver form prior to offering this option to any customers. The Commission will have 30 days from the date of filing to either approve or deny the proposed waiver form. Any subsequent changes to the form will require Commission approval.

With regard to extending the residential cancellation right period, we agree with the responses filed by the Joint Utilities, TURN, and Greenlining. PG&E currently sends a notice to the customer 7-10 days after the CTA submits a Direct Access Service Request to the utility requesting a particular customer be switched to CTA service. The current three-day cancellation provision in the bill is therefore not enough time to allow customers to be notified by the utility of an unintended switch to CTA service. Furthermore, the notice that the utility sends to the customer may not be enough to provide non-native English speakers, elderly, or disabled customers with enough forewarning that they have been switched to CTA service. Indeed, there have been several documented instances of customers not realizing they had been switched from bundled to CTA service until several months after the fact. To ensure residential customers have a fair chance to cancel CTA service agreements without penalty, we will extend the cancellation period for residential gas customers to midnight of the thirtieth day after the date of the first bill for CTA service being issued to the customer.

5.2. Applicability/Definition of “Core Customer”

This decision requires all core transport agents to register with the Commission within 90 days after the effective date of the decision. The statute

defines core transport agent as an “entity that offers core gas procurement service to customers within the service territory of a gas corporation, but does not include a public agency that offers gas service to core and noncore customers within its jurisdiction, or within the service territory of a local publicly owned gas utility.” The School Project For Utility Rate Reduction (SPURR) and the ABAG Publicly OWned Energy Resources (ABAG POWER) each provided a declaration stating that they provided gas service within the service territory of publicly-owned gas utilities, therefore, consistent with Section 980(b), SPURR and ABAG are exempt from this statute and the new regulations addressing consumer protections for core customers do not apply to SPURR and ABAG POWER.

Similarly, Shell Energy and SPURR/ABAG POWER note that Section 980(a) provides that “a core small commercial customer account that is associated with and part of the same business operation as a large commercial customer account is not a “core customer” for purposes of this chapter.” We agree that SB 656 provides an exemption for CTAs whose small commercial customer accounts are exclusively loads associated with noncore customer loads. In the next phase of this OIR, the Commission will determine whether specific rules for implementing this exemption are necessary.

Section 980(a) provides that the term “Core gas customer” shall have the same meaning as that specified in the tariff of the gas corporation whose territory the customer in question lies within. The relevant definitions of “core customer” are found in PG&E’s Gas Rule 1, “Core End-use Customer”; SoCalGas’ Preliminary Statement Part I, “Description of Service,” and SDG&E’s Gas Rule 1, “Core Service.”

Commerce Energy requests that the Commission establish a common definition of “core customer” along with a definition of “small commercial customer” to ensure that uniform standards apply to core transport agents across utility service areas statewide.

We will defer consideration of whether a revised definition of “core” customer or a definition of “small commercial customer” is necessary for purposes of implementation of the consumer protection requirement of SB 656 to the next phase of this proceeding. For purposes of this decision, we will rely on the current definition of “core” customer provided in the tariffs of PG&E, SDG&E, SoCalGas, and Southwest Gas referred to above.

6. Next Steps

As we noted above, our focus in this decision is to adopt registration standards and standards of fiscal viability and technical and operational capability. The interim rules and procedures that we adopt today are designed to protect consumers and ensure that market participants demonstrate their creditworthiness and technical expertise in order to engage in sales of natural gas to residential and small commercial customers. We defer the determination of all remaining issues to the next phase of this proceeding including, but not limited to, notice, complaint tracking and resolution, marketing issues, financial security requirements, reentry fee, uniform credit requirements, return notices and rate schedules for returned customers, restrictions or time constraints on replacement service and potential revisions to the interim standards and processes we adopt today. The assigned Commissioner and assigned ALJ will schedule a prehearing conference to address the schedule and scope for the next phase of this proceeding, including scheduling workshops and hearings for specific issues, as necessary.

7. Safety

Parties to the OIR were invited to comment on whether SB 656 or the Commission's OIR raises safety concerns that must be addressed. The comments and replies to the OIR did not identify any specific safety concerns that must be addressed in today's decision. To the contrary, we find that today's decision improves public safety by requiring CTA's to provide specific information to the Commission demonstrating technical and operational capability. In addition, today's decision provides the public with another forum in which they may raise concerns regarding CTA service.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 29, 2014 by Commercial Energy, IGS, Commerce Energy, Shell Energy North America, SPURR and ABAG POWER (jointly), and the Joint Utilities. Reply comments were filed on August 4, 2014 by Commerce Energy, IGS Energy, Commercial Energy, and TURN and CforAt (jointly).

IGS Energy states that expanding the statutorily mandated 3-day cancellation period to 30 days constitutes legal error. They argue that the statute provides for a 3-day cancellation period and that the Commission does not have the discretion to extend this period. IGS also argues that extending the three-day time period is unreasonable and would place the CTAs at a competitive disadvantage. IGS explains that shortly after a CTA and customer enter into an agreement, the CTA often enters into a financial hedge to protect itself against the risk of commodity price changes, therefore any extension of that period would increase the risk to the CTA, potentially increasing costs to customers. To

the extent that the extension of the cancellation period is based on the concern that customers may not receive notice informing them of the change in providers, IGS suggests that, at best, a delay in notifying the customer of the pending switch warrants a ten to fourteen day cancellation period.

We disagree. The 3-day notice period provide in the statute represents a minimum requirement that the Commission must include in its standards and procedures to implement SB 656. The Commission retains the discretion to increase consumer protection standards where appropriate. The purpose of the cancellation period is clearly to allow customers who cancel an unintended service switch without penalty. As we note above, currently the utilities send a notice to customers of any change in service within 7-10 days after a CTA submits a Direct Access Service Request (DASR) to the utility. The three-day cancellation period is therefore insufficient to ensure that customers receive notice in time to allow them to cancel an unintended service switch.

IGS also suggests that the Commission may not require the CTAs to post a bond to cover utility administrative fees and to ensure that customers have adequate recourse for fraud or non-performance. IGS states that this requirement exceeds the authority granted to the Commission by SB 656. IGS concedes that SB 656 provides the Commission with the authority, via Sections 989(a)(9) and (10) to develop standards for evaluating CTA proof of financial viability and technical and operational ability, including “any other appropriate criteria to ensure that core gas customers have adequate recourse in the event of fraud or nonperformance,” however, IGS argues that authority to develop standards does not include the authority to require a performance bond. IGS maintains that the only portion of SB 656 that permits the Commission to require a bond is found in Section 983.5(d) which requires as a condition of registration, that the CTA shall

post a bond or demonstrate insurance sufficient to cover reentry fees necessary to avoid imposing costs on other customers.

Commerce Energy expresses concern that while the proposed CTA Registration Form (Appendix A to the PD) requires CTAs to submit to the Commission a security deposit and states that “the deposit must be received by the CPUC before your CTA registration will be considered complete.”⁹ Commerce states that process unnecessarily leaves the CTAs in a catch 22 situation. Commerce recommends that the PD be modified to adopt an interim security deposit identify to the security deposit adopted for ESPs in D.99-05-034, which requires a minimum \$25,000 cash security deposit or financial guarantee bond be provided to the Commission , up to a maximum of \$100,000, based on the number of customers served.¹⁰

As we discussed in Section 4.1.2. above, since the record does not contain sufficient evidence to determine the appropriate amount of the security deposit or bond at this point, the amount of the security deposit contemplated by Sections 981(9) and 983.(d), will be determined in the next phase of this proceeding.

⁹ Proposed Decision in R.14-03-002, Appendix A, Notice, at 6.

¹⁰ D.99-05-034, at 26.

We will not suspend the registration process pending the determination of the appropriate amount of the security deposit or bond. CTAs that provide evidence of satisfactory compliance with the UDC-CTA service agreement and CTA credit application with their registration applications will be permitted to continue operation or to begin operation pending the Commission's final decision of the necessary security deposit.

Commerce also notes that for those CTAs that also operate as ESPs and have their fingerprints on file with the Commission to comply with the ESP registration requirements, the Commission should not require the CTA to re-submit the individual's fingerprints, but should instead require the CTA to submit a list of individuals who have fingerprints on file, and allow Commission Staff to confirm that such records are on file. It is reasonable to allow CTAs to either fingerprints or a list of those individuals who already have fingerprints on file as part of their registration application. If Commission Staff is unable to confirm that an individual's fingerprints are on file, the CTA will be required to provide fingerprints.

Commercial Energy supports the Commission's proposal to allow CTA to offer a written waiver of the three-day cancellation rights to commercial customers as defined in the utilities' tariffs, however, Commercial Energy requests that the Commission also provide that master-metered multi-unit residential customers are also commercial customers entitled to waive their cancellation rights. Commercial maintains that master-metered multi-unit residential customers are larger apartment building and multi-building complexes whose owners are well versed on energy procurement issues. Commercial Energy also suggests that in the next phase, the Commission should specifically define "small commercial customers" to distinguish commercial

customers and apartment owners from individually metered residential customers. We decline to adopt Commercial Energy's proposal to allow a waiver of cancellation rights for master-metered residential accounts at this time but will consider whether it is reasonable to add master-metered multi-unit residential customers to the category of core small commercial customers at such time as we consider whether a revised definition of "core" customer or a definition of "small commercial customer" is necessary for purposes of implementation of the consumer protection requirement of SB 656

The Joint Utilities and TURN/CforAT request that the Commission modify the Registration Application Form to require CTA applicants to disclose the identification of any independent contractors used for marketing, sales or administration of service agreements. The Joint Utilities also request that the Commission require that the Interim Section 986 Notice include the format for a side-by-side comparison of gas prices offered by the CTA and the utility.

We decline to adopt these changes in this phase of the proceeding. As discussed above, in the next phase, we will consider, among other things, notice and marketing issues, including the uniform format and information required in the Section 986 notice. All non-exempt CTAs remain responsible for the conduct of any third party vendors or contractors engaged on their behalf.

We decline to adopt these additional reporting requirements in this phase of the proceeding. As discussed above, in the next phase, we will consider, among other things, notice and marketing issues, including the uniform format and information required in the Section 986 notice. All non-exempt CTAs remain responsible for the conduct of any third party vendors or contractors engaged on their behalf.

Finally, in response to comments from SPURR and ABAG POWER and Shell Energy, we have clarified that entities that are exempt from the requirements of SB 656 need not register with the Commission.

8. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Julie M. Halligan is the assigned ALJ in this proceeding.

Findings of Fact

1. SB 656 added Chapter 4.7 to Part 1 of Division 1 of the Pub. Util. Code including Sections 980-989.5.
2. SB 656 extends certain consumer protection provisions that are applicable to electric restructuring to natural gas restructuring, including the requirement to register with, and provide specified information to the Commission to core transport agents offering gas service to customers within the service territory of a gas corporation.
3. Pub. Util. Code Section 980(a) provides that a “Core gas customer” has the same meaning as that specified in the tariff of the gas corporation whose territory the customer in question lies within. A core small commercial customer account that is associated with and part of the same business operation as a noncore large commercial customer account is not a “core gas customer” for purposes of this chapter.

4. Pub. Util. Code Section 980(b) defines a Core Transport Agent as an entity that offers core gas procurement service to customers within the service territory of a gas corporation, and does not include a public agency that offers gas service to core and noncore customers within its jurisdiction, or within the service territory of a local publicly owned gas utility.

5. Section 981(a) requires that all non-exempt CTAs provide, as a precondition to registration, information pertaining to the ten different elements set forth in paragraphs (1) to (10), inclusive, of subdivision (a) of Section 981.

6. Section 982(d) requires that registered CTAs update the CTA registration information required by Section 981(a) within 60 days of any material change in the information that was previously provided.

7. Section 981(a)(9) directs the Commission to develop uniform standards for proof of financial viability and proof of technical and operational ability and to publish those standards for comment by June 30, 2014.

8. A requirement that all prospective CTAs must have a signed UDC-CTA service agreement before the CTA can apply to register will screen out entities who lack the financial resources and technical and operational skills.

9. The CTA-UDC service agreement requires the CTAs to have some level of technical and operational experience in natural gas procurement.

10. Further proof of technical and operational ability could come from a requirement to disclose the names of key personnel and their experience, as well as the names and experience of any companies acting on behalf of the CTA.

11. The credit requirements necessary to successfully execute a UDC-CTA service agreement are intended to address the creditworthiness of the CTA.

12. The Commission should adopt a minimum security deposit to be posted with the Commission to provide customers with adequate recourse in the event of fraud or nonperformance.

13. The amount of the minimum security deposit should be determined in the next phase of this proceeding.

14. This decision contains the proposed standards that CTAs must show as proof of financial viability and technical and operational ability.

15. Before imposing the annual fee under Section 984(a) the Commission must annually determine the costs.

16. The Legislature granted the Commission broad authority to develop and adopt additional consumer protection rules.

17. Public agencies that offer natural gas service to residential and core customers within their own jurisdiction or within the service territory of the local publicly owned gas utility are not CTAs under Section 980(b) and therefore are exempt from compliance with the provisions of SB 656 addressing CTAs.

18. All non-exempt CTAs seeking to provide gas service to core customers shall provide the notice of price, terms and conditions required by Section 985(d) to the Commission's Energy Division with the CTA Registration Application Form.

19. The Section 985(d) notice must contain a description of the potential customer's right to rescind the contract.

20. Small commercial customers are likely to have the energy sophistication necessary to sign a waiver of their Section 989.1 Cancellation rights.

21. The three-day cancellation period provided by Section 989.1 is not enough time to allow residential customers to be notified by the utility of a switch to CTA service.

22. Section 983.5 permits the Commission to take enforcement action against Registered CTAs.

Conclusions of Law

1. The rules and procedures adopted in this decision will ensure that residential and small commercial gas consumers have mechanisms to protect themselves from unfair or abusive practices.

2. Unless otherwise exempted, all entities offering natural gas service to residential and small commercial customers within the service territory of a natural gas corporation are required to register with the Commission.

3. Section 981(a)(8) and Section 982(c)(1) contemplate that the Commission shall conduct a criminal background check of CTAs and their officers and directors.

4. Requiring a CTA to provide a full set of fingerprints of their officers and directors is necessary to enable a criminal background check to ensure compliance with the statute.

5. The CTA registration application form, as shown in Appendix A to this decision, provides the necessary information required by Section 981 and is consistent with the Commission's authority to adopt additional consumer protection standards.

6. The Commission has the authority to deny a registration application if the application fails to comply with the rules adopted in this decision.

7. It is reasonable to require applicants for CTA registration to submit a minimum security deposit to the Commission to ensure adequate recourse to customers in the event of fraud or nonperformance.

8. The Commission should adopt interim standards for proof of financial viability and proof of technical and operational ability to protect customers from fraud and abuse.

9. Interim standards will ensure that all registered CTAs are financially, technically, and operationally capable of conducting a business.

10. It is reasonable to allow CTAs to offer small commercial customers the option of signing a waiver of the Section 989.1 Cancellation rights.

11. To ensure that residential customers have a fair chance to cancel CTA service agreements without penalty, the three-day cancellation period for residential gas customers provided by Section 989.1 should be extended to midnight of the thirtieth day after the date the first bill for CTA service is issued to the customer.

12. Pursuant to Section 983.5(b), the Commission has the right to suspend or revoke, immediately or prospectively, a CTA's registration.

13. Pursuant to Section 983(a), the Commission has the authority to, on its own motion, initiate investigations into the activities of a core transport agent offering gas service.

14. The Commission's authority to suspend or revoke a CTA's registration for conduct set forth in Section 983.5(b) applies to the CTA regardless of whether the CTA has third parties or independent agents performing marketing and sales activities and administering service agreements on the CTA's behalf.

15. If a residential or small commercial customer submits a complaint against a registered CTA which involves issues that do not relate to rates or charges, the Commission should accept the complaint for filing pursuant to Section 983(b).

O R D E R

IT IS ORDERED that:

1. Unless otherwise exempt, all Core Transport Agents offering gas service to residential or small commercial customers in the service territory of a gas corporation in California are required to register with the Commission within 90 days of this decision.

2. The interim standards for proof of financial viability and proof of technical and operational ability as set forth in this decision are adopted. These standards shall remain in effect until the Commission adopts permanent standards.

3. Appendix A is adopted as the Core Transport Agent registration application form that all non-exempt core transport agents who serve residential and small commercial customers are required to provide to the Commission.

4. Unless otherwise exempt, Core Transport Agents shall complete and forward the registration form attached as Appendix A, a copy of which will be available on the Commission's website.

5. Completed Core Transport Agent Registration application forms shall be forwarded to the Commission's Energy Division.

6. All core transport agents registered with the Commission shall pay the registration fee of one hundred dollars (\$100) set forth in Public Utilities Code Section 984(a). The registration fee may be adjusted by the Commission as necessary to recover the cost of administering the program.

7. All registered Core Transport Agents shall ensure that any person or entity performing marketing or sales activities, or administering its service agreements on the Core Transport Agent's behalf, complies with the rules adopted in this decision.

8. Core Transport Agents who wish to provide small commercial customers the option to waive their Section 989.1 Cancellation Rights must seek Commission approval of the written waiver form prior to offering this option to customers.

9. The Director of the Energy Division and the Chief Administrative Law Judge shall develop a procedure to resolve complaints against registered core transport agents consistent with Public Utilities Code Section 983.

10. The Chief Administrative Law Judge shall ensure that the provisions associated with the Section 983.5 process be developed, and reflected as appropriate in the Commission's Rules of Practice and Procedure.

11. The May 2, 2014, Motion for Party Status filed by Noble America Energy Solutions is granted.

12. Rulemaking 14-03-002 remains open.

This order is effective today.

Dated August 28, 2014, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

MICHAEL PICKER

Commissioners

APPENDIX A