Decision **PROPOSED DECISION OF COMMISSIONER PETERMAN**
(Mailed 10/6/2017)

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

DECISION ON PHASE TWO ISSUES REGARDING CORE TRANSPORT AGENTS

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DECISION ON PHASE TWO ISSUES REGARDING CORE TRANSPORT AGENTS

Summary

In Decision 14-08-043, the Commission assigned this phase of this proceeding to address a number of registration and consumer protection issues regarding core transport agents (CTAs). Today's decision addresses these remaining registration and consumer protection issues that took effect as a result of Senate Bill (SB) 656 (Statutes of 2013, Chapter 604), which added Public Utilities Code Sections 980 through 989.5.

Among the issues resolved in today's decision are the permanent standards that the CTAs' are required to adhere to for proof of financial viability, and proof of technical and operational ability. In addition to the requirement that the CTA have a service agreement with the gas utility in whose territory it plans to do business, and the gas utility's approval of the CTA's credit application, all CTAs are required to provide financial resources (minimum of $25,000 to a maximum of $100,000) in accordance with the number of customers set forth in the schedule adopted in today's decision.

Today's decision also adopts certain consumer protections added by SB 656. These include the following:

- The process for denial of CTA registration;
- The process for the suspension or revocation of a CTA's registration;
- The process for informal complaints submitted to the Commission by a customer against a CTA;
- The process for formal complaints filed at the Commission by a customer against a CTA;

- Determine the amount of a recurring annual fee that is to be imposed on the CTAs for the cost of administering the CTA registration program and other consumer protection activities associated with the CTA program, and to collect the fee from the CTAs;
- Establish a process to compile the list of CTAs and to make the list available to the public;
- Adopt rules to require the filing of standard service plans and the submission of the written notice of the terms and conditions of the CTA's standard service plan, and to provide prospective customers with the written notice;
- Establish a process for the issuance of a public alert concerning companies attempting to provide core transport service in an unauthorized or fraudulent manner;
- Establish a process to develop informational guides and other tools to help core gas customers understand their core transport service options;
- Adopt rules to implement the minimum standards in Public Utilities Code Section 985 that CTAs must adhere to in their interactions with customers;
- Adopt a uniform format for the written notice of the price, terms, and conditions of service that a CTA is required to provide to prospective customers pursuant to Public Utilities Code Section 986; and
- Establish a process and rules for the do not call list required by Public Utilities Code Section 987.

Appendix A of today's decision contains the revised CTA Registration Form that prospective CTAs must complete before they can be registered with this Commission as a CTA. Appendix B contains the adopted rules that CTAs must follow to address the minimum standards that CTAs must adhere to in their dealings with customers. Appendix C sets forth a uniform format for the written notice of the price, terms and conditions of service that CTAs are

required to provide to prospective customers. A CTA may use the uniform format for its written notice to prospective customers, or provide its own written notice so long as the requirements of Public Utilities Code Section 986 and the additional rules that have been adopted in today's decision, are met.

1. Background

Senate Bill (SB) 656 (Statutes of 2013, Chapter 604)[1] added Public Utilities Code Sections 980 through 989.5.[2] Among other things, these code sections established the registration procedures for core transport agents (CTAs).

The CTAs are defined in § 980(b) as follows:

> ... an entity that offers core gas procurement service to customers within the service territory of a gas corporation, but does not include a gas corporation, and does not include a public agency that offers gas service to core and noncore gas customers within its jurisdiction, or within the service territory of a local publicly owned gas utility. "Core transport agent" includes the unregulated affiliates and subsidiaries of a gas corporation.[3]

Core gas customers or core service generally refers to residential end-use customers who use natural gas, and to non-residential customers whose natural gas usage does not meet the minimum usage specified for noncore customers.[4]

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[1] Signed October 5, 2013 and effective January 1, 2014.

[2] Unless otherwise stated, all code section references are to the Public Utilities Code.

[3] The term "gas corporation" is defined in § 222, and the term "public utility" is defined in § 216 and includes a gas corporation. Depending on the context of the sentence, we refer to the gas corporation in this decision as the "gas corporation," "gas utility," "gas utilities," or "utility distribution company" (UDC).

[4] Section 980(a) states 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."

The CTAs are the entities who aggregate and arrange for the transportation of the natural gas load of core customers who sign up to have the CTAs procure natural gas on their behalf.[5] (Decision (D.) 14-08-043 at 3.)

The Commission initiated Order Instituting Rulemaking 14-03-002 (OIR or Rulemaking) "to address the policy, standards, rules, and procedures necessary to comply with Public Utilities Code Sections 980 – 989.5." (OIR at 25.) As a result, the Commission adopted D.14-08-043. In that decision, the Commission ordered all CTAs, unless exempted, to register with the Commission within 90 days of the decision. The registration form attached to D.14-08-043 was adopted as the registration form that the CTAs are to use. D.14-08-043 also adopted interim standards for proof of financial viability, and proof of technical and operational ability. The registration requirement and the interim standards were adopted to ensure that core gas customers who purchase natural gas from CTAs are protected from fraud and abuse.

At various pages of D.14-08-043, the Commission stated that the next phase of this Rulemaking would address the other issues set forth in SB 656. A prehearing conference (PHC) was noticed for and held on September 28, 2015 to discuss the next phase of issues. The parties were provided the opportunity at the PHC to discuss the scope of issues to be covered, the work effort needed, and the procedural schedule.

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[5] The core transport aggregation program has its origins in Decision (D.) 90-11-061 (38 CPUC2d 333), which was authorized by the Commission for a three year trial basis in D.91-02-040 (39 CPUC2d 360). The program was subsequently extended by D.94-04-027 (54 CPUC2d 5), and then made permanent in D.95-07-048 (60 CPUC2d 519). The gas utilities have rules and tariffs in place for this program. For PG&E, see gas Rule 23, and Schedule G-CT. For SDG&E, see gas Rule 32, and Schedule GR. For SoCalGas, see Rule 32, and Schedule GR.

Following the September 28, 2015 PHC, a scoping memo and ruling (Scoping Ruling) was issued on February 28, 2017. The Scoping Ruling identified a number of consumer protection provisions and other requirements set forth in SB 656 that are to be addressed in this phase of the proceeding, and the process and procedural schedule for resolving these issues. The Scoping Ruling allowed parties to file opening and reply comments in response to the Phase 2 issues identified in the Scoping Ruling, and to contend whether workshops or evidentiary hearings should be held.[6]

Seven opening comments and eight reply comments were filed in response to the Scoping Ruling. A ruling was issued by the assigned Administrative Law Judge (ALJ) on May 17, 2017, which determined that no workshops or evidentiary hearings would be held. The ruling also stated that a proposed decision would be drafted based on the pleadings filed in this proceeding, and the statutory language added by SB 656.

This Rulemaking was initiated on March 13, 2014, which was before the effective date of § 1711. Section 1711(a) provides that where feasible and appropriate, that "the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding." That code section also requires the Commission to "demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding."

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[6] The Scoping Ruling stated: "Generally speaking, the process to be followed in Phase 2 of this Rulemaking will involve reviewing the code sections added by Section 4 of SB 656, allowing parties to comment in response to this scoping ruling on how the standards and processes should be shaped, and developing standards and processes based on these code sections and comments." (Scoping Ruling, at 4.)

The February 28, 2017 Scoping Ruling invited all interested parties to file opening and reply comments on the consumer protection issues that were identified in the Scoping Ruling. As noted above, a number of comments were received from potentially affected parties, including those who represent CTAs, the utilities, and consumer groups representing residential customers.

2. Issues To Be Resolved

2.1. Introduction

Consistent with § 981, as added by Section 4 of Chapter 604, the Commission adopted registration procedures for the CTAs in D.14-08-043. D.14-08-043 ordered all CTAs, unless exempted, to register with the Commission within 90 days of that decision.[7] D.14-08-043 also adopted interim standards for proof of financial viability, and proof of technical and operational ability. In various parts of D.14-08-043, the Commission stated that the next phase of this Rulemaking would address the other issues raised by SB 656.

In resolving the scope of issues in this phase of the proceeding, we have considered the code sections added by SB 656, the Scoping Ruling, the parties' comments to the Scoping Ruling, and the parties' other pleadings that were filed in this proceeding. All of these considerations have informed our thinking in deciding what rules are appropriate and should be adopted.

As the Legislative Counsel noted in its digest to the enactment of SB 656:

> This bill would extend certain consumer protection provisions that are applicable to electrical restructuring to aspects of natural gas restructuring, including the requirement to register with, and provide specified information to the commission, to a core transport

[7] As provided for in §§ 980(b), 981(a) and 983.5(a)(2), certain entities are exempt from the CTA registration requirements.

> agent, as defined, offering gas service to customers within the service territory of a gas corporation. (Statutes of 2013, Chapter 604.)

Although some of the parties recommended that workshops be held, and that the Commission staff develop proposals to discuss at these workshops, we believe the specificity of the code sections added by SB 656, the processes that are in place for the electric service providers (ESPs), and the parties' comments, provide us with the necessary building blocks to establish a consumer protection framework for CTAs and their customers. For those reasons, the May 17, 2017 ruling determined that no workshops or evidentiary hearings would be held.

In the sections below, we discuss the recommendations of the parties. For ease of reference and matching to SB 656, this decision generally follows the outline of the code sections added by Section 4 of Chapter 604.

2.2. Registration Requirements – § 981

2.2.1. Registration Procedures

Section 981(a) states in part:

> A core transport agent shall register with the commission within 90 days after the commission has adopted standards for financial viability, and technical and operational capacity. As a precondition to registration, the core transport agent shall provide, under oath, declaration, or affidavit, all of the following to the commission….

Section 981(a) lists 11 items that are to be included as part of the registration process. A summary of these 11 items are as follows:

(1) Legal name and any other names under which the CTA 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 of a customer contact 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 prior to registration, and of any felony convictions. In addition, submission of fingerprints of key personnel for a possible national criminal history record check.

(9) Proof of financial viability.

(10) Proof of technical and operational ability.

(11) A statement regarding whether the applicant or key personnel has: filed for bankruptcy; been found liable for fraud, dishonesty, failure to disclose, or misrepresentation to consumers or others; been convicted of a felony; been the subject of a criminal referral by a judge or public agency; had a license of operating authority denied, suspended, revoked, or limited; entered into a settlement of criminal or civil claims involving violations of the Business and Professions Code or related statutes or regulations relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or entered into any settlements or agreements, made any voluntary payments, or agreed to any other type of monetary forfeitures to resolve any action by any regulatory body, agency, or attorney general.

The Commission adopted and implemented a registration process for the CTAs in D.14-08-043. Anyone registering as a CTA is to complete and submit the Core Transport Agent Registration Application Form (CTA Registration Form), which was adopted for use in D.14-08-043 and attached to that decision as

Appendix A.[8] The CTA Registration Form reflects the requirements set forth in §§ 980 through 989.5.

Upon receipt of the completed CTA Registration Form, the Energy Division staff of the Commission has 45 days to approve or deny the registration to become a CTA. If the application to become a registered CTA is approved, the CTA is assigned a registration number and entered into the Commission's database as a registered CTA. (D.14-08-043 at 8; § 982(a).)

In the Scoping Ruling, the Commission stated that no further work was needed in this phase on the registration issues except to modify the CTA Registration Form to reflect the outcomes adopted in today's decision. Accordingly, the registration process described and adopted in D.14-08-043, which reflects the requirements of § 981, should be adopted as the permanent registration process for those CTAs who are required to register with the Commission. The CTA Registration Form adopted in D.14-08-043 is modified as discussed in this decision to reflect the adopted outcomes in this phase of the proceeding. The updated version of the CTA Registration Form is attached to this decision as Appendix A.

All CTAs who are registered with the Commission, as well as prospective CTAs, are reminded of the § 982(d) requirement that all registered CTAs are to update their registration information set forth in § 981(a)(1) to (10) "within

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[8] We note that under the definition of a CTA in § 980(b), if a public agency or a local publicly owned gas utility provides core gas procurement service to customers in a gas corporation's service territory (as opposed to offering such services in the public agency's jurisdiction or in the service territory of the local publicly owned gas utility, <u>such as the School Project for Utility Rate Reduction and the ABAG Publicly Owned Energy Resources pursuant to D.14-08-043</u>), that the public agency or local publicly owned gas utility must register with the Commission pursuant to § 981 and § 980(b).

60 days of any material change in the information provided." Any material changes to any other information that the CTAs are required to provide, is to be updated annually.

In D.14-08-043, the Commission adopted interim standards for proof of financial viability and proof of technical and operational ability, and deferred the adoption of permanent standards for these two items to this phase of the proceeding. We discuss those issues below.

2.2.2. Proof of Financial Viability

2.2.2.1. Background

In this section, we address the permanent standards that should be adopted for proof of financial viability.[9] Section 981(a)(9) states that in determining the financial viability of a CTA, "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."

In D.14-08-043, the Commission adopted two interim financial viability standards.[10] First, the Commission adopted the requirement that before a CTA can register with the Commission, the CTA must sign a service agreement with each natural gas UDC in whose service territory the CTA plans to do business in.

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[9] Proof of financial viability is distinct from the CTA registration fee, the annual determination of the costs of administering the CTA registration program, and the reentry fee. (See § 984(a) and (b), and § 983.5(d).)

[10] See D.14-08-043 at 17 through 27.

In addition, a signed copy of the CTA's approved credit application with the UDC is required. (D.14-08-043 at 17-20.)

The second interim financial viability standard adopted in D.14-08-043 is for the CTA to provide a security deposit or performance bond. However, D.14-08-043 did not decide how much the security deposit amount should be, or how much the performance bond should be. Instead, the Commission decided that those amounts should be decided in this phase of the proceeding. The CTAs were allowed to submit their completed CTA Registration Forms to become CTAs and to "continue operations pending satisfactory approval by the Commission" of the security deposit and performance bond amounts. (D.14-08-043 at 24.)

The Scoping Ruling invited the parties to comment on "what final financial viability standards should be adopted," and whether the CTA's service agreement with the UDC and the completed credit application "are sufficient for determining financial viability, whether additional factors should be considered in determining proof of financial viability, and whether a CTA should have to prove or post financial assets in a certain amount." (Scoping Ruling at 7.)

The Scoping Ruling also noted that proof of financial viability is "related to the bond amount or insurance that a CTA is required to post with the Commission pursuant to § 983.5(d) to cover any reentry fees that may be imposed." The scoping ruling invited parties to "comment on what the amount of the security deposit or bond amount should be, or the insurance sufficient to cover the security deposit and reentry fees, to ensure proof of financial viability and that the reentry fee is paid consistent with §§ 989(a)(9) and 983.5(d)." (Scoping Ruling at 8.)

2.2.2.2. Position of the Parties

The Joint Utilities[11] propose that the CTAs be required to maintain a security deposit or bond with the respective utility for each service territory in which the CTA serves CTA customers, and that the security deposit or bond should be the higher of $100,000 or the formula as described in their April 7, 2017 comments for PG&E, SDG&E, and SoCalGas. The Joint Utilities propose that the formula for the "security deposit or bond amount should be calculated for each CTA based on the sum of the applicable re-entry fee described … and the incremental gas procurement cost calculation." (Joint Utilities, April 7, 2017 Opening Comments at 15.) The Joint Utilities further recommend that the amount of the existing security deposit or bond amount for the three large utilities should be reviewed and revised every three years. The Joint Utilities contend that this deposit or bond amount is needed to ensure that they have sufficient funds to serve the CTA customers and utility bundled customers in the event of a CTA default.

Due to operational differences, the amount of the security deposit or bond amount for Southwest Gas should be the higher of $20,000 or the amount derived by the formula as described in Attachment B of the Joint Utilities' April 7, 2017 comments. For Southwest Gas, the amount of the existing security deposit or bond amount should be reviewed and revised annually.

Just Energy Solutions Inc. (Just Energy) and Interstate Gas Supply, Inc. (IGS) oppose the Joint Utilities' proposals on how the security deposit or bond

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[11] The Joint Utilities refer to Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Southwest Gas Corporation (Southwest Gas). Comments were jointly filed by the Joint Utilities.

amount should be calculated. IGS contends that the utility service agreement and the credit evaluation are sufficient, and that no additional requirements are needed.[12] Just Energy contends that the CTAs should be treated consistently with how ESPs are treated, and no additional factors need to be considered for determining financial viability. Just Energy and IGS contend that "any reentry fees, particularly when including incremental gas procurement costs or pipeline capacity charges, are unwarranted for the competitive gas market and given the current collateral requirements in the CTA-utility agreement." (Just Energy and IGS, April 28, 2017 Reply Comments at 5.) Just Energy and IGS contend that this collateral consists of the gas utilities having possession of the CTA receivables, and access and control to the CTA gas that is held in storage. Just Energy and IGS contend:

> Therefore, to the extent that any bond is required beyond existing collateral – whether the bond is filed with the Commission or the utilities – it should be reduced: (1) for CTA receivables in the utility's possession; and (2) market price of CTA gas in a utility's storage (at the time the bond is set). (Just Energy and IGS, April 28, 2017 Reply Comments at 3.)

Just Energy and IGS also argue that the Joint Utilities' proposal to use citygate and average monthly gas prices is complicated and does not make sense. Just Energy and IGS contend that the difference between these two gas prices "bears no relevance to any increased costs the CTA's returned customers might

[12] Several other CTAs also agree that the existing CTA Registration Form and the standards that were adopted (UDC-CTA service agreement and credit application verification) in D.14-08-043 for verifying financial and operational ability are sufficient to protect residential and small commercial CTA customers.

experience from paying utility procurement charges compared to the CTA's charges." (*Id*. at 3-4.)

Just Energy and IGS also contend that the Joint Utilities have not justified why additional pipeline capacity would have to be procured. Just Energy and IGS state:

> Further, if a CTA returns all of its customers, it has no further use for its own procured pipeline capacity and, by default, the utilities have the capability to recall such capacity from the CTA at no or a very minimal incremental charge. Therefore, pipeline capacity costs should be removed as a component of any reentry fee to the extent one is authorized by the Commission. (*Id.* at 4.)

Just Energy further proposes that since the reentry fee does not apply to commercial and industrial customers of ESPs, that a reentry fee should not apply to commercial and industrial customer of CTAs.

The Joint Utilities also propose that an administrative cost (per account or per meter) be assessed by each utility in the event there is a mass involuntary return of CTA customers. Just Energy and IGS contend that the utilities have not justified why this administrative charge is needed. Just Energy and IGS point out that the rate schedules for both PG&E and SDG&E include a flat fee for mass enrollment from utility service to CTA service. Just Energy and IGS contend that "if a utility can process a mass departure of bundled customers to CCA service for a nominal flat fee (for PG&E - $4,475 per event; for SDG&E - $3,600 per event), it should be able to process a mass return of CTA customers to bundled utility service for no more than that same nominal fee." (Just Energy and IGS, April 28, 2017 Reply Comments at 5.) Just Energy and IGS suggest that the "more reasonable proposal would be to apply the lower of the flat fee for 'Mass Enrollment' or the proposed charge per customer." (*Ibid*.)

Commercial Energy of California (Commercial Energy) contends that in the event of an involuntary return of CTA customers to a utility, that there is a minimal risk of significant incremental costs to core customers or to the utility because the utility will not have to make extraordinary purchases of gas or capacity to accommodate returned CTA customers.

Just Energy and IGS contend that the financial security requirement (§ 981(a)(9)) and the reentry fee (§ 983.5(d)) are two separate statutory requirements. Just Energy and IGS point out that the Joint Utilities "seem to argue that these two separate statutory requirements can be satisfied through one CTA security deposit/bond." (Just Energy and IGS, April 28, 2017 Reply Comments at 6.) For the reasons mentioned earlier, Just Energy and IGS contend that the reentry fee amount should be set at zero. They also contend that the Commission is not required to impose a reentry fee on the CTAs pursuant to § 983.5(d). Just Energy and IGS also point out that the Commission did not adopt a reentry fee for the community choice aggregators in Resolution E-4133.

The Joint Utilities appear to argue that the security deposit and bond should be posted with the utilities, instead of with the Commission. Just Energy and IGS point out that the CTA Registration Application Form clearly requires the CTAs to post the financial security with the Commission. Also, ESPs have been required to post their financial security with the Commission.

Although several of the CTAs argue that no further action is needed to address the financial viability of CTAs, the Joint Consumers[13] contend that "the

[13] The Joint Consumers are composed of the Center for Accessible Technology (CforAT), The Utility Reform Network (TURN) and the National Consumer Law Center (NCLC). These three entities filed joint comments.

language of the statute specifically requires the Commission to develop uniform standards for determining financial viability of CTAs as well as to develop uniform standards for determining technical and operational capability." (Joint Consumers, April 28, 2017 Reply Comments at 2.) The Joint Consumers contend that relying on the utilities' tariff alone to demonstrate financial, technical, and operational capability is not the same as developing uniform standards as § 981(a)(9) and (a)(10) requires. The Joint Consumers contend that the development of uniform standards will ensure a consistent baseline of protections for all California consumers.

2.2.2.3. Discussion

D.14-08-043 left open the issue of adopting permanent proof of financial viability to this phase of the proceeding.

The Joint Utilities and the Joint Consumers favor that some kind of security deposit be posted to ensure that customers receive continuing service from the CTAs, and to provide financial recourse in the event the CTA fails to provide service to its customers. Several of the CTAs contend that no security deposit is needed, and argue that the UDC service agreement and the credit application that a CTA must provide for the utility's approval, are sufficient guarantees to ensure the CTA's financial viability.

We have considered the various arguments of the parties, and reviewed their recommendations for how the security deposit should be formulated.

We first address the argument of some of the CTAs who contend that no security deposit is needed, or that SB 656 does not require a security deposit. Section 981(a) provides for the registration of CTAs, and states that "As a precondition to registration, the core transport agent shall provide, under oath, declaration, or affidavit, all of the following to the commission." One of the

items that the CTA is to provide is proof of financial viability, which is set forth in § 981(a)(9) and states as follows:

> (9) Proof of financial viability. The commission shall develop uniform standards 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.

In D.14-08-043 at 23, the Commission adopted among other things, the interim "requirement that CTAs provide a security deposit or performance bond, consistent with Section [981(a)(9)] and 983.5(d)." (D.14-08-043, Ordering Paragraph 2 at 44.) However, the Commission decided that the record was insufficient "to determine the appropriate amount of the security deposit or bond at this point," and that "the amount of the security deposit contemplated by Sections [981(a)(9)] and 983.5(d), will be determined in the next phase of this proceeding…."

In the Scoping Ruling for this phase of the proceeding, comments were solicited from the parties on the financial viability language contained in § 981(a)(9), the service agreement that the CTA signs with the utility, and the approved credit application that the CTA submits to the utility.

None of the parties have objected to the use of the service agreement between the utility and the CTA, and to the utility's verification of the CTA's credit application as providing proof of financial viability. These two components are related to the number of customers the prospective CTA plans to sign up, as well as the number of therms of gas the CTA expects to provide. The requirements for a service agreement are currently part of the gas utilities'

tariffs.[14] Accordingly, we retain these two components as proof of financial viability, and adopt them as a permanent standard of proof of financial viability.

The third component that we adopt as a permanent standard of proof of financial viability is to require all registered CTAs to provide adequate financial resources in the form of a cash security deposit (i.e., cashier's check), a financial guarantee bond, or a customer trust account in a form approved by the Commission's General Counsel.

The Commission stated the following in D.14-08-043:

> 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(a)(9)]. (D.14-08-043 at 23.)

The Commission also stated in D.14-08-043 that "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." (D.14-08-043 at 42.) However, the Commission deferred the issue of how much the minimum security deposit amount should be to this phase of the proceeding.

The parties had the opportunity to comment on the security deposit component in their comments to the OIR, and in their responses to the Scoping Ruling. Although some of the CTAs continue to argue that no security deposit should be required, we are not persuaded by that argument and continue to believe that a security deposit, a financial guarantee bond, or a customer trust

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[14] See PG&E Rule 23 in Sections A and B, SDG&E Rule 32 in Sections A.1 and B, and SoCalGas Rule 32 in Sections A.1 and B.

account in a form approved by the Commission's General Counsel, is consistent with §§ 981(a)(9) and 985(h).

Requiring the CTA to provide financial resources is consistent with the § 981(a)(9) provision that the Commission is to "take into account … other appropriate criteria to ensure that core gas customers have adequate recourse in the event of fraud or nonperformance." This additional security deposit helps to ensure that as the number of customers grows over time, that there is still adequate financial recourse for the CTA's customers.

The posting of financial resources is also authorized by § 985(h), which allows the Commission to impose "additional core gas consumer protection standards that are in the public interest." This requirement of posting financial resources with the Commission is in the public interest because if a CTA ceases to provide gas service to core gas customers, the funds can be used by the Commission to ensure that these customers continue to receive gas service either from another CTA or from the gas utility, or to provide reparations (e.g., customer deposits) to these customers.

In addition, this requirement of posting financial resources is similar to what the Commission requires of the ESPs in D.99-05-034 and the statutory provisions of §§ 394(a)(9) and 391(g)(3).

Next, we address what the amount should be for the CTAs' posting of financial resources with the Commission.

In the initiating OIR for this proceeding, the Commission recognized the consumer protection safeguards that were established for the registration of ESPs. As part of those safeguards, the ESPs were required to post financial resources with the Commission. In D.99-05-034, the Commission adopted as a

permanent standard the amount that must be posted by the ESPs. This amount varies depending on the number of customers, and is set forth as follows:

Number of Customers	Amount of Financial Resource
1 - 250	$25,000
251-500	$50,000
501-1000	$75,000
1001 and above	$100,000

The OIR proposed that a CTA be required to post financial resources with the Commission "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." (OIR at 7.) The OIR further stated that "The methodology for calculating these amounts will be determined over the course of this proceeding."

After reviewing the formulas that the Joint Utilities and the Joint Consumers have proposed, as well as the arguments of the CTAs that the Commission should refrain from requiring any amount or should set it at a certain level, we have decided to adopt the same schedule that is in place for the ESPs. The formulas recommended by the Joint Utilities and the Joint Consumers are too cumbersome to apply, and would require frequent review by the Energy Division to ensure that the CTA has posted financial resources in the applicable amount. Also, none of the parties commenting on the security deposit issue have raised concerns about using the financial resources schedule that was adopted for the ESPs for the CTAs. In particular, no party has commented on the schedule's relationship between the number of customers and whether the

amount to be posted, is inadequate. In addition, the use of such a schedule, and the deposit amount required, allows for easy verification by the Energy Division.

Accordingly, we adopt as the third permanent component of proof of financial viability the requirement that all registered CTAs must post financial resources with the Commission in the amount corresponding to the number of customers they have in accordance with the schedule referenced above. If the posted financial resource is provided through a security deposit, i.e., cashier's check, any interest that the Commission earns on the posted amount shall be returned to the CTA shortly after the CTA gives up its CTA registration or has its registration rescinded by the Commission, so long as there are no outstanding disputes at the Commission involving the CTA.

The CTAs who have registered with the Commission up until today have not been required to post any financial resource amount with the Commission. However, D.14-08-043 at 23 recognized that once the "appropriate amount of the security deposit or bond" is decided by the Commission, the CTAs will be required to post the appropriate amount with the Commission. The CTAs and prospective CTAs were also made aware in the CTA Registration Form that at some point during the course of this proceeding, that the CTA would be required to post the financial resource amount. (See D.14-08-043, Appendix A at 6 of 8, and Ordering Paragraph 2 at 44.)

Accordingly, all currently registered CTAs shall provide the financial resource amount that corresponds to the number of customers that the CTA has in California to the Fiscal Office of the Commission within 30 days of the issuance of this decision. The financial resource amount may be in the form of a cashier's check made payable to the "California Public Utilities Commission," or a financial guarantee bond in favor of the "California Public Utilities

Commission." Alternatively, the CTA may open a customer trust account for the applicable amount in a format approved by the Commission's General Counsel. As the number of customers increases for the CTA, bringing it to the next customer threshold level, the CTA shall within 10 days of that triggering event increase the financial resource amount to the applicable amount.

For prospective CTAs who have not yet registered with the Commission, they shall be required to post an initial $25,000 at the time they submit their application to become registered CTAs. Requiring the posting of the financial resource at the time a prospective CTA applies for registration is consistent with what we proposed in the OIR and in D.14-08-043. (See OIR at 7, Attachment B at 6 of 7; D.14-08-043, Appendix A at 6 of 8.) As the number of customers increases for the CTA, bringing it to the next customer threshold level, the CTA shall within 10 days of that triggering event increase the financial resource amount to the applicable amount.

The requirement to post financial resources, as well as providing proof of technical and operational ability, will ensure that CTAs are in a position to deliver gas to its customers in a safe and reliable manner.

We have modified the CTA Registration Form, which is attached to this decision as Appendix A, to reflect this requirement.

With the adoption of this permanent financial resource requirement, there are multiple administrative tasks that different units of the Commission will have to perform.

For the Fiscal Office, they will need to prepare for, record and track the incoming financial resources that the CTAs will post with the Commission.[15] The Fiscal Office will also have to account for the interest that a cash security deposit earns over time, and to release the deposited funds, including any applicable interest, upon the direction and authorization by the Commission.

For CTAs who have already registered with the Commission before today's decision, the Fiscal Office will need to inform the Energy Division when the CTA delivers the financial resource to the Fiscal Office, and the amount that the CTA has submitted. This will allow the Energy Division to verify if the posted amount correlates to the number of customers a CTA has.

For CTAs who register after today's decision, the financial resource is to be submitted to the Energy Division as part of the application to become a registered CTA. The Energy Division will need to forward the financial resource to the Fiscal Office for recording, tracking, and safekeeping.

When the Energy Division receives notification from the Fiscal Office of the financial resource amount submitted by CTAs who have previously registered with the Commission, the Energy Division shall verify that the financial resource amount submitted by the registered CTA correlates to the amount of customers that the CTA presently has. Energy Division can verify this by contacting the utilities to determine how many core customers are being served by a particular CTA, or by requesting this information from the CTA as part of the Commission's licensing function pursuant to § 981(c). In the event of

[15] If the financial resource is in the form of a bond or other format approved by the Commission's General Counsel, the Fiscal Office should retain these documents for safekeeping and for disposition at the Commission's direction.

a discrepancy between the financial resource amount and the number of customers a CTA has, the Energy Division shall be authorized to notify the CTA of the discrepancy and to direct the CTA to increase the financial resource amount. In the event the CTA refuses to do so, the Energy Division with the assistance of other Commission Divisions, may recommend that action be taken to suspend or rescind the CTA's registration number pursuant to § 983.5. In addition, Energy Division will need to periodically check to see if the amount of the financial resource submitted by the CTA correlates to the number of customers that the CTA has.

If the CTA's required financial resource is in the custody of the Commission's Fiscal Office, the Fiscal Office will need a letter from the Director of Energy Division, Commission resolution or decision to disburse the funds. The disbursement of the funds is likely to occur when a registered CTA decides to cease providing service as a CTA, or shortly after the CTA's customers are returned to the gas utility if the CTA defaults on its obligations. If there are no informal or formal complaints or proceedings pending against the CTA when these situations arise, the Director of Energy Division is authorized to prepare a letter directing the Commission's Fiscal Office to release the financial resource, with any interest that may be applicable to the security deposit, back to the CTA. If there are pending matters involving the CTA at the Commission, the Fiscal Office shall not release or dispose of the funds until the Director of Energy Division issues a letter addressing all of the pending matters involving the CTA.

2.2.3. Reentry Fee

2.2.3.1. Background

An issue closely related to proof of financial ability is the posting of a security deposit, a bond, or insurance sufficient to cover the reentry fee for CTA

customers who are involuntarily returned to service provided by the incumbent gas utility. The reentry fee and involuntary return are addressed in § 983.5(d), which provides:

> If a customer of a core transport agent is involuntarily returned to service provided by a gas corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the gas corporation shall be the obligation of the core transport agent, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, a core transport agent shall post a bond or demonstrate insurance sufficient to cover those reentry fees, including reentry fees for customers returned in the event of the core transport agent becoming insolvent.

In the Scoping Ruling, parties were asked to "comment on what the amount of the security deposit or bond amount should be, or the insurance sufficient to cover the security deposit and reentry fees, to ensure proof of financial viability and that the reentry fee is paid consistent with §§ [981(a)(9)] and 983.5(d)." (Scoping Ruling at 8.) In addition, parties were asked to comment on what "involuntarily returned" means, and to comment on the following:

> What factors the Commission should consider in determining the amount of the reentry fee; what should be the amount of the reentry fee; how large the bond amount or insurance should be to cover the reentry fees; whether a workshop should be held to discuss these issues; and any other issues regarding § 983.5(d). (Scoping Ruling at 23.)

2.2.3.2. Position of the Parties

The Joint Utilities support the adoption of a reentry fee to be paid for by the CTAs. The Joint Utilities contend that the purpose of the reentry fee is to cover the administrative costs of returning a CTA customer to the utility for gas commodity service. The Joint Utilities propose that the following reentry fees be

charged for each customer account: (1) for PG&E, a reentry fee of $4.24 per account; (2) for SDG&E, a reentry fee of $1.12 per account; (3) for SoCalGas, a reentry fee of $5 per account; and (4) for Southwest Gas, a reentry fee of $8.28 per meter. Each of the utilities' proposed reentry fees vary based on each utility's estimated administrative expenses of switching a CTA customer back to utility service.

The Joint Utilities do not agree with the CTAs who advocate that no reentry fee or bond should be required for the CTAs. The Joint Utilities contend that the Commission should take precautionary measures before a major involuntary return of customers occurs, and that a bond or security sufficient to cover the costs of involuntary returns should be required.

As for the arguments of some of the CTAs that the utilities will not incur increased procurement costs from returning customers, the Joint Utilities contend that an increase in such costs is a risk, especially during times of high and volatile natural gas prices.

Several of the CTAs contend that it is not necessary to impose a reentry fee on CTAs for returned customers. Commercial Energy, Just Energy, Shell Energy North America (US), L.P. (Shell Energy), and Tiger Natural Gas, Inc. (Tiger) contend that there is very little or no incremental procurement cost associated with returned customers. Just Energy also asserts that the utilities' incremental cost of returning customers is already included in the utilities' delivery and service rates. The CTAs who oppose the imposition of a reentry fee also contend that the credit and collateral requirements imposed on the CTAs by the utilities, as well as the consolidated billing option where the utility acts as the billing and collection agent for the CTA, all help to protect the gas utilities if customers of a CTA are returned to the gas utility.

In the event the Commission decides that a reentry fee should be imposed on the CTAs, some of the CTAs recommend that the reentry fee only apply to core residential customers and not to core commercial customers. The CTAs further recommend that the utilities document the incremental administrative and procurement costs that may result if CTA customers are returned to the gas utilities, and suggest a workshop be held for that purpose.

2.2.3.3. Discussion

We are not persuaded that the CTAs should be required to deposit a separate sum to cover reentry fees. Section 983.5(d) provides that a CTA "shall post a bond or demonstrate insurance sufficient to cover those reentry fees, including reentry fees for customers returned in the event of the core transport agent becoming insolvent. " Nothing in § 983.5(d) prevents the Commission from utilizing the § 981(a)(9) financial resource that we require as proof of financial viability, to also cover the reentry fees addressed in § 983.5(d).

Some might argue that the § 981(a)(9) deposit amount that we require of each customer level is insufficient to cover both the cost of providing "adequate recourse in the event of fraud or nonperformance," and to cover any reentry fees. However, we believe that our adopted schedule for the financial resource that the CTAs are required to provide is sufficient to cover these kinds of situations, and appropriately balances the risks of such situations occurring, and the cost of registering as a CTA and operating in a competitive market.

Should Energy Division believe that the amount of the financial resource set forth in the adopted § 981(a)(9) schedule is insufficient to cover the risks contemplated in both § 981(a)(9) and § 983.5(d), the Energy Division, with the assistance of other Commission Divisions, is authorized by today's decision to draft a resolution for the Commission as to why the amounts in the schedule

should be increased. Alternatively, any party may file a petition to modify the financial resource schedule adopted in today's decision using the petition for modification process set forth in Rule 16.4 of the Commission's Rules of Practice and Procedure.

2.2.4. Proof of Technical and Operational Ability

In the OIR, the Commission proposed the following standards as proof of financial, technical, and operational viability of the CTAs:

> 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 the 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. (OIR at 6.)

After the filing of comments to the OIR, the Commission addressed the proof of technical and operational ability in D.14-03-002 as follows:

> 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 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.

The Scoping Ruling noted that the above discussion of the proof of technical and operational ability in D.14-08-043 suggests that this was meant to be a final standard. However, due to other references in D.14-08-043 which referred to the technical and operational ability as an interim standard, the Scoping Ruling invited comment "on whether any other factors should be taken into consideration before the Commission adopts a final standard for proof of technical and operational ability in this phase of the proceeding."

The only party who responded to this issue in response to the Scoping Ruling was Just Energy. Just Energy contends that the interim standard that was adopted in D.14-08-043 should be approved as the final standard. Just Energy contends that no additional factors need to be considered because the interim standard adopted in D.14-08-043 is consistent with the ESP rules that were adopted to meet the § 394(b)(10) requirement.

Since no one has raised the need for additional standards, or challenged the standards that were adopted in D.14-08-043, today's decision adopts as the permanent standard for proof of a CTA's technical and operational ability, the standards that were discussed and adopted in D.14-08-043, and in Appendix A of that decision.

2.3. Denial of Registration and Suspension or Revocation of Registration – §§ 982 and 983.5

2.3.1. Background

Section 982 addresses the approval or denial of a CTA registration, while § 983.5 addresses the processes to follow to suspend or to revoke a CTA's registration.

To implement § 982, the Commission directed the following in D.14-08-043:

> 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. (D.14-08-043 at 11.)

To implement the suspension and revocation processes contained in § 983.5, the Commission in D.14-08-043 directed Commission staff to develop procedures to implement the suspension and revocation procedures described in §§ 983.5(a)(3) and 982(c)(1). D.14-08-043 contemplated the following to occur:

> 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.
>
> …
>
> Finally, 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 sign[] ups as well as suspensions or revocations, as appropriate, consistent with Section 983.5(c). (D.14-08-043 at 10-11.)

Due to the plan outlined in D.14-08-043 to implement the registration, suspension and revocation, and reentry processes for the CTAs, and the direction given to Commission staff to establish the necessary procedures, the Scoping Ruling noted that no further work was needed in this phase of the proceeding to implement the various processes. However, the Scoping Ruling invited parties to comment on whether any additional work is needed for these processes.

Just Energy and Tiger were the only parties who commented on the issues involving approval of registration, suspension and revocation, and the reentry processes. Just Energy and Tiger contend that no additional work is needed on these processes that were set forth in D.14-08-043.

2.3.2. Discussion of Processes for Approval on Denial of an Application to Become a Registered CTA

The approval and denial processes for the registration of CTAs have been ongoing since D.14-08-043 implemented the CTA requirements of SB 656. The

Commission's Energy Division is primarily responsible for the approval or denial of a CTA's registration, with the assistance of the Commission's Utilities Enforcement Branch (UEB) and the Executive Director. We describe the approval and denial processes below to illustrate the various tasks that the different Commission units must undertake and coordinate with each other.

Pursuant to § 982, once a CTA submits the completed CTA Registration Form and all the other required information and fees, including the bond or other security discussed earlier in this decision, the CTA's registration is deemed approved and a registration number is to be issued no later than 45 days after the CTA's completed submission (assuming that the Energy Division does not approve the CTA's registration before such time). The CTA's application for registration can be denied within that time period if the Executive Director:

> ... finds, upon review of the information submitted by the core transport agent or available to the commission, that there is evidence to support a finding that the core transport agent has committed an act constituting grounds for denial of registration as specifically set forth in the operative provisions of this chapter, including, but not limited to, subdivision (c). (§ 982(a).)

Given the timeframe set forth in § 982(a), the Commission's Energy Division needs to review all of the materials submitted by a prospective CTA before the 45 day period. Before the denial of a CTA's application for registration can occur, several steps required by § 982 must be taken. During the 45 day timeframe, if the Energy Division or the UEB become aware of deficiencies in the submitted materials, or learns of activities by the prospective CTA that may constitute grounds for denying a CTA's registration, the Commission staff needs to take action to notify the Executive Director of the need to prepare the denial of registration and hearing letter described in § 982(a) and (b).

As required by § 982(b), the Executive Director needs to find that there is evidence to support a finding that there is grounds for denying registration as a CTA. Next, Commission staff or the Executive Director will need to prepare and issue a letter to the prospective CTA stating something to the effect "that there is evidence to support a finding that the CTA has committed an act constituting grounds for denial of registration…." In order to make such a finding, the Energy Division and/or the UEB, will need to review the completed CTA Registration Form, the information and fees submitted by the CTA, and gather evidence or investigate allegations of the prospective CTA's activities which constitute grounds for the denial of a CTA's registration.

The grounds for denial of a CTA's registration include, but are not limited to, the reasons set forth in § 982(c) which are as follows:

> (c) (1) 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.
> (2) 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. For purposes of this subdivision, conviction of a crime shall be established in the same manner as that set forth in paragraph (1) of subdivision (a) of Section 480 of the Business and Professions Code.

Once the denial of registration and hearing letter is issued, § 982(b) requires that the CTA registration materials be filed as a formal application for

registration, and that an expedited hearing on the CTA's registration application be noticed and "held within 30 days of the notification to the core transport agent of the executive director's funding of evidence to support denial of registration." The code section also requires the Commission to issue a decision on the registration request within 45 days after the holding of the hearing, and that the decision "shall be based on the findings of fact and conclusions of law based on the evidence presented at the hearing." The requirements in this code section will require coordination between the Energy Division (possibly with the assistance of the UEB), the Executive Director's office, and the ALJ Division. Once the denial of registration and hearing letter goes out, the CTA materials and the letter will need to be submitted to the Commission's Docket Office to be filed as a formal application regarding the possible denial of the CTA's registration application. Upon the filing of the application, the ALJ Division will need to notice an evidentiary hearing within 30 days of the Executive Director's notification letter to the CTA applicant.[16] In addition, the ALJ Division will need to ensure that a timely decision is prepared for the Commission to act upon within 45 days of the hearing.

Today's decision adopts the processes described above, and in D.14-08-043, to process the approval or denial of an application to become a registered CTA. Today's decision also directs the Commission's Executive Director to direct the various staff of the Commission to develop and implement the processes described above.

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[16] Section 982(b) refers to the noticing of an "expedited hearing." We note that this reference is different from the "expedited complaint procedure" described in Rule 4.5 of the Commission's Rules of Practice and Procedure, and in which no court reporter is required. For an expedited hearing held pursuant to § 982(b), the hearing is to be transcribed by a court reporter.

2.3.3. Discussion of Enforcement and Grounds for Suspension or Revocation of a CTA's Registration

2.3.3.1. Background of § 983.5

Section 983.5 addresses several different issues, which we set out below.

Section 983.5(a)(1) addresses the various code sections that the Commission can enforce against a CTA "as if the core transport agent is a public utility for purposes of those sections." Section 983.5(a)(2) provides that § 983.5 does not grant the Commission jurisdiction to regulate CTAs other than as specifically set forth in Chapter 4.7 (§§ 980-989.5) of Part 1 of the Public Utilities Act. Section 983.5(a)(2) also provides that CTAs are subject to the financial penalties and criminal misdemeanor provisions of §§ 2111 and 2112.

Section 983.5(a)(3) provides for a similar kind of process as described in § 982(b) for the Commission to follow when it moves to suspend or revoke a CTA's registration.[17] This process involves the Executive Director issuing a finding, and notifying the CTA, in writing, that there is evidence to support a finding that the CTA has committed an act constituting grounds for the suspension or revocation of a CTA's registration. With that notification, an expedited hearing on the suspension or revocation of the CTA's registration is to be held within 30 days of the notification. Within 45 days after the holding of the hearing, a decision is to be issued "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…."

Section 983.5(b) provides as follows:

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[17] The grounds for the suspension or revocation are set forth in § 983.5(b).

> A core transport agent may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:
> (1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.
> (2) Dishonesty, fraud, or deceit with the intent to substantially benefit the core transport agent or its employees, agents, or representatives, or to disadvantage retail gas customers.
> (3) If the commission finds that there is evidence that the core transport agent is not financially or operationally capable of providing the offered gas service.
> (4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 981.

Section 983.5(c) provides:

> Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the core transport agent to cease serving customers within the boundaries of investor-owned gas corporations, and the affected customers shall be served by the gas corporation until the time when they may select service from another core transport agent. A customer shall not be liable for the payment of any early termination fees or other penalties to any core transport agent under the service agreement if the serving core transport agent's registration is suspended or revoked.

Section 983.5(d) refers to the reentry fee, and what is to occur when a CTA customer is involuntarily returned to service provided by a gas corporation. We discussed the reentry fee earlier in this decision.

2.3.3.2. Other Applicable Code Sections

Section 983.5(a)(1) refers to the Commission's enforcement of §§ 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against a CTA.[18]

The Scoping Ruling at 16 stated:

> Since the code sections referenced in § 983.5 already direct what the CTA is prevented from doing, or what the Commission must do under those circumstances, the Commission does not need to take any further action to implement § 983.5(a)(1). Parties may, however, comment on whether additional steps need to be taken in order to implement § 983.5(a)(1).

None of the parties recommend that additional steps be taken to implement § 983.5(a)(1).

In accordance with § 983.5(a)(1), today's decision provides notice to all CTAs who are required to register with the Commission, that they are subject to §§ 2102, 2103, 2104, 2105, 2107, 2108, and 2114, and that the Commission may bring an action against a CTA to enforce those code provisions.

2.3.3.3. Jurisdiction Over CTAs

Section § 983.5(a)(2) provides that notwithstanding § 983.5(a)(1), the Commission does not have jurisdiction "to regulate core transport agents other than as specifically set forth in" Chapter 4.7 of Part 1 of the Public Utilities Act. We note that § 983.5(a)(2) is consistent with § 981(c) which provides that the registration of CTAs "is an exercise of the licensing function of the commission,

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[18] The code sections referenced in § 983.5(a)(1) address the following kinds of enforcement actions the Commission can pursue: the failure or omission of a public utility to do anything required of it by law, or by an order, decision, rule, direction, or requirement of the Commission; the processes that the Commission and the CTA are to follow in the event of such a violation; the penalties that may be sought against the CTA; and that the failure to testify truthfully, or to willfully state as true any false material statement amount to a felony.

and does not constitute regulation of the rates or terms and conditions of service offered by core transport agents."

Section 983.5(a)(2) also provides that CTAs "continue to be subject to Sections 2111 and 2112.[19] No one filed any comments that additional action is needed to implement the provisions set forth in § 983.5(a)(2).

In accordance with § 983.5(a)(2), this decision provides notice to all CTAs who are required to register with the Commission, that they are subject to the provisions contained in §§ 2111 and 2112.

2.3.3.4. Suspension and Revocation

Next, we address the process that the Commission needs to follow when it moves to suspend or revoke a CTA's registration. This process is codified in § 983.5(a)(3). That code provision states:

> 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 subdivision (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

[19] Section 2111 provides, in essence, that every corporation or person who knowingly violates or fails to comply with, or aids or abets any violation of any provision of the California Constitution relating to public utilities, or fails to comply with any Commission order, decision, rule, direction, demand or requirement, is subject to a penalty of not less than $500, nor more that $50,000 for each offense. Section 2112 provides, in essence, that every person who violates or fails to comply with any Commission order, decision, rule, direction, demand, or requirement, is guilty of a misdemeanor, and is punishable by a fine not exceeding $1,000, or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment.

> findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

The suspension or revocation process referenced in § 983.5(a)(3) is to be initiated when any one of the following acts occur, as described in § 983.5(b):

> (1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.
> (2) Dishonesty, fraud, or deceit with the intent to substantially benefit the core transport agent or its employees, agents, or representatives, or to disadvantage retail gas customers.
> (3) If the commission finds that there is evidence that the core transport agent is not financially or operationally capable of providing the offered gas service.
> (4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 981.

The Scoping Ruling noted in order to implement the suspension or revocation process under § 983.5(a)(3), the various staff of the Commission will need to establish procedures that fit within the timing constraints of that code section, and several new procedures will need to be created "to carry out the provisions described in § 983.5(a)(3) and (b)." (Scoping Ruling at 18.) The Scoping Ruling proposed that the following procedures be adopted:

> If a CTA engages in an alleged act that can lead to suspension or revocation of its registration, the Commission is likely to learn about that through the staff in the UEB, CAB or the Energy Division. When the staff of the Commission learns that a CTA may be engaging in or has engaged in an alleged act, the staff of UEB, CAB or Energy Division will need to bring the alleged act to the attention of the Commission's Executive Director and the ALJ Division.
>
> In order to carry out the provisions described in § 983.5(a)(3) and (b), several new procedures will need to be created, as contemplated in D.14-08-043. In accordance with these code sections, once the staff informs the Commission's Executive Director about the alleged

violation, the Executive Director should prepare a memorandum to the ALJ Division that finds "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" § 983.5(b).

As described in § 983.5(a)(3), the Executive Director's memorandum should then lead to the ALJ Division's preparation and issuance of a new Order Instituting Investigation (OII) to suspend or revoke the CTA's registration, and a ruling noticing a hearing on the suspension or revocation which is "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.

Such a process will require the ALJ Division to prepare a new OII for the Commission's adoption at its earliest voting meeting, obtain a new OII docket number in advance of the adoption of the new OII by the Commission, and issue a ruling in the new OII docket notifying the CTA of the Executive Director's memorandum and of the hearing on the suspension or revocation of the CTA's registration. In order to comply with § 983.5(a)(3), this ruling will need to notice this expedited hearing so that it will "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." After this hearing is held, and in accordance with § 983.5(a)(3), the Commission is to issue a decision within 45 days after holding of the hearing. The decision is to "be based on findings of fact and conclusions of law based on the evidence presented at the hearing," and "shall include the findings of fact and the conclusions of law relied upon."

The expedited hearing and decision required by § 983.5(a)(3) raises the issue of whether certain timing requirements and provisions in other code sections in the Public Utilities Code still apply, or should new rules be crafted due to the timing requirements of § 983.5(a)(3). (See §§ 311(g), 1701.2.) For example, if the OII regarding the possible suspension or revocation of a CTA's registration is categorized as adjudication, it is likely that no scoping memo can be issued, and no preemptory challenge can be brought, due to the § 983.5(a)(3) timing

requirements for an expedited hearing and the issuance of a decision. In addition, a decision on the suspension or revocation of the CTA's registration should not be subject to comments by the parties due to the requirement in § 983.5(a)(3) that a decision is to be issued by the presiding officer within 45 days after the hearing is held. Instead, such a decision could be treated similar to how adjudicatory decisions are handled as described in § 1701.2, and in Rules 14.4 and 15.5.

Procedures similar to what are contained in § 1701.2 and in Rules 14.4 and 15.5 should be adopted. Specifically, a presiding officer's decision regarding the suspension or revocation of a CTA's registration should be issued within 45 days after the hearing is held. The presiding officer's decision would then become the decision of the Commission if no further action is taken within 15 days. Any interested party would be allowed to file an appeal of the presiding officer's decision provided that the appeal is made within 15 days of the issuance of the presiding officer's decision. Any Commissioner would also be permitted to request review of the presiding officer's decision by filing a request for review within 15 days of the issuance of the presiding officer's decision. Any appeal or request for review of the presiding officer's decision is to set forth the specific grounds on which it believes the decision to be unlawful or erroneous. Any party may then file a response no later than 7 days after the date the appeal or the request for review is filed. If the presiding officer's decision is appealed or there is a request for review, the Commission is to meet in closed session to consider the presiding officer's decision that is under appeal or review. The vote on the appeal or request for review is to be in a public meeting and shall be accompanied by an explanation of the Commission's decision, which shall be based on the record developed by the presiding officer. A decision that is different from that of the presiding officer's decision shall include or be accompanied by a written explanation of each of the changes made to the presiding officer's decision. The decision of the Commission is to be effective on the day of the vote on the appeal or request for review. (See § 1701.2(a); Rules 14.4 and 15.5.) Such a process is consistent with due process and the procedures already in place for adjudicatory proceedings, and with the provision in § 311(g)(3) to

> "adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section."

The Scoping Ruling invited parties to comment on whether the proposed procedures, as described above, should be adopted or whether changes to the proposed suspension or revocation process should be made.

The Joint Utilities support the Scoping Ruling's proposed process for revoking a CTA's registration.

Just Energy is not opposed to such a process, but notes that it is unaware of any special process to implement the parallel code provisions for the ESPs in § 394.25(a) and (b). Just Energy contends that the Commission should try to implement the provisions consistently for both the CTAs and ESPs. If the Commission decides to implement such a process, Just Energy requests that before such a process is used, Commission staff first contact the CTA to discuss the basis of the proposed enforcement action to rule out any inadvertent errors or misunderstandings.

The Joint Consumers contend they do not have information on what, if any steps, the Commission has taken regarding the suspension and revocation of a CTA's registration. The Joint Consumers also state that they lack the resources to develop proposals for this process.

We have considered the comments of the parties, and compared § 983.5(a)(3) to the process for denying a CTA's application for registration that is contained in § 982(b). We have also reviewed D.98-03-072 to determine how the Commission has handled this issue for the ESPs. In that decision, the Commission adopted a similar process for suspending or revoking the registration of an ESP. The ESP process adopted in D.98-03-072 differs from the

proposed CTA process in that an OII is not opened, and the process of issuing a presiding officer's decision was not addressed.

We also note that the process for carrying out a denial of registration pursuant to § 982(b) is slightly different from the process that we adopt in today's decision for implementing § 983.5(a)(3). The reason for that difference is because denial of a CTA's registration is distinct from the Commission taking action to suspend or revoke a CTA's registration. When a denial of registration occurs, § 982(b) provides that the denial notification, and the registration materials of the CTA applicant, are to be formally filed as an application for registration. This makes sense to convert the denial of registration into an application for registration since the prospective CTA is pursuing approval of its application for registration.

In contrast, when action is taken pursuant to § 983.5(a)(3) to suspend or revoke a CTA's registration, the CTA is no longer applying for registration as a CTA. Instead, the Commission is acting to enforce the Public Utilities Code by seeking to suspend or revoke the CTA's registration. (See §§ 1701.1(c)(2) and 1701.2; Rule 5.1 of the Commission's Rules of Practice and Procedure.) The Commission's action in that instance is more akin to the opening of an OII since the Commission is investigating why the CTA's registration should be suspended or revoked.

As noted in the Scoping Ruling at 19 to 21, certain rules and requirements will need to be adapted to ensure that a Commission decision is issued within 45 days after the holding of an evidentiary hearing. Due to the timeframe set forth in § 983.5(a)(3) for opening a proceeding to hold an expedited evidentiary hearing, and for the Commission to issue a decision, a shortened process needs to be adopted which sets aside: a party's right to make a peremptory challenge

to the assignment of an ALJ to the OII (§ 1701.2(c)); removes the need for a scoping memo (§ 1701.1(b)); and waives the comment period for a proposed decision (see §§ 311(g) and 1701.2). If we retain the requirements of having a scoping memo, allowing a party to exercise a peremptory challenge, and to issue a proposed decision followed by written comments, this will conflict with the requirements in § 983.5(a)(3) of having a timely hearing and issuing a decision within 45 days after holding of the hearing. When possible, a statute should be construed to promote the purpose of the statute. (*Lopez vs. Superior Court* (2010) 50 Cal.4th 1055, 1063; *Smith vs. Superior Court* (2006) 39 Cal.4th 77, 83.) Here, the Legislature clearly wants to promote a timely hearing on the suspension and revocation of a CTA's registration, as well as a timely decision.

To promote the objective of § 983.5(a)(3), to avoid conflict with other code sections, and pursuant to §§ 311(g)(3) and 701,[20] the Commission should adopt the following processes in the situation where the Commission moves to suspend or revoke a CTA's registration. These processes adapt some of processes set forth in § 1701.2 for use in the implementation of § 983.5(a)(3).

Accordingly, the following procedures should be undertaken by the staff of the Commission when it seeks to suspend or revoke a CTA's registration. First, the Commission staff seeking to suspend or revoke a CTA's registration is

[20] Section 311(g)(3) states in part: "Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section." Section 701 states: The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

most likely to be staff of the Energy Division or the UEB.[21] These staff are likely to be the first to hear about an action taken by a CTA that may constitute grounds for suspension or revocation of a CTA's registration as provided for in § 983.5(b). Once staff learns of an action taken by a CTA that is grounds for the suspension or revocation of a CTA's registration, they will need to gather evidence of the offending action, and draft the suspension or revocation letter for the Executive Director's signature.

In accordance with § 983.5(b), the Executive Director's letter may suspend or revoke the CTA's registration immediately or prospectively. This will depend on the circumstances of the CTA's action.[22] The suspension or revocation letter will then be sent to the CTA.

Prior to or concurrent with the drafting and issuance of the suspension or revocation letter, the staff of the Commission and the Executive Director will need to coordinate with the ALJ Division to draft an OII for the next available Commission meeting agenda, and to secure a date for an evidentiary hearing on the suspension or revocation of the CTA's registration. This hearing is to be scheduled "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." (§ 983.5(a)(3).) The ALJ Division will also need to reserve a reporter to transcribe the evidentiary hearing.

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[21] The Consumer Affairs Branch and the UEB are part of the Commission's Consumer Protection and Enforcement Division (CPED).

[22] The issue of whether a CTA's registration should be suspended immediately is discussed in the next section of this decision.

The OII will need to include the following: name the CTA as a respondent; state that an evidentiary hearing is needed to decide whether the CTA's registration should be suspended or revoked; state the alleged acts that support the suspension or revocation process; identify the Commission unit responsible for prosecuting the suspension or revocation of the CTA's registration; the date, time, and location of the evidentiary hearing; categorize the OII as an adjudication matter; designate the presiding officer for the OII; that no peremptory challenges will be allowed; that ex parte communications are prohibited; no written briefs will be allowed; parties are permitted to make closing arguments at the conclusion of the evidentiary hearing; a presiding officer's decision will be issued and served within 45 days after the holding of the evidentiary hearing; pursuant to Rule 14.4 and § 1701.2(a), a party may file an appeal of the presiding officer's decision within 30 days of the date the decision is issued, or a Commissioner may request review of the presiding officer's decision by filing a request for review[23] within 30 days of the issuance of the decision;[24] pursuant to Rule 14.4(d), any party may file a response no later than 15 days after the date the appeal or the request for review is filed; pursuant to Rule 15.5, the decision of the assigned Commissioner or the assigned ALJ shall become the decision of the Commission if no further action is taken within

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[23] Consistent with Rule 14.4, any appeal or request for review of the presiding officer's decision is to set forth the specific grounds on which the party or Commissioner believes the presiding officer's decision to be unlawful or erroneous.

[24] The Scoping Ruling contemplated 15 days for the filing of an appeal of the presiding officer's decision, and for a request for review by a Commissioner. Upon reflection, however, this process should be kept at 30 days as provided for in § 1701.2(a) and in Rule 14.4. We also note that the reference to "issue a decision" within 45 days of holding the hearing, which is found in § 982(b), is consistent with the concept of the issuance of a (presiding officer's) decision that is referenced in § 1701.2(a) and in Rules 14.1(a). 14.2(b), and 14.4.

30 days of the issuance of the decision; if an appeal of the presiding officer's decision is filed, or a Commissioner requests review of the presiding officer's decision, the vote of the appeal or request for review shall take place as provided for in Rule 15.5.

The processes described above are adopted for the suspension and revocation of a CTA's registration pursuant to § 983.5, and the various staff of the Commission are directed to take the necessary steps to coordinate and implement these processes. These adopted processes are consistent with due process, and with the other procedures that are in place for adjudicatory proceedings. The adopted processes also promote the objective of § 983.5(b) of having a timely hearing and decision on the suspension or revocation of a CTA's registration.

Due to the differences in the suspension and revocation process for ESPs as adopted in D.98-03-072, and the process for the CTAs as adopted in today's decision, the ALJ Division and other affected divisions should be directed to look into whether these two processes should use a single uniform process, and to determine how these processes can be improved or streamlined while fulfilling the objectives of §§ 394.25 and 983.5.

2.3.3.5. Suspension or Revocation Remedies

Section 983.5(c) describes what actions the Commission can take if a CTA's registration is suspended or revoked. That code section provides:

> Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the core transport agent to cease serving customers within the boundaries of investor-owned gas corporations, and the affected customers shall

> be served by the gas corporation until the time when they may select service from another core transport agent. A customer shall not be liable for the payment of any early termination fees or other penalties to any core transport agent under the service agreement if the serving core transport agent's registration is suspended or revoked.

The Scoping Ruling stated that a review of this code provision suggests that no additional work is needed. The parties, however, were allowed to comment on whether any additional action should be taken to implement this code provision.

Two parties commented on § 983.5(c). Just Energy commented that no additional work was needed to implement this code section. The Joint Consumers commented that if the CTA's early termination fees are set too high, that this will discourage a competitive market from developing, and prevent CTA consumers from shopping for more competitive products or returning to utility service. The Joint Consumers recommend that the early termination fees be capped at $50, and if a consumer continues with CTA service from year to year that the early termination fee be reduced by $10 for each year.[25]

Section 983.5(c) needs to be read together with § 983.5(b). Our interpretation of § 983.5(b) and (c) is that the Commission may immediately suspend or revoke a CTA's registration at the time the Commission's Executive Director issues its finding and notice letter to the CTA. The authority to take immediate action makes sense because a CTA could be engaging in an act that requires the Commission to take quick action to prevent harm to the public. The Commission previously recognized the importance of this interim suspension

[25] We discuss the early termination fee later in the section addressing § 986.

authority when it addressed the same issue for the ESPs and stated that: "The right to suspend the ESP registration on an interim basis does not violate due process when there is a compelling state interest and a timely hearing is provided." (D.98-03-072 [79 CPUC2d at 274.].)

In addition, when the Commission issues a decision to revoke or suspend a CTA's registration, § 983.5(c) allows the Commission to "suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers." Also, § 983.5(c) allows the Commission to require a CTA to stop serving its customers, and to return the affected customers to the gas utility.
Section 983.5(c) also provides that when a CTA's registration is suspended or revoked, the CTA's customer is not liable for any early termination fee or other penalty.

These various remedies allow the presiding officer in a suspension or revocation proceeding to develop a remedy which best fits and responds to the actions that the CTA may have engaged in. Both the UEB, and the presiding officer need to be aware of the various actions the Commission can take to protect consumers in the event a CTA's registration is revoked or suspended.

Some of the parties suggest that the UEB be allowed to adopt a citation procedure whereby a citation is issued before any suspension or revocation process is initiated. This would allow the CTA time to correct any alleged deficiency before the suspension or revocation process is started.

We do not believe that a citation process should be used before the suspension or revocation process is used. The citation process, and any appeal process for the citation, may overlap with and duplicate the suspension and revocation process that we adopt today, and add more time to the overall process

before the Commission suspends or revokes the CTA's registration. However, if the UEB believes that a citation process should be implemented as a precursor to the suspension and revocation process, the UEB may propose in a Resolution that a citation process be adopted by the Commission. The proposed Resolution should explain why a citation procedure should be used before the suspension or revocation process is started, and how a citation procedure will result in a more efficient and cost effective process.

2.4. Resolution of Complaints – § 983

2.4.1. Introduction

One of the issues that was not addressed in D.14-08-043 is how consumer complaints regarding CTAs should be handled. Section 983(a) sets forth an informal complaint process at the Commission. In addition, § 983(a) allows the Commission to initiate an investigation if it "suspects a pattern of customer abuses" by a CTA. Section 983(b) provides core gas customers with the option of filing "a complaint against a [CTA] either through an action filed in the judicial court system or through a complaint filed with the commission." Section 983(c) provides that CTAs "shall provide the commission access to their accounts, books, papers, and documents related to California transactions as described in Sections 313 and 314, if the information is relevant to the complaint or investigation." In § 983(d), a CTA is prohibited from discontinuing "service to a customer for a disputed amount if that customer has filed a complaint that is pending with the commission, and that customer has paid the disputed amount into an escrow account."

The Scoping Ruling invited comment on the following:

(1) the use of the Commission's informal complaint process to resolve § 983(a) informal complaints against CTAs;

> (2) the kind of internal complaint resolution processes the CTAs should have in place to resolve customer complaints, and how the CTAs should coordinate with the Commission's Consumer Affairs Branch (CAB) in terms of providing CAB with relevant information, the timing of responding to CAB's inquiries by the CTAs, and how the CTAs plan to interact with CAB when an informal complaint against a CTA is handled by CAB;
>
> (3) whether a citation program should be adopted to ensure CTA compliance with the statutes and rules pertaining to CTAs;
>
> (4) whether additional clarification is needed about the distinction between formal complaints filed with the Commission, and those filed in the judicial court system;
>
> (5) whether further work is needed to implement the language in § 983(c) that CTAs are to provide the Commission with access to their accounts, books, papers, and documents; and
>
> (6) whether the escrow account process proposed in the Scoping Ruling needs any modification.

2.4.2. Informal Complaint Process

2.4.2.1. Background

We first address the informal consumer complaint process that is referenced in § 983(a).[26] That code provision states:

> The commission shall accept, compile, and attempt to informally resolve consumer complaints regarding core transport agents. If the commission reasonably suspects a pattern of customer abuses, the commission may, on its own motion, initiate investigations into the activities of a core transport agent offering gas service. Consumer complaints regarding service by a public agency offering gas service within the political boundary of the public agency or service territory of a local publicly owned gas utility shall continue to be resolved by the public agency. Within the service territory of a local

[26] The filing of a formal complaint at the Commission is discussed in Section 2.4.3. of this decision.

> publicly owned utility, consumer complaints arising from the violation of core transport service rules adopted by the governing body of the local publicly owned utility shall be resolved through the local publicly owned utility's consumer complaint procedures.

Section 983(a) makes a distinction between complaints involving registered CTAs, and complaints involving a public agency. As noted earlier, certain entities are exempt from registering with the Commission as a CTA. One of the entities exempt from registering with the Commission is "a public agency that offers gas service to core and noncore gas customers within its jurisdiction, or within the service territory of a local publicly owned gas utility." (§ 980(b).)

The last two sentences of § 983(a) make it clear that consumer complaints about "a public agency offering gas service within the political boundary of the public agency or service territory of a local publicly owned gas utility" are "to be resolved by the public agency," and not by the Commission. In addition, the last sentence of § 983(a) makes clear that a consumer complaint against a public agency "shall be resolved through the local publicly owned utility's consumer complaint procedures." The last sentence in § 983(a) also infers that the "governing body" of the "local publicly owned gas utility" should adopt its own "core transport service rules."[27] For those reasons, the Commission does not have any jurisdiction over a complaint involving a public agency offering gas service to customers within the public agency's jurisdiction, or within the service territory of a local publicly owned gas utility.

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[27] Section 988 states: "Notwithstanding any other provision of this chapter, requirements placed on a core transport agent shall not apply to gas services provided by a local publicly owned gas utility to customers within the jurisdiction or service territory of that local publicly owned gas utility."

The first sentence of § 983(a) directs the Commission to "accept, compile, and attempt to informally resolve consumer complaints regarding core transport agents." As noted in the Scoping Ruling at 12-13, the Commission already has an informal complaint process in place which is managed by the CAB unit of the Commission. The Scoping Ruling at 13 asked for comments on the following:

> … the use of the Commission's informal complaint process to resolve § 983(a) informal complaints against CTAs. In addition, parties should comment on the internal complaint resolution processes that the CTAs should have in place to resolve customer complaints, and how the CTAs should coordinate with the Commission's informal complaint process in terms of providing CAB with relevant information, the timing of responding to CAB's inquiries by the CTAs, and how the CTAs plan to interact with CAB when an informal complaint against a CTA is handled by CAB.

2.4.2.2. Position of the Parties

Several comments were received about the informal complaint process.

The Joint Utilities agree with the Scoping Ruling that the Commission should use this established process to resolve complaints against the CTAs. The Joint Utilities recommend that the Commission develop and maintain a standardized reporting system to track and resolve the CTA complaints. The Joint Utilities contend that such a reporting system complies with the Commission's obligation under § 983(a) keep track of, and to "accept, compile, and attempt to informally resolve consumer complaints regarding core transport agents." The Joint Utilities recommend that the reporting system classify the type of complaint (such as, marketing, billing, sign up process), and the time it takes to close the informal complaint process.

Several of the CTAs support the use of the Commission's informal complaint process, but recommend that some modifications be made.

IGS recommends that the informal complaint process should be distinguished from an inquiry. IGS views an inquiry as being "focused on gathering additional information, which information may or may not lead to the initiation of a complaint." (IGS, April 7, 2017 Comments at 5.) IGS views a complaint as:

> … a good faith objection made to an entity, by a customer or another entity, as to its charges, facilities, or service, the disposal of which requires a follow up investigation or analysis, where there are reasonable grounds to believe that the circumstances underlying the objection constitute an act of noncompliance with statutory or regulatory requirements relevant to the objection. (IGS, April 7, 2017 Comments at 5.)

If a customer contacts the Commission with a bona fide complaint, IGS recommends that the Commission take note of the customer's complaint, but refer the complaint to the CTA for a response. The CTA should then be allowed to contact the customer in an attempt to informally resolve the complaint before the Commission intervenes or initiates any process. IGS contends that such a process "allows the customer and CTA to review the specific facts and work toward a resolution without involving third parties." (*Id.* at 6.) Just Energy and Tiger also recommend that the Commission's CAB unit first refer an informal complaint to the CTA, before CAB takes any steps to resolve the matter.

Just Energy and Shell Energy both contend that SB 656 specifically provides that the CTA registration requirement is a licensing function of the Commission, and that the Commission has no authority to regulate the CTAs' rates or terms and conditions of service. (See § 981(c).)

The Joint Consumers agree that the existing CAB complaint processes can be used to resolve CTA customer complaints. However, they believe several improvements need to be made to the online complaint process, and that a

workshop should be held to discuss how the informal complaint process can be improved.

The problems cited by the Joint Consumers include the following:

- The online complaint form does not have a location to enter the CTA's name, and should be re-labeled or use a drop-down box to choose from all utility and CTA names, or to label as "Name of company with which you have a dispute," such as an electric, water or gas utility; natural gas provider; telephone company; wireless provider; transportation; or other.
- Improve the online complaint form by utilizing a drop down menu that allows the customer the choose the specific provider, and the type of complaint that best fits the situation so that ORA, CAB, and the parties can "compile statistics about complaints in general and CTAs specifically." (Joint Consumers, April 7, 2017, Opening Comments at 15.)
- The online complaint form has insufficient space (limited to 1,000 characters) to describe the customer's situation and problem, and that the character limit should be expanded.
- In case additional information about a complaint is needed, CAB should send an e-mail or postcard to the customer giving them at least two weeks to provide additional information, instead of CAB seeking information from the utility.

The Joint Consumers recommend that the CTAs be held to the same requirements and expectations as the IOUs, and "that the CTAs be required to provide a periodic report to CAB and ORA on the number and types of complaints it receives directly from customers." (Joint Consumers, April 7, 2017, Opening Comments at 17-18.)

Tiger is open to the Joint Consumers' proposed improvements to the existing complaint form and instructions to make them more customer-friendly. However, Tiger opposes the Joint Consumers' recommendation that the CTAs be held to the same requirements and expectations that the IOUs are held to when

there is an informal complaint. Tiger contends that the CTAs should not be treated the same as the utilities because the Commission has no jurisdiction over the CTAs' rates or terms and conditions of service. In addition, unlike the utilities, the CTAs are not "guaranteed a reasonable opportunity to recover their costs in Commission-authorized rates in exchange for meeting Commission-imposed service standards." (Tiger, April 28, 2017 Reply Comments at 4.)

2.4.2.3. Discussion

2.4.2.3.1. CTA Obligations

None of the parties that commented oppose using the Commission's informal complaint process.[28] However, they recommend that various changes be made to the process.

Some of the CTAs suggest that when a customer first contacts the Commission's CAB unit about an issue with a CTA, that CAB should record the contact into a log, and then refer the complaint to the CTA for possible resolution before CAB takes any further action. We decline to adopt that recommended change. Adopting such a recommendation may just repeat something the consumer has already done, and add more time to the overall process.[29] A consumer usually contacts the service provider before the consumer seeks an alternative method of trying to resolve the issue. In addition, the Legislature has

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[28] In D.98-03-072, the Commission addressed the parallel language in § 394.2(a) for an informal complaint process for the ESPs. In that decision, the Commission directed that procedures be established to address the informal resolution of complaints against ESPs. (79 CPUC2d at 297, 324.)

[29] When a consumer accesses the Commission's website regarding informal complaints, the consumer is advised that it should first contact the entity providing the service before an informal complaint is submitted.

directed the Commission, and not the CTAs, to informally resolve the consumer complaints. This means that CAB should be involved at the outset for any informal complaints. For those same reasons, we do not adopt IGS' recommendation that the Commission should distinguish between a customer's "inquiry" and an "informal complaint."

The Joint Utilities and the Joint Consumers recommend that the CAB unit maintain a log of the informal complaints so as to provide relevant data to the Commission, and to ORA for its analysis pursuant to § 984.5(d). The data from the log can be used for several purposes, such as determining the most common type of issues involving CTAs, whether the CTAs are taking action to resolve the informal complaints, and the time it takes for CAB to resolve the informal complaints.

As part of its internal processes, the CAB tracks informal complaints and the same type of information that the Joint Utilities request that the Commission maintain. Today's decision does not change any of the information that CAB currently tracks as part of the informal complaint process. However, CAB is directed to review the information data categories that it collects when informal complaints are submitted, and to make revisions to the type of data collected if it believes that would improve the Commission's monitoring of consumer protection issues involving CTAs.[30] Such a review will ensure that the Commission has the information it needs to protect consumers, to detect any problem areas, and to decide if additional protections are needed and to

[30] The information data that CAB collects as part of the informal complaint process is similar to what the Commission ordered the electric utilities to provide about complaints against ESPs. (D.99-05-034 [86 CPUC2d 467, 496-499].)

implement such changes. All of these concerns are consistent with the various code sections added by SB 656 which directs the Commission to protect consumers.[31]

The Joint Consumers recommend that the Commission's online informal complaint form be revised to allow a consumer to insert the name of a CTA or a utility's name, or to have that field use a pull-down menu to select from the names of all the utilities and registered CTAs. We direct CAB to review the online informal complaint form to determine whether the form and any applicable webpages should be updated. The Public Advisor's Office (PAO), in conjunction with the ALJ Division, shall review the formal complaint form and any applicable webpages, to determine if any of the information should be updated. We note that maintaining an up to date pull-down list of all the utilities and registered CTAs needs to be weighed against having a consumer simply listing on the form the name of the service provider that the consumer has an issue with.

The Joint Consumers recommend that in processing an informal complaint, the CTAs should be held to the same requirements and expectations as the utilities. Several of the CTAs note that the Commission only has licensing authority over the CTAs, and cannot regulate the CTA's rates and terms and conditions of service.

In deciding how the CTAs should respond to the informal complaint process, we recognize the Commission's limited authority over the CTAs.

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[31] For example, § 981(a)(9) directs the Commission to develop "other appropriate criteria to ensure that core gas customers have adequate recourse in the event of fraud or nonperformance." In § 985(h), the Commission has the authority to "adopt additional core gas consumer protection standards that are in the public interest."

However, the Legislature clearly imposed certain restrictions and terms on the CTAs, and has directed the Commission on what it must do with respect to the CTAs.

With the enactment of § 983.5, the Legislature has prohibited the CTAs from engaging in certain acts, and in § 985 the Legislature requires the CTAs to abide by the minimum standard rules that the Commission adopts. As part of the informal complaint process in § 983(a), the Commission is to "accept, compile, and attempt to informally resolve consumer complaints regarding" CTAs. In § 983(c), the Legislature has also directed that "In connection with customer complaints or commission investigations into customer abuses, core transport agents shall provide the commission access to their accounts, books, papers, and documents related to California transactions …, if the information is relevant to the complaint or investigation."

Consistent with our limited authority over the CTAs, we expect that under § 983(c) and D.14-08-043, all CTAs shall provide the information required of them that is relevant to the complaint or investigation, and to provide the necessary resources to attempt to resolve informal complaints consistent with § 983(a).[32]

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[32] In accordance with § 981(a)(6) and D.14-08-043, all CTAs registering with the Commission are to provide "The name, title, address and telephone number of the person to whom correspondence or communication regarding customer complaints or inquiries are to be addressed," and "This person must have the ability to receive complaint cases through the CPUC Consumer Affairs Branch web portal." (D.14-08-043, Appendix A at 5 of 8.) In addition, § 982(d) and Appendix A of D.14-08-043 at 7 of 8 requires a CTA to update any material changes to their registration information within 60 days, and any change in the CTA's telephone number or address within five days of such a change.

We note that it is in the CTA's interest to cooperate because the Commission: has licensing authority over the CTA's registration; the Commission can move to suspend or revoke a CTA's registration under specified situations; the Commission can open an OII to investigate a pattern of consumer abuses; and the Commission can issue public alerts about an offending CTA. In addition, if a CTA does not cooperate in attempting to resolve informal and formal complaints, the CTA runs the risk that it may lose potential customers as a result of the actions the Commission can take against the CTA.

In order to involve the CTAs in the informal complaint resolution process, the CTAs will need to access the informal complaint web portal platform that CAB uses,[33] provide certain information to the Commission, and supply the resources to address any informal complaints.

The existing CAB process involves the intake of an informal consumer complaint against a utility, and CAB's attempt to resolve the complaint by working with the utility and the consumer. If a complaint cannot be resolved through the informal complaint process, the consumer may then file a formal complaint as provided for in Rules 4.1 to 4.5 of the Commission's Rules of Practice and Procedure. Under the current informal complaint process, the utilities do the following:

- Provide designated complaint contact(s) that interact directly with CAB in providing assistance to consumers. These contacts are at a level with the authority to resolve informal complaints, such as in the "executive office" or "customer relations team."

[33] The CTA Registration Form refers to this as the "CPUC Consumers Affairs Branch web portal."

- Ensure that the utility contact information is current and that any changes are timely provided.
- Available to assist CAB by telephone contact during regular business hours.
- Use CAB's web portal platform to receive, process and respond to informal complaints.
- Respond to CAB's written requests for assistance within 20 business days.

Since today's decision adopts the current informal complaint process that CAB has in place, and adapts it so that the Commission can attempt to resolve informal complaints against CTAs, all registered CTAs shall do the following for the informal complaint process in accordance with the code provisions applicable to CTAs:

1. <u>§ 981(a)(6) and § 982(d)</u>: CTAs shall provide a number for a customer contact representative for receiving customer inquiries when they register with the CPUC, and to update the information required in § 981(a) within 60 days of any material change in the information that was provided. Accordingly, for the informal complaint process, the CTA shall provide to CAB and the Energy Division the current contact information of CTA representatives authorized to address and resolve informal complaints. The CTA contacts shall be at a level above the CTA's call center line representatives and have the authority to timely resolve informal complaints. In addition, the CTA contacts shall be available during regular California business hours (Pacific Standard Time) to receive phone calls from CAB, and shall respond to CAB written informal complaints within 20 business days. The CTAs shall update the CTA customer contact number for the informal complaint process as quickly as possible. These discretionary internal functions of the CTAs are in the interests of the CTAs so that informal complaints can be addressed in a timely manner for public relation purposes, to minimize the filing of formal complaints for public relation purposes, and to avoid the possible future imposition of additional consumer

protection rules pursuant to the ORA review in § 984.5(d). For those reasons, the CTAs shall cooperate in providing the necessary resources to respond to and address any informal complaints.

2. § 983(c): The CTAs shall provide the Commission with access to their accounts, books, papers, and documents related to California transactions as described in §§ 313 and 314 if the information is relevant to a complaint or investigation.
3. § 985(h): The Commission may adopt additional core gas consumer protection standards that are in the public interest. Accordingly, pursuant to § 985(h) and § 983(a), it is in the public interest for the Commission to assist complainants and to attempt to resolve informal complaints that may be submitted against the CTAs, and to require the CTAs to utilize CAB's web portal platform to facilitate the timely disposition of the informal complaints. In order to utilize CAB's web portal platform, an instruction package for accessing and using the web portal platform will be sent to the complaint handling groups of the CTAs.

Consistent with the second sentence of § 983(a), if during the informal complaint process CAB suspects that a CTA is engaging in a pattern of customer abuses, CAB should notify the Energy Division and the UEB to look into whether an OII should be initiated.

At the conclusion of the informal complaint process, if CAB cannot resolve the informal complaint against the CTA to the customer's satisfaction, CAB shall inform the customer that it may file a formal complaint using the process in § 983(b).

As discussed in Section 3.4.4., we also establish an escrow process for the informal complaint process.

2.4.2.3.2. PG&E's Gas Rule 23

Just Energy recommends that the gas utilities should be required to file revised tariffs to eliminate any language that allows the utilities to assess consequences or take other punitive action against CTAs. In particular, Just Energy points to the consumer protection rules set forth in PG&E's gas Rule 23 in Sections D and E.1.

The CTA consumer protection rules contained in PG&E's gas Rule 23 were added as part of a settlement reached in PG&E's Test Year 2011 gas transmission and storage proceeding in A.09-09-013, and which was approved by the Commission in D.11-04-031. The "Core Transport Agent (CTA) Settlement Agreement" (CTA Settlement Agreement), which addressed the CTA consumer protection issues, was part of the overall settlement adopted by D.11-04-031. The overall settlement was attached to D.11-04-031 as Appendix A, and referenced the CTA Settlement Agreement in Section 11.2 at page 18 of that Appendix A. The CTA Settlement Agreement was attached to D.11-04-031 as Appendix B.

The overall settlement approved in D.11-04-031 states that the "Settlement Period" covers the four-year period from January 1, 2011 through December 31, 2014. In the section of the CTA Settlement Agreement entitled "New Consumer Protection Rules," that settlement states as follows:

1) New rules will be developed in collaboration with the CTAs and the CPUC, but the CPUC's level of participation will be at its own discretion.

2) PG&E proposes to implement the new consumer protection rules, developed in collaboration with the CTAs and the CPUC, based on the following guiding principles, by no later than April 1, 2011:

    a) The new rules will be added to the Core Gas Aggregation Service Agreement and all applicable PG&E tariffs;

b) The new rules will be submitted to the CPUC for approval through the Advice Filing process;

c) CTAs agree not to oppose PG&E's advice filing of the consumer protection rules agreed upon in the collaborative effort;

d) CTAs will provide PG&E with proof of a customer's authorized enrollment, within a specified timeframe, in response to customer complaints of unauthorized enrollments;

e) The new rules will give CTAs the first opportunity to resolve a customer's complaint within a specified timeframe;

f) The new rules will include monetary penalties assessed to CTAs if: 1) CTAs do not resolve complaints related to improper enrollments or provide proof of a customer's authorized enrollment within a specified timeframe; or 2) CTAs engage in fraudulent, deceptive, or abusive marketing activities;

g) The new rules will allow PG&E to suspend CTAs from enrolling new customers for a specified timeframe, and allow PG&E to terminate a CTA's Core Gas Aggregation Service Agreement under specified conditions as agreed upon in the collaborative effort.

The above consumer protection concepts were then incorporated into PG&E's gas tariffs and submitted for approval in PG&E's Advice Letter 3436-G filed on December 5, 2013. That Advice Letter was approved by the Energy Division Director on February 25, 2015, with an effective date of January 4, 2014.

SB 656, which became effective on January 1, 2014, adopted a series of new consumer protection rules for the CTA program. The consumer protection rules in SB 656, as discussed in D.14-08-043 and in this decision, differ from the consumer protection rules set forth in PG&E's Rule 23. That raises the point that

Just Energy made as to whether the consumer protection rules in PG&E's Rule 23 should be revised or changed.

Due to SB 656, and the expiration of the Settlement Period of the overall settlement adopted in D.11-04-031, the consumer protection rules set forth in SB 656, as interpreted and implemented through D.14-08-043 and in today's decision, supersede the consumer protection rules set forth in PG&E's current gas Rule 23. Accordingly, PG&E, along with the other gas corporations, will need to revise their applicable tariffs pertaining to the CTA program to conform to today's decision. Because the rules equally apply to all, PG&E and the other gas corporations shall file the conforming tariffs in a similar fashion.

2.4.2.3.3. Conclusion

Based on the above, we adopt and adapt the Commission's current informal complaint process to handle any informal complaints that may be brought against a CTA pursuant to § 983(a). All registered CTAs shall follow the steps discussed above for the informal complaint process, and the gas corporations shall revise their tariffs to conform their tariff language to today's decision regarding the informal complaint process.

CAB shall review the current informal complaint form that is in use, and revise it as needed, consistent with today's decision. The CAB shall also review the information it collects when informal complaints are lodged against a CTA to determine whether any revisions to the type of information collected is needed. CAB shall also adapt its current informal complaint process, as discussed above, to handle informal complaints that may be lodged against a CTA. The PAO, in conjunction with the ALJ Division, shall review the formal complaint form to determine if any revisions to the form are needed.

On the issue of whether a citation program should be used when a pattern of customer abuses is suspected in connection with informal complaints, we decline to do so. As provided for in § 983(a) and § 983.5, the Commission may investigate alleged abuses, open an OII, or initiate suspension and revocation proceedings.

2.4.3. Formal Complaint Process

Section 983(b) states as follows:

> Notwithstanding other provisions, core gas customers shall have the option to proceed with a complaint against a core transport agent either through an action filed in the judicial court system or through a complaint filed with the commission. A customer who elects either the judicial or commission remedies may not raise the same claim in both forums. The commission shall have the authority to accept, compile, and resolve core gas consumer complaints, including the authority to award reparations. The commission's authority in these complaint proceedings is limited to adjudication of complaints regarding core gas service provided by a core transport agent and shall not be expanded to include an award of any damages through regulation of the rates or charges of the core transport agent. However, a person or core transport agent that takes a conflict to the commission shall not be precluded from pursuing an appeal of the decision through the courts as provided for by law.

The Scoping Ruling invited parties to comment on whether any additional work was needed on the formal complaint process set forth in § 983(b). The only parties who commented were Just Energy and Tiger who stated that no additional action was needed to implement § 983(b).

Pursuant to § 983(b), a customer of a CTA has the option of filing a formal complaint against a CTA at the Commission or in civil court. It is up to the consumer to decide the venue in which to pursue a formal complaint.

In order to inform consumers of § 983(b), when an informal complaint is closed out by the CAB, we direct CAB to inform the CTA customer in writing that the customer has the option to pursue a formal complaint under § 983(b) at the Commission or with a civil court.[34] The PAO is directed to work with the Commission's Information Technology Services Branch (ITSB) to revise the web pages discussing formal complaints to include a discussion about the § 983(b) option for customers of CTAs. The revision to the web pages should also address the second sentence of § 983(b), which states that "A customer who elects either the judicial or commission remedies may not raise the same claim in both forums." These directives will help ensure that customers of CTAs are made aware that they can file a formal complaint against a CTA either with the Commission or in a civil court.

We also direct the PAO to work with the ITSB to revise the web pages discussing formal complaints to include a discussion about the Commission's authority to award reparations, but that it cannot award "any damages through regulation of the rates or charges of the core transport agent." The limits on what the Commission can do with respect to the filing of a formal complaint are set forth in the third and fourth sentences of § 983(b).

Closely tied to the informal complaint process and the formal complaint process is the obligation of the CTAs under § 983(c) to provide the Commission with "access to their accounts, books, papers, and documents related to California transactions… if the information is relevant to the complaint or

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[34] The Commission's web pages describe how a consumer can submit an informal complaint, and to file a formal complaint with the Commission. It does not address how the customer of a CTA has the option of filing a formal complaint with the Commission or in the judicial court system.

investigation." In accordance with § 983(c), and as discussed earlier, today's decision directs the CTAs that they shall provide the Commission with access to their relevant accounts, books, papers, and documents in the event of a customer complaint against a CTA, or a Commission investigation into customer abuses by a CTA.

2.4.4. Escrow Deposit of a Disputed Amount

Section 983(d) provides that "A core transport agent shall not discontinue service to a customer for a disputed amount if that customer has filed a complaint that is pending with the commission, and that customer has paid the disputed amount into an escrow account."

The Scoping Ruling recommended that in this phase of the proceeding, the Commission "should make clear that if a CTA customer deposits the disputed amount with the Commission when the complaint is filed, that the CTA is prevented from discontinuing service to the customer until a decision is rendered regarding the outcome of the complaint." The parties were invited to comment on this proposed process.

The Joint Utilities acknowledge that the Commission already has an escrow process in place, and support the establishment of a similar escrow process.

Just Energy and Tiger agree that the escrow provision in § 983(d) should be implemented as described in the Scoping Ruling.

The Joint Consumers also support the use of the existing escrow process for a customer dispute with a CTA. The Joint Consumers also recommend that the right to use this escrow process be included in a consumer "bill of rights" brochure that the Commission should develop and provide to prospective CTA customers.

Section 983(d) raises three issues that we need to address. The first issue is that this code provision is clear that if a formal complaint is filed with the Commission against a CTA by a customer of the CTA, the CTA shall not discontinue service to the customer if the customer has deposited the disputed amount into an escrow account. To implement § 983(d), the Commission's Fiscal Office is directed to set up the processes to handle incoming disputed amounts from customers of CTAs when a formal complaint involving the CTA is filed with the Commission. The Fiscal Office may want to adapt the current escrow processes it uses for utility complaints and for complaints involving ESPs. These processes include the following: receiving the deposit amount from the customer; accounting for the deposit amount; tracking any interest that may accrue on the deposit amount; and sending the deposit amount, along with any accrued interest, to the appropriate person as directed in a Commission decision.

The second issue with § 983(d) is what should occur if an informal complaint against a CTA is submitted by a customer. The reference in § 983(d) to "filed a complaint that is pending with the commission" suggests that this code provision only applies when a formal complaint is filed with the Commission. This interpretation is supported by the references to "filed" in § 983(b). Thus, if a formal complaint is filed against a CTA at the Commission, and the customer deposits the disputed amount with the Commission, the CTA cannot discontinue service to the customer while the formal complaint is pending at the Commission.

However, § 983(d) does not specifically address whether a CTA can discontinue gas service to a customer during the time an informal complaint is pending resolution by CAB. The language in § 983(d) could be interpreted to mean that the CTA has the right to discontinue gas service to a CTA customer

during the informal complaint process at the Commission if no deposit is placed in escrow by the customer.

Such a result, however, would run counter to the directive in §983(a) that the Commission attempt to informally resolve a consumer complaint. CAB currently uses the escrow process as part of the informal complaint process when a customer faces imminent disconnection. Consistent with §985(h) about adopting additional consumer protection standards, it is in the public interest for CAB to use an escrow process for informal complaints against a CTA when a customer faces an imminent threat of discontinuance of service by the CTA. If a CTA plans to discontinue service during the informal complaint process, CAB and the Fiscal Office shall have the authority to hold in escrow the customer's deposit of the disputed amount to avoid disconnection.

The third issue that arises with § 983(d) is what action the Commission should take to make consumers aware of this code provision. CAB and the PAO, in conjunction with ITSB, are directed to revise the webpages on the informal complaint and formal complaint processes to describe that a customer of a CTA can avoid discontinuance of gas service from the CTA if the customer deposits the disputed amount with the Commission. CAB and the PAO should also look into whether the materials that are used for informal and formal complaints should be revised to incorporate the escrow provision.

2.5. Claim for Damages to Property

Section 983.7, as added by SB 656, provides as follows:

> If a customer files a claim with a gas corporation for damages to property resulting from the curtailment of gas service due to the failure of the gas corporation to reasonably provide service or restore service within a reasonable time after a fire, flood, earthquake, other natural disaster, or act of God, the gas corporation shall inform the customer that the claim may be pursued in small

claims court or other judicial courts, depending on the amount of the claim.

The Scoping Ruling noted that § 983.7 only applies to the investor-owned gas utilities, and not to the CTAs, because of the reference in that code section to "gas corporation." The Scoping Ruling stated at 23-24 that: "Based on a reading of this code section, the only thing that the Commission needs to do is to direct the investor-owned gas utilities to follow this code section in the event such a claim is filed."

The Scoping Ruling invited parties to comment on whether any other action needs to be taken with respect to § 983.7.

Just Energy and Tiger commented that no additional work is needed to implement the property damage claim provisions of § 983.7. Tiger contends that the Scoping Ruling correctly points out that the damage claim provisions in this code section applies to the utilities, and not to the CTAs.

Pursuant to § 983.7, the gas corporations are directed to inform their customers at the time the customer files a claim with the gas corporation "for damages to property resulting from the curtailment of gas service due to the failure of the gas corporation to reasonably provide service or restore service within a reasonable time after a fire, flood, earthquake, other natural disaster, or act of God," that the customer may pursue the claim in small claims court or Superior Court depending on the amount of the claim.

2.6. Registration Fee and Annual Determination of the Costs of the Registration Program

2.6.1. Background

Section 984 addresses the registration fee for CTAs, and provides for an annual determination of the costs of administering the CTA registration program. Section 984 states:

> In order to carry out essential elements of a sustainable and effective consumer protection program in connection with core transport agents offering gas service to core gas customers as intended by the Legislature in this chapter, the following shall apply:
> (a) A registration fee of one hundred dollars ($100) shall be collected from a core transport agent required to register under this chapter and the fee proceeds shall be deposited in the Public Utilities Reimbursement Account established under Section 402. The commission may adjust the fee as necessary to recover the cost of administering the program.
> (b) The commission shall annually determine the costs of administering the registration program and other facets of consumer protection directly related to the core transport service transactions of core transport agents, including the cost for the duties imposed pursuant to subdivision (c) of Section 984.5. The commission shall only collect those costs not already being collected elsewhere. Registrants who fail to submit to the commission required fees or information upon which fees are calculated within 30 days of billing shall be subject to a 15-percent penalty.

2.6.2. Position of the Parties

The Scoping Ruling invited parties to comment on whether both a periodic fee and a registration fee should be imposed on and collected from the CTAs. If a periodic fee is to be collected, parties were asked to comment on how much the periodic fee should be, the factors the Commission should consider in determining how much this fee should be, and how often this fee should be collected. Comments were also sought on how often the CTA registration fee should be adjusted, and what costs the Commission should consider in adjusting the CTA registration fee.

The Joint Utilities support the adoption of a fee from the CTAs to recover the costs of administering the CTA consumer protection program, especially in light of the tasks that the Commission is directed to perform as set forth in §§ 983 and 984.5. The Joint Utilities recommend the following:

> The Commission should consider collecting a fee from CTAs to recover the costs associated with administering its CTA registration and consumer protection program. These costs include staffing and business-related expenses to support the Commission's customer complaint process and oversight of the CTAs' written notices and gas commodity pricing products; administrative and web hosting expenses for on-line posting of CTA gas commodity pricing information, and expenses incurred to issue public communications and public alerts concerning CTAs. The amount of the fee due from each CTA should be determined on a sliding scale based upon the CTA's market share, and be assessed and collected by the Commission on a semiannual basis.
>
> At the conclusion of this Proceeding, once all the roles and responsibilities at the Commission have been established, the Commission should reassess whether the current registration fee of $100 is adequate to cover the costs associated with administering the CTA registration and consumer protection program. (Joint Utilities, April 7, 2017 Comments at 5-6.)

The Joint Utilities agree with the comments of Commercial Energy that if an additional registration fee is imposed, the fee should be related to the number of customers or meters that the CTA serves. The Joint Utilities contend that this is a reasonable way to allocate administrative costs, and is an appropriate metric because "the marketing and acquisition of the customer and the billing to the customer (usually through tariffed utility meter and billing arrangements) are specific aspects of CTA service over which the Commission has jurisdiction." (Joint Utilities, April 28, 2017 Reply Comments at 11.)

Just Energy and IGS contend that the Joint Utilities have not demonstrated a need as to why the current $100 registration fee should be reexamined to determine if the fee should be based on a sliding scale related to the CTA's

market share. Just Energy and IGS also point out that the $100 registration fee for the ESPs has remained unchanged since 1998.

Just Energy and IGS note that for the ESPs, the Commission has imposed an annual fee of $1,000, which the Commission stated in Resolution M-4797 is a nominal amount.[35] In the event the Commission decides to adopt an additional fee, Just Energy and IGS recommend that the same annual fee of $1,000 should be imposed on the CTAs.

On the issue of whether the $100 registration fee provided for in § 984(a) should be adjusted for the CTAs, Just Energy notes that the fee adjustment language in § 984(a) does not appear in § 394.3(a), which covers the registration fee that applies to the ESPs. Just Energy and IGS point out that the $100 registration fee for the ESPs has remained unchanged since 1998. Just Energy recommends that the CTA and ESP rules be consistent, and the $100 registration fee for the CTAs should only be adjusted if the registration fee for ESPs is adjusted.

Shell Energy and Tiger recommend that the Commission should not impose an additional fee for administering the CTA registration program and for other consumer protection activities. Instead, they recommend that an annual CTA charge of $100 be adopted to satisfy the § 984(b) requirement.

Commercial Energy contends that the language in § 984(b) that the "commission shall only collect those costs not already being collected elsewhere" should not be interpreted to mean that an additional fee should be imposed on

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[35] Resolution M-4797 was adopted by the Commission on November 4, 1999, and was issued in response to Ordering Paragraph 17 of D.98-03-072. A link to the resolution can be found at the following: http://www.cpuc.ca.gov/general.aspx?id=3430

the CTAs to pay for the costs of administering the CTA registration program. Commercial Energy contends that § 984 only refers to one fee, and that it "merely elaborates on the Commission's annual determination of the costs of administering the CTA program and cautions the Commission that it may not collect costs already being collected elsewhere." (Commercial Energy, April 7, 2017 Comments at 7.)

Since the Commission already has the authority under § 984(a) to adjust the registration fee as necessary to recover the cost of administering the CTA registration program, Commercial Energy contends that "additional charges would be duplicative and are unnecessary." (Commercial Energy, April 7, 2017 Comments at 6.) For those reasons, Commercial Energy is opposed to an annual registration fee for the CTAs.

In the event the Commission concludes that an additional fee should be imposed, Commercial Energy, along with Tiger, contend that the fee should be based on the number of customers or meters that the CTA serves. Basing the fee on such a relationship is appropriate because those "are specific aspects of CTA service over which the Commission has jurisdiction." (Commercial Energy, April 7, 2017 Comments at 7.)

Commercial Energy also contends that it is unknown at this time how much more the administrative costs associated with SB 656 will be, and suggests that the Commission revisit the issue of increasing fees after the rules adopted in today's decision have been in effect for one year. At that time, if it is determined that the registration fee is not enough to cover the incremental administrative activities, Commercial Energy contends that the Commission can adjust the registration fee, and assess the costs on the CTAs who are the cause of the incremental costs.

The Joint Consumers recognize that the Commission needs resources to accomplish the tasks set forth in SB 656. The Joint Consumers recommend that in addition to the registration fee, that an annual fee also be assessed on the CTAs. The Joint Consumers contend that these fees can help support the various administrative and review processes contained in SB 656. The Joint Consumers recommend that a workshop be held to determine the appropriate amount to be charged.

2.6.3. Discussion

As noted in the Scoping Ruling at 25, § 984 arguably imposes two charges on the CTAs. The first charge is the $100 registration fee as described in § 984(a). In accordance with D.14-08-043, all CTAs who have registered with the Commission have paid the $100 registration fee, and prospective CTAs planning to register with the Commission are required to pay the $100 registration fee.

Section 984(a) provides that this registration fee may be adjusted by the Commission "as necessary to recover the cost of administering the program." We do not seek to change the CTA registration fee in today's decision since we did not ask the parties whether the registration fee should be adjusted, and did not solicit any evidence on whether a fee adjustment is warranted. Parties and future CTAs who have not registered with the Commission are advised that this CTA registration fee may be adjusted in the future. As provided for in § 984(a), the Commission's Energy Division, with the assistance of other divisions of the Commission, is directed to prepare a proposed resolution for the Commission's action if Energy Division believes an adjustment to the CTA registration fee is needed to recover the cost of administering the CTA program.

As noted in the Scoping Ruling, the second charge that § 984(b) arguably allows for is a recurring fee. This code provision states that "The commission

shall annually determine the costs of administering the registration program and other facets of consumer protection directly related to the core transport service transactions of core transport agents, including the cost for the duties imposed pursuant to subdivision (c) of Section 984.5."

Some of the CTAs argue that a recurring fee should not be imposed on top of the $100 registration fee. Others contend that a periodic recurring fee of $1,000 should be imposed (the same amount that the Commission imposed on the ESPs), or that a periodic recurring fee should be imposed on the CTA based on the number of customers and meters that a CTA has.

We disagree with the CTAs who argue that § 984 does not allow the Commission to charge a recurring charge. A second fee is supported by the recurring annual fee that the Commission imposed on the ESPs in D.98-03-072 (79 CPUC2d at 272). In addition, § 984(b) does not limit the "required fees" to a registration fee only that is to cover "the cost of administering the registration program." Instead, § 984(b) provides that the Commission shall also "annually determine the costs of… other facets of consumer protection directly related to the core transport service transactions of core transport agents, including the cost for the duties imposed pursuant to subdivision (c) of Section 984.5."[36] Section 984(b) further provides that "The commission shall only collect those costs not already being collected elsewhere."

In D.98-03-072, the Commission directed the Executive Director to have staff determine the costs of the registration and consumer protection activities

[36] Section 984 differs from the similar code section that applies to ESPs in § 394.3. In particular, § 984(b) specifically references the "cost for the duties imposed pursuant to subdivision (c) of Section 984.5." The statutory scheme for the ESPs does not contain a code section equivalent to the duties imposed on the Commission by § 984.5 for the CTAs.

related to the ESP program, and to prepare a report and a proposed resolution to determine how much of a recurring charge should be assessed. This resulted in Resolution M-4797, which imposes an annual fee of $1,000 on each registered ESP.

As directed by § 984(b), today's decision directs the Executive Director to have staff "annually determine the costs of administering the registration program and other facets of consumer protection directly related to the core transport service transactions of core transport agents, including the cost for the duties imposed pursuant to subdivision (c) of Section 984.5." The Executive Director shall direct the staff to determine these costs, and to prepare a report and a proposed resolution for the Commission's consideration on staff's recommendation for an annual recurring charge for the CTAs. Subsequent annual reviews of these costs shall also take place by the staff, and if these costs warrant an increase in the annual fee collected from the CTAs, staff shall prepare a proposed resolution with the recommended annual fee.

The staff responsible for this annual review need to be cognizant of the costs of activities, especially §§ 984.5 and 987, that could drive these annual costs even higher. At the same time, staff and the Commission need to weigh whether the proposed increase in the annual fee will deter market entry by prospective CTAs.

The interim annual fee of $100 shall remain in effect until changed by further Commission action. This initial review, report, and proposed resolution shall be submitted to the Commission by March 1, 2019. It is our intent to consider the report and proposed resolution, and to adopt an annual charge that is to be imposed on all registered CTAs no later than July 1, 2019, and on July 1 of each subsequent year.

Once the Commission approves the resolution for the annual fee, the Executive Director shall have staff prepare and send out a bill for the annual fee to all registered CTAs. The bill for this annual fee shall be sent out by July 1 of each year, and the bill shall state that if the CTA fails to pay the bill within 30 days, that a 15% late penalty will be incurred consistent with § 984(b).[37]

The first annual review of these costs shall take place by March 1, 2019, and by March 1 of each subsequent year. If these subsequent reviews recommend that the annual CTA fee be increased, staff shall prepare a proposed resolution for the Commission's action.

The CTA Registration Form in Appendix 1 of this decision has been modified to advise prospective CTAs of the annual fee.

2.7. CTA Information, Public Alerts and Analysis by ORA

Section 984.5 addresses certain consumer protection related work that the Commission is required to undertake.

2.7.1. List of CTAs and Other Information

2.7.1.1. Background

Section 984.5(a) directs the Commission to do the following:

> The commission shall compile and regularly update the following information: names and contact numbers of a registered core transport agent, information to assist consumers 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.

[37] A CTA's failure to pay the annual fee is grounds under § 983.5(b)(3) to suspend or revoke the CTA's registration.

To facilitate these compilation, updating, and information assistance duties, § 984.5(a) requires the registered CTAs to "file with the commission information describing the terms and conditions of any standard service plan made available to core gas customers," and for the Commission to "adopt a standard format for this filing."

Section 984.5(a) further provides:

> The commission shall maintain and make generally available a list of entities offering core transport services operating in California. This list shall include all registered core transport agents and those agents not required to be registered that request the commission to be included on the list. The commission shall, upon request, make this information available at no charge. Notwithstanding any other law, public agencies that are registered entities shall be required to disclose their terms and conditions of service contracts only to the same extent that other registered entities would be required to disclose the same or similar service contracts.

2.7.1.2. Compilation of CTAs

The Scoping Ruling recognized that § 984.5(a) will require the Commission to implement a number of processes and procedures. The Commission's initial compilation of the names and contact numbers of the CTAs will come from the CTA registration process. In addition, for "those agents not required to be registered," such as publicly owned utilities, a process needs to be adopted to allow such entities who want to be included on the list of CTAs, to submit their contact information so that they can be included on this list.

As described in the Scoping Ruling, the Commission's Energy Division shall be responsible for compiling, maintaining and updating the list of registered CTAs, and those publicly owned utilities who request that they be included on the list. The Director of the Energy Division shall be directed to ensure that a process is established to create a list of registered CTAs, and those

publicly owned utilities who request to be included on this list. As the starting point for compiling the list of CTAs, the Energy Division should use the list of CTAs who have registered or will register with the Commission.

Section 982(d) and the "Notice" section of the CTA Registration Form[38] already informs the CTAs that:

> Any material change in the information required by this form shall be provided to the CPUC within 60 days, except for any change in the CTA's telephone number or address, which shall be reported within five days of such a change.

If a CTA submits a material change to their registration information, the Energy Division will need to reflect those changes in the list of CTAs as required by § 984.5(a).

In order to allow "those agents not required to be registered that request the commission to be included on the list," the publicly owned utilities may send a request to the Director of the Energy Division to ask that they be included in the "list of entities offering core transport services operating in California" as provided for in § 984.5(a). Pursuant to the second and last sentence of § 984.5(a), the publicly owned utilities who request to be included on the CTA list are also required to provide the Commission with the terms and conditions of their standard service plans.

As new CTAs register with the Commission, and as additional publicly owned utilities request to be included on the list, the Energy Division will need to update the "list of entities offering core transport services operating in California."

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[38] D.14-08-043, Appendix A, at 7 of 8.

2.7.1.3. Informational Guides and Tools

Section 984.5(a) requires that this list of CTAs be made "generally available" to consumers. As discussed later, § 984.5(c) requires the Commission to compile, design, write up, and post on its web site "easily understandable informational guides or other tools to help core gas customers understand core transport service options." In order to make the list of CTAs available, the Energy Division, with the assistance of other divisions of the Commission, shall create a web page describing the core transport service program and the ability of a core gas customer to obtain gas service from CTAs or from a gas utility, and to provide a link to the list of the CTAs.

The first sentence of § 984.5(a) also requires the Commission to compile and regularly update "information to assist consumer 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." In the sixth sentence of § 984.5(a), it states "The commission shall, upon request, make this information available at no charge."

Thus, in addition to compiling the list of the CTAs, § 984.5(a) requires the Commission to compile information to assist consumers in making service choices among CTAs, and to compile information about 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 means that the Energy Division will need to design, and write up information for consumers describing the core transport and the CTA program, the ability of core gas customers to choose gas service from the utility provider of natural gas or

from a CTA, and the factors core gas customers should consider in selecting a CTA for natural gas service.[39] In drafting up consumer information about the CTAs, the Energy Division needs to be cognizant of the directive in § 984.5(c) that the Commission "shall not make specific recommendations, rank the relative attractiveness of specific service offerings of registered providers of core transport services, or provide customer-specific assistance in the evaluation of core transport agents."[40] The Energy Division will then need to post this information on the Commission's webpage that describes the CTA program.

In addition, the Energy Division needs to compile information on the number of customer complaints that have been made against each CTA. The phrase in the first sentence of § 984.5(a) that states "in relation to the number of customers served by those providers" suggests that this customer complaint information should list the number of complaints that may be lodged against each CTA as a percentage of, or in relation to, the total number of customers of each CTA.

The Energy Division will need to work with CAB and the ALJ Division to obtain the customer complaint information about informal and formal complaints as required by § 984.5(a). As for the number of customers a CTA serves, this will either come from the answer to line 14.d. of the CTA Registration

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[39] We reject the suggestion that each CTA be allowed to describe its core gas transport services as part of the consumer information provided to the public. Section 984.5(a) clearly directs the Commission, and not the CTAs, to compile and regularly update" information to assist consumers in making service choices…."

[40] Due to the requirements in § 984.5(a), (b) and (c) for the Commission to provide to consumers certain information about the CTAs and the core transport program, the Energy Division will need to design informational content (both in printed form and web site content) that provides all of the information required by § 984.5.

Form, or from information the Energy Division obtains from the gas utility or from the CTA. Energy Division will then need to assemble the customer complaint information for each CTA, and provide that information on the Commission's CTA program web site.

2.7.1.4. Standard Service Plans

To facilitate the compilation of information function, the second sentence of § 984.5(a) states that "registered entities shall file with the commission information describing the terms and conditions of any standard service plan made available to core gas customers." In addition, the seventh sentence of § 984.5(a) states: "Notwithstanding any other law, public agencies that are registered entities shall be required to disclose their terms and conditions of service contracts only to the same extent that other registered entities would be required to disclose the same or similar service contracts." This information describing the terms and conditions of the standard service plan of either the CTA or the publicly owned utility is to be filed with the Commission as required by § 984.5(a).

Based on our reading of § 984.5(a), the filing of information describing the terms and conditions of the standard service plan is to assist the Commission in compiling "information to assist consumers in making service choices." The Energy Division can use the information from the different CTAs, and from the publicly owned utilities who request to be added to the list of CTAs, to compile and develop the information to assist consumers in deciding whether to take gas service from a CTA.

In accordance with the second sentence of § 984.5(a), CTAs who are registered with the Commission, as well as publicly owned utilities who request to be added to the CTA list, are required to file with the Energy Division and

UEB information that describes the terms and conditions of the standard service plan that a CTA plans to make available to core gas customers. We construe this requirement to mean each of these entities shall file with the Energy Division and UEB a written summary of its terms and conditions of its standard service plan. We describe the terms and conditions of the standard service plan in Section 2.9. of this decision.

In addition, the third sentence of § 984.5(a) states that the Commission "shall adopt a standard format for this filing." This sentence suggests that the "information describing the terms and conditions of any standard service plan" that the CTA supplies is to be in a standard format that the Commission adopts. The standard format that we adopt today is that the summary information to be filed by each CTA shall contain the following: a summary of the price being charged (or if the price is negotiated with each customer, an explanation that each price is negotiated individually with each customer, and an explanation of what factors the CTA considers in arriving at the negotiated price); a general overview of the principal terms and conditions of the standard contract; and a disclosure of all recurring and nonrecurring charges associated with the contract. This adopted standard format for this summary information is based on the information that §§ 984.5(a) and 986 require, the comments received on this issue by the parties, and what the Scoping Ruling at 29-30 recommended be done.

Each registered CTA is directed to file this summary within 45 days of today's date with the Energy Division and UEB, and each new CTA registrant shall provide the summary at the time it submits its registration to become a CTA. As set forth in the seventh sentence of § 984.5(a), those publicly owned utilities who have requested to be included on the § 984.5(a) list of entities offering core transport services in California, shall also be required to file a

summary of its terms and conditions of its standard service plan within 45 days of today's date to the Energy Division and UEB, or at the time the publicly owned utility requests to be added to the list of entities offering core transport services in California.

In compiling the information to assist consumers in choosing a CTA, the Energy Division, with the assistance of other divisions of the Commission, will review these summaries, and incorporate the descriptions of the terms and conditions that are part of a standard service plan into the consumer information guide for selecting a CTA.

2.7.2. Public Alerts

2.7.2.1. Introduction

Section 984.5(b) directs the Commission to "issue public alerts about companies attempting to provide core transport service in the state in an unauthorized or fraudulent manner as defined in subdivision (b) of Section 983.5."

The Scoping Ruling noted that in order to implement the public alert under this code section, various Commission divisions will need to coordinate their activities if allegations of unauthorized or fraudulent activities arise. The Scoping Ruling stated:

> Parties may comment on the timing of when the Commission should issue these public alerts, i.e., should it occur after a decision is issued on the suspension or revocation of a CTA's registration as described in § 983.5(a)(3), or should it occur before such a decision is issued, such as shortly after the Executive Director makes a finding 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…." (§ 983.5(a)(3).) Parties should also comment on the kind of circumstances that should occur before a public alert is issued, and the manner and type of public alerts the Commission should engage in. (Scoping Ruling at 31.)

The parties were also asked to comment on whether the Commission should weigh the costs and benefits of implementing the requirements set forth in § 984.5(a), (b) and (c).

2.7.2.2. Position of the Parties

Some of the CTAs contend that although it is important to protect consumers against fraudulent activities, the Commission needs to balance the public alert process with due process. The CTAs argue that a public alert which names a specific CTA should only be issued after a decision is issued suspending or revoking the CTA's registration. IGS contends that issuing an alert before due process is afforded, "would effectively prejudge a matter to a CTA's detriment and cause irreparable harm to a CTA's brand." (IGS, April 7, 2017 Comments at 7.)

The Joint Consumers contend the public alert process referred to in §§ 984.5(b) and 983.5(b) "demonstrates a limited tolerance for abusive and harmful CTA actions," and the "Commission must issue an alert where the Commission has knowledge of such activities that are not a one-time accidental occurrence, but rather a common practice in the case of material misrepresentations or dishonesty, fraud, or deceit with intent to substantially benefit the [CTA] or its employees, agents, or representatives, or to disadvantage retail gas customers." (Joint Consumers, April 7, 2017 Opening Comments at 28.) In a situation where a CTA's "particular action poses grave harm to consumers, one action should be enough to [issue] an immediate public alert." (*Ibid.*) The Joint Consumers also recommend that a public alert issue in the following situations: "(1) CTAs (including CTA agents) that use high pressure tactics to target vulnerable populations (e.g., CARE customers, seniors, limited English proficiency populations, individuals with disabilities such as cognitive

impairment, etc.) and (2) Section 983.5 type of violations by CTAs (including CTA agents) that have triggered enforcement actions in other states." (*Ibid.*)

The Joint Consumers further note that the need for public alerts will be diminished if the Commission adopts "strong consumer protection rules, a strong enforcement mechanism and strong consumer education." (Joint Consumers, April 7, 2017 Opening Comments at 28.)

2.7.2.3. Discussion

Some of the CTAs argue that a public alert should not be issued until a Commission decision addressing the CTA's alleged actions have been addressed. However, § 984.5(b) clearly authorizes the Commission to issue a public alert when an entity is "attempting to provide core transport service … in an unauthorized or fraudulent manner." Thus, the Commission can issue a public alert in a situation where an entity, who is not registered as a CTA, engages in activities to sign up customers for gas service. In such a situation, the unregistered entity may be representing it is registered with the Commission when it is clear that the entity is not registered. Other situations may also arise where a public alert can be issued about a particular entity, or to warn consumers more generally about unauthorized or fraudulent activities that are targeting core gas consumers.

We agree with the CTAs that if a public alert is targeted at a particular CTA, that the Commission should, in general, issue a public alert naming the CTA only after the Commission has adopted a decision in an OII looking into the CTA, or in an OII suspending or revoking the CTA's registration. This will ensure that before a public alert is issued, the allegations against a CTA have been proven, and the CTA has been afforded due process.

In issuing a public alert pursuant to § 984.5(b), the Commission and Commission staff need to exercise restraint before a public alert is issued, especially when the public alert names a particular entity. The following factors should be considered by the Commission and staff before issuing a public alert: (1) the type of unauthorized or fraudulent activity being engaged in by the entity, and whether there is evidence of such activity; (2) how are core gas consumers being harmed by the entity's actions; (3) should a public alert be issued immediately to avoid harm to consumers; and (4) has a preliminary investigation or an OII been opened into the activities of the entity, or has an OII been opened to suspend or revoke the CTA's registration.

The impetus for the issuance of a public alert will likely come from interaction with consumers and Commission staff in CAB, the UEB, or Energy Division. The UEB staff is directed to lead the effort in deciding whether a public alert should be issued. If CAB or Energy Division staffs learn of actions by an entity that may trigger the issuance of a public alert, staff needs to inform the UEB. The UEB will then need to do a preliminary investigation of the entity's actions, consider whether a public alert should be issued, whether a formal investigation should be opened into the actions of the entity, or whether an investigation to suspend or revoke the CTA's registration should be opened.

Before a public alert is issued, the UEB will need to document the actions giving rise to the need for an alert, and provide the reasons as to why the alert is needed immediately. UEB will then be required to deliver these materials to the Executive Director, with a copy to the Energy Division Director. The Executive Director is delegated the authority to decide whether a public alert should be issued immediately. If the Executive Director decides that a public alert should be issued, the UEB will then take steps to issue and disseminate the public alert.

Dissemination of the public alert may require the assistance of ITSB to post information on the Commission's website, and the Commission's News and Public Information Office to disseminate information to news outlets and through social media channels.

2.7.3. Internet Information and Tools

2.7.3.1. Introduction

Section 984.5(c) directs the Commission to "compile and post on its Internet Web site easily understandable informational guides or other tools to help core gas customers understand core transport service options." Section 984.5(c) further provides that in compiling and posting these informational guides and other tools, the Commission "shall pay special attention to ensuring that customers, especially those with limited-English-speaking ability or other disadvantages when dealing with marketers, receive correct, reliable, and easily understood information to help them make informed choices." In addition, § 984.5(c) provides that "The commission shall not make specific recommendations, rank the relative attractiveness of specific service offerings of registered providers of core transport services, or provide customer-specific assistance in the evaluation of core transport agents."

The Scoping Ruling asked parties to comment on how this information should be made available in accordance with § 984.5(c), and whether the Commission should take any other steps to implement this code section, in particular, "to ensuring that customers, especially those with limited-English-speaking ability or other disadvantages … receive correct, reliable, and easily understood information to help them make informed choices."

2.7.3.2. Position of the Parties

The Joint Utilities point out that many of the complaints in other states involve initial promotional or teaser fixed rates, which expire after a few months and are then replaced with a higher variable rate charge. The Joint Utilities recommend that if variable rate contracts are allowed, the consumer information should provide a clear explanation about what variable rate contracts entail. As suggested by the Joint Utilities and the Joint Consumers, another solution for a variable rate is to require the CTA to provide an average monthly price for natural gas purchases for its customers such as requiring the CTA to provide the posted low price and high natural gas prices in the last 12 months.

The Joint Utilities support the recommendation of the Joint Consumers that customers should "be able to compare the current standard or basic service price to the price being offered by a CTA." (Joint Utilities, April 28, 2017 Reply Comments at 4.)

The Joint Utilities and the Joint Consumers disagree with those CTAs who recommend that the Commission exempt master metered customers and other commercial customers from certain CTA consumer protection requirements. The Joint Utilities contend that § 984.5(c) makes no distinction between residential and commercial customers. The Joint Consumers contend that not all master metered customers are sophisticated energy consumers, such as mobile home parks or small properties owned by a single person or family. The Joint Consumers contend that these type of customers are distinguishable from a commercial entity that owns and manages multiple master metered properties.

On the issue of providing the required CTA written notice and other information in languages other than English, the Joint Utilities recommend the Commission follow the guidance set forth in Civil Code § 1632, whereby the

notice and information "should be made available in alternative languages, such as Spanish, Chinese, Tagalog, Vietnamese, and/or Korean based on the demographics of the respective service territory and consistent with the language offerings provided by the serving utility." (Joint Utilities, April 7, 2017 Comments at 6.)

For those customers who have limited or no access to the internet, the Joint Consumers recommend that the information be available through other means. The Joint Consumers contend these recommendations are consistent with what other states have adopted, and with § 984.5(c).

2.7.3.3. Discussion

In our review of the parties' comments and § 984.5(c), we believe that the Legislature's intent is for the Commission to provide information that allows a consumer to understand its core transport service options, and that the information and tools are objective and neutral and do not favor the gas utilities or the CTAs. For those reasons, we do not adopt the suggestion of some of the parties that the Commission's information and tools should compare the price of service between the utility and the CTAs. Instead, the Commission should provide written information about what factors a consumer should consider in choosing between competing gas service providers.

Since § 984.5(c) provides that the Commission is to compile informational guides or other tools to help core gas customers understand their core transport options, we do not adopt the recommendation of Commercial Energy and Shell Energy that the information and tools requirement should not apply to core commercial, master metered, and industrial customers. If a customer falls within the definition of a "core gas customer" as defined in § 980(a), the informational guides and other tools required by § 984.5(c) shall target all core gas customers.

The Energy Division, with the assistance of other divisions of the Commission, is delegated the responsibility to draft the informational guides and other tools required by § 984.5(c). The guides or tools should address the following topics: an explanation of how natural gas service has been provided to core gas customers by the gas utility; that the Legislature and the Commission have allowed registered CTAs (and publicly owned utilities) into the market of providing natural gas service; in order for CTAs to provide gas service to core gas customers in the utilities' service territories, the CTAs must be registered with the Commission and provide evidence of financial viability and technical and operational ability in order to provide service; who will bill the core gas customer, and what charges the customer will be responsible for; the factors a core gas customer should consider before signing up with a CTA or with a publicly owned utility, such as, the cost of gas provided by the gas utility versus the cost of gas provided by the CTA or the publicly owned utility, the differences between a fixed and variable rate, the length of time a customer may be required to stay with the CTA or the publicly owned utility, and any other applicable recurring or nonrecurring fees a core gas customer may be responsible for; and the process for how a gas customer can choose gas service from the CTA (or publicly owned utility) or the gas utility.

Another information guide or tool that Energy Division, in consultation with other divisions of the Commission, should consider is whether the Joint Consumer's recommendation for a "bill of rights" brochure should be prepared. Such a brochure could focus on the specific requirements that the CTAs are required to follow in providing gas transport service to their customers, and the rights of customers as provided for by SB 656.

In preparing this information and tools, the Energy Division shall ensure it follows the directive in § 984.5(c) of not doing the following: making specific recommendations; ranking the relative attractiveness of specific service offerings of registered CTAs and public agencies; or provide customer-specific assistance in the evaluation of CTAs or public agencies.

In compliance with the second sentence of § 984.5(c), the Energy Division, in consultation with other divisions of the Commission, shall also ensure that these informational guides and tools are available on the Commission's website in languages other than English. We note that the Commission's website presently allows non-English speakers to access the website in other languages. Consistent with the second sentence of § 984.5(c), printable copies of these informational guides and tools created by the Energy Division should also be made available on the Commission's website in major languages other than English and accessible by persons with disabilities.

2.7.4. Balancing the Directives Set Forth in § 984.5 With the Cost of Carrying Out the Activities

On the issue of whether the Commission should consider balancing the benefits of carrying out § 984.5(a), (b) and (c), with the cost of the resources that are needed to carry out these code provisions, the parties who commented assert that the Commission should carry out the tasks that the code provisions require. Based on the directives set forth in § 984.5(a), (b) and (c), and to assist consumers in navigating the option of taking core gas service from registered CTAs, the various units of the Commission are directed to implement and carry out these various tasks.

As discussed earlier, the cost of carrying out the activities required by SB 656, and whether the annual fee should be increased, are factors to be considered in the annual review of the fee required by § 984(b).

2.7.5. ORA Analysis and Recommendations

Section 984.5(d) directs the Office of Ratepayer Advocates (ORA) to do the following:

> The Office of Ratepayer Advocates shall analyze customers' complaints submitted to the gas corporation and to the commission and the disposition of those complaints to determine if the changes in the consumer protection rules are necessary to better protect the participants in the core transportation program, and make recommendations to the commission regarding those rule changes.

The Scoping Ruling asked the parties to "comment on how ORA should undertake this task, and what ORA should be aware of while analyzing complaints about the core transportation program." (Scoping Ruling at 32.)

ORA acknowledges that SB 656 assigned certain tasks to ORA.

ORA states that the Joint Consumers recommended that ORA do the following:

> "… review the veracity of CTA claims that customers will, in fact, save money by signing up for CTA service" and "analyze CTA customer bills to determine if customers are saving money compared to having remained with the IOU [investor-owned utility]." The Joint Consumers state that "ORA should analyze the data under different billing scenarios such as fixed rate, variable rate, and other rate schemes offered by the CTAs", convene a Commission working group, "issue a report on CTA billing and billing practices," and "actively monitor the cost of CTA service." (ORA April 28, 2017 Reply Comments at 1-2.)

In response to the Joint Consumers, ORA contends that it obtains CTA customer complaint information on a quarterly basis from the gas utilities. However, the information that ORA gathers does not include individual

customer rates, billing information, or contract terms, and therefore the Joint Consumers' recommendations concerning what ORA should do are premature given the lack of information that ORA receives. ORA notes it is working with the utilities to obtain more detailed information to assist in ORA's analysis of whether changes to the existing commercial protections are needed.

Tiger opposes the recommendation of the Joint Consumers that ORA "review the veracity of CTA claims that customers will, in fact, save money by signing up for CTA service." (Tiger, April 28, 2017 Reply Comments at 9.) Tiger contends that § 984.5(d) sets forth ORA's responsibilities. Since the Commission has no authority to regulate the CTA's terms and conditions of service, Tiger contends that the Commission cannot require the CTAs to provide price information or customer bills which ORA would need to perform the cost savings analysis that the Joint Consumers recommend.

In deciding what type of information ORA should be analyzing, we agree with the CTAs who argue that ORA's analysis should be limited to customer complaints as provided for in § 984.5(d). Thus, we do not adopt the Joint Consumers' recommendation that ORA should be directed to analyze the claim that customers will save money by taking service from CTAs rather than the utility.[41] Instead, and as directed by § 984.5(d), ORA is expected to analyze customer complaints submitted to the utility and to the Commission to

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[41] Sections 983(a) and 983.5 allow the Commission to look into allegations of fraudulent or material misrepresentations by a CTA. As discussed earlier, the Commission has the authority to investigate CTAs, or to suspend or revoke the registration of the CTAs. The Commission can take these actions when there is a pattern of customer abuses, if the CTA makes material misrepresentations, or engages in dishonesty, fraud or deceit with the intent of substantially benefiting the CTA or its employees, agents and representatives, or with the intent to disadvantage retail gas customers.

determine if changes need to be made to the consumer protection rules regarding the provisioning of service by CTAs, and to make recommendations regarding those changes.

Section 984.5(d) does not establish a date certain for ORA to perform its analysis and to make recommendations to the Commission. Instead, it appears that the Legislature intended to allow ORA to perform more than one analysis over time, and left it up to ORA as to when ORA should submit its recommendations to the Commission. We refrain in this decision from establishing a date certain for ORA to submit its first analysis of the customer complaints relating to the core transportation program.

2.8. CTA Minimum Standards

2.8.1. Introduction

Section 985 addresses certain minimum standards the CTAs must adhere to in their dealings with customers. In the preface to § 985, it states that:

> Rules that implement the following minimum standards shall be adopted by the commission for core transport agents offering gas services to core gas customers and the governing body of a public agency offering gas services to core gas customers within its jurisdiction.

The minimum standards that the Commission must adopt rules for are described in detail in subdivisions (a) through (h) of § 985 and cover the following:

> (a) confidentiality of customer information;
> (b) physical disconnects and reconnects of a customer from the transmission or distribution grid shall only be performed by the gas corporation or the publicly owned gas utility that provides physical delivery service to the affected customer;
> (c) procedure to follow to change energy supplier;
> (d) written notices describing the terms and conditions of service as described in § 986, and other notices, to be easily understandable

> and are to be provided in the language in which the CTA offered the services;
> (e) bills to have a standard bill format, separately stated late fees, contact number for billing inquiries, and in the event of a billing dispute the CTA is to inform customer at time of initial contact regarding the dispute that a complaint may be filed with the Commission if the dispute is not satisfactorily resolved with the CTA;
> (f) customer shall have a reasonable opportunity to have the meter tested to ensure reasonable accuracy, and the Commission is to decide who should pay for the cost of the testing;
> (g) a customer deposit may be requested by the CTA, but the deposit may not exceed the estimated bill for the customer for a three-month period; and
> (h) the Commission may adopt additional core gas consumer protection standards that are in the public interest.

The Scoping Ruling at 34 noted that to carry out the directive in § 985, the Commission will need to adopt rules to implement the minimum standards listed in that code section, and that the adopted rules follow "the criteria set forth by the Legislature for each minimum standard."

The parties were asked to comment on the additional rules that should be adopted to implement the minimum standards listed in subdivisions (a) through (g) of § 985, and to comment on the need for other consumer protection standards as provided for in § 985(h). The parties were also asked to comment on how the Commission should verify whether a "change in providers" has taken place as addressed in § 985(c), whether the CTA is in compliance with § 366.5, and whether other steps should be taken to prevent unauthorized enrollment in the core transport program.

In the paragraphs which follow, we adopt rules to implement the minimum standards set forth in § 985. In adopting such rules, the Commission may go beyond the minimum standards that are set forth in the code section, and

as permitted by § 985(h) "may adopt additional core gas consumer protection standards that are in the public interest." The rules we adopt are based on a review of the minimum standards set forth in § 985, the comments of the parties, and the rules the Commission has established for ESPs and community choice aggregators.

For ease of reference, the rules we adopt for § 985 are attached to Appendix B of today's decision.

2.8.2. Confidentiality – § 985(a)

Section 985(a) sets forth the minimum standards that a CTA must adhere to with respect to the confidentiality of customer information.[42]

The Joint Utilities recommend that the Commission adopt confidentiality rules that require the CTAs to protect customer information in the same manner as community choice aggregators and ESPs are required to do as set forth in D.12-08-045. The Joint Utilities also recommend that the CTAs protect and maintain the confidentiality of customer data and information using the same type of care as the Commission directed in D.13-09-025 at 44-45, 68-69, and Ordering Paragraph 19.

Tiger agrees with the Joint Utilities that the confidentiality rules for CTAs should be the same for other third party suppliers such as ESPs and demand response providers.

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[42] Confidentiality. Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer-specific billing, credit, or usage information. This requirement shall not extend to disclosure of generic information regarding the usage, loadshape, or other general characteristics of a group or rate classification, unless the release of that information would reveal customer-specific information because of the size of the group, rate classification, or nature of the information. *See Public Utilities Code Section 985(a).*

Commercial Energy contends that any standards that are adopted "must ensure that market-sensitive service contracts between a CTA and a commercial or master-metered customer remain confidential," and "should remain proprietary to the CTA and customer." (Commercial Energy, April 7, 2017 Comments at 9-10.)

The Joint Consumers contend that § 985(a) applies to the confidentiality of customer-specific billing, credit and usage information, and should not be applied to non-customer specific information. The Joint Consumers also recommend that the bill of rights brochure should include a statement about confidentiality, and that the confidentiality protections should be reinforced in the CTAs' "training materials, websites, marketing materials and contracts for service." (Joint Consumers, April 7, 2017 Opening Comments at 31.) In addition, the Joint Consumers recommend that the agents of CTAs be required to sign a confidentiality agreement to keep personal customer information confidential.

The Joint Consumers also recommend the following: (1) CTAs must notify consumers "as to how their information will be used by the CTA before they are asked to provide their consent for their information to be shared between the IOU and the CTA for purposes of enrollment, billing, etc.;" and (2) the "CTA must also disclose to the consumer that the CTA and its agents may not disclose a customer's billing, payment or credit information without the customer's consent and must provide a copy of the CTA's privacy policy (in language or in accessible format, as needed) to the customer." (*Id*. at 31.)

To implement the confidentiality standards set forth in § 985(a), all entities that fall within the definition of a "core transport agent" as defined in § 980(b) and their agents and representatives, shall adhere to the following standard that we adopt today:

Except as noted below, all identifying and customer-specific information (including the customer's gas usage) provided by the customer, or provided by the gas corporation, to a CTA shall remain confidential. The CTA is prohibited from selling or sharing that customer information with other entities. For the purposes of billing of the CTA's services, the CTA and the gas corporation may exchange the customer's identifying and customer-specific information (including the customer's gas usage) with each other, and with third-party entities under contract to the CTA for this purpose, provided the CTA's contract with the third-party entity requires this same confidential treatment.

A customer may consent to the CTA's release of the customer's information if the customer signs a separate document allowing the CTA to do so. However, at the top of that separate document, the heading shall state "**Customer's Agreement to Release Confidential Information**," and shall be in bold characters and in a font size of at least 16. In the first sentence of this document following the heading, it shall state that "Pursuant to Public Utilities Code Section 985(a), and Decision 17-___-___ of the California Public Utilities Commission, all identifying and customer-specific information (except for the customer's identifying and gas usage information which may be exchanged between the Core Transport Agent, [[insert name of CTA]], and the gas utility for billing purposes) shall remain confidential unless the customer agrees in this document to allow [[insert name of CTA]] to release this information to others." In addition, this document shall describe what kind of information the customer is agreeing to allow the CTA to disclose, and to whom the CTA plans to release the information to.

This confidentiality requirement shall encompass all customer-specific billing and customer identifying information (except for the exchange of gas usage information and customer identifying information for billing purposes between the CTA and the gas corporation), credit, or usage information. This confidentiality requirement shall not extend to the disclosure of generic information regarding the usage, load shape, or other general characteristics of a group or rate classification, unless the release of that information would reveal customer-specific

information because of the size of the group, rate classification, or nature of the information.

We note that this adopted rule prohibits the CTAs from selling or sharing customer information. This prohibition is consistent with § 8380 which protects all customers' gas consumption data (which includes the name, account number, and residence of the customer) from being disclosed or shared by a gas corporation.

In the section below concerning § 986, we address whether these confidentiality provisions should be included in the CTA's written notice of service that describes the price, terms, and conditions of service.

Although the § 985(a) confidentiality rule adopted above applies to the release of all customers' data from the gas corporation to the CTA, the gas corporations are directed to include in their respective tariffs the requirement that: the CTA provide a signed authorization form from the customer allowing the gas corporation to release information about a customer to the CTA; or that the CTA acknowledges that the customer enrolling in the CTA's core gas transportation service has authorized the gas corporation to release information about the customer to the CTA.[43] Once the CTA receives this identifying and customer-specific information (including the customer's gas usage) from the gas corporation, the CTA is required to follow the § 985(a) confidentiality rule with respect to the information it obtains from the gas corporation.

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[43] See PG&E Gas Rule 23, Section D.1.A, SoCalGas' Rule 32, Section A.5, and SDG&E's Rule 32, Section A.2.d.(4).

2.8.3. Physical Disconnects and Reconnects – § 985(b)

Section 985(b) sets forth the minimum standards as to who can perform the physical disconnection of a customer or reconnection to the transmission or distribution pipelines.

The Joint Consumers recommend that the "CTAs should be required to include this information in the description of terms and conditions of service and in any materials sent to the consumer regarding late payments by specifically stating that the CTA is not permitted to physically disconnect and/or reconnect the consumer's gas service." (Joint Consumers, April 7, 2017 Opening Comments at 31.)

The Joint Consumers note that § 985(b) is consistent with § 779.2 "which prohibits a distribution company from terminating residential service for nonpayment of any delinquent account owed by the customer to any other person or corporation." (*Ibid*.)

To implement the physical disconnect and reconnect standards set forth in § 985(b) for CTAs operating in the gas utilities' service territories, all entities that fall within the definition of a "core transport agent" as defined in § 980(b) and their agents and representatives, shall adhere to the following standard that we adopt today:

> Only a gas corporation that provides physical delivery service to the affected customer shall have the authority to physically disconnect or reconnect a customer from the transmission or distribution grid. Physical disconnection by gas corporations subject to the commission's jurisdiction shall occur only in accordance with protocols established by the Commission.
>
> In accordance with Public Utilities Code Section 779.2(a), the gas corporation may not disconnect gas service to the CTA's customer

> for the customer's nonpayment of any amount owed by the customer to the CTA.

As a result of § 985(b) and the adoption of this rule, CTAs are prohibited from physically disconnecting a customer's gas service.[44] As for the circumstances and protocols for when a physical disconnection by a gas corporation subject to the Commission's jurisdiction can take place, those protocols are set forth in the tariffs of the gas corporations. (See PG&E Rule 11, SDG&E Rule 11, and SoCalGas Rule 9.)

2.8.4. Change in Providers – § 985(c)

Section 985(c) sets forth the minimum standards for how a change in provider is to take place. That code section provides:

> Change in providers. Upon adequate notice supplied by a core transport agent to the gas corporation or local publicly owned gas utility providing physical delivery service, customers who are eligible for core transport service may change their energy supplier. Energy suppliers may charge for this change, provided that any fee or penalty charged by the supplier associated with early termination of service, shall be disclosed in that contract or applicable tariff.

Since this code provision addresses the ability of a customer to select a different gas service provider, the parties were asked to comment on how the Commission should verify whether a "change in providers" has taken place as addressed in § 985(c). Several parties commented on the issue about how a verification of a customer's switch should take place.

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[44] The section on billing discusses what a CTA can do if a customer does not pay the CTA's charges.

Commercial Energy commented that the verification of a customer consent to move to CTA service should be limited to CTAs who serve residential customers.

The Joint Consumers recommend a rule be adopted which requires verification of a consumer's consent to switch to or from a CTA before the switch is allowed to occur. In addition, the Joint Consumers recommend the Commission allow customers to place a block against switching on their account, which will prevent unauthorized switching.

On the issue of whether the ESP verification process set forth in § 366.5 should apply to the CTAs, Just Energy notes that § 366.5 only applies to ESPs serving residential and small commercial electric customers, and for that reason, Just Energy contends that PG&E's tariff is accurate in stating that PG&E has no responsibility for verifying compliance with § 366.5. However, since Just Energy recommends that there be uniform standards for both ESPs and CTAs, Just Energy favors applying the language in § 366.5 to the CTAs who provide service to residential and small commercial customers.

In considering what rules we should adopt to implement the minimum standards set forth in § 985(c), we look to what the Legislature requires when an electric customer switches to an ESP. Section 366.5 requires that the verification of a customer switch occur in the manner prescribed in that code section, and that certain procedures are to be followed when the change is made by a small commercial customer, and when the change is made by a residential customer.

Based on the comments of the parties, and the ESP verification procedures in § 366.5, we adopt the verification rules below to implement the standard of how a core gas customer may change its gas service provider in the service territories of the gas corporations under our jurisdiction, and require the CTAs

and gas corporations to follow this rule. Since the ESP marketplace and entities are comparable to the CTA marketplace and entities, similar kind of rules patterned after the ESP provisions contained in § 366.5 should be adopted for the CTAs.

We do not limit these verification rules to CTAs who only serve core residential customers. That is because the minimum standard for a change in providers as set forth in § 985(c) applies to all "customers who are eligible for core transport service…."

The following are the verification rules that CTAs and the gas corporations are to abide by.

A. Upon adequate notice supplied by a core transport agent to the gas corporation providing physical delivery service, core gas customers who are eligible for core transport service may change their energy supplier. The change by the customer of its energy supplier shall take place as described below.

B. To verify the customer's change in provider, the CTA shall obtain the following information from the customer. This information—whether obtained by voice, electronically, or in writing—shall be solicited in the customer's primary language.

   (1) The name of the customer of record;

   (2) The name of the person requesting that a change of provider be made;

   (3) That the person requesting the change of provider is authorized to do so;

   (4) The name of the new provider that the customer is requesting;

   (5) The account number of the customer requesting the change of provider.

   (6) The date of the customer's request to change the provider.

(7) An acknowledgement from the customer that the only change being requested by the customer is a change of provider.

C. No change in the core transport agent for a non-residential core gas customer may be made until one of following means of confirming the change has been completed.

(1) Independent third-party telephone verification as described in Section D of these rules.

(2) Receipt of a written confirmation received in the mail from the consumer after the consumer has received an information package confirming the agreement.

(3) The customer signs a document fully explaining the nature and effect of the change in service.

(4) The customer's consent is obtained through electronic means, including, but not limited to, computer transactions.

D. No change in the core transport agent for a residential customer may be made over the telephone until the change has been confirmed by an independent third-party verification company, as follows:

(1) The third-party verification company shall meet each of the following criteria:

(A) Be independent from the entity that seeks to provide the new service.

(B) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by an entity that seeks to provide the new service.

(C) Operate from facilities physically separate from those of the entity that seeks to provide the new service.

(D) Not derive a commission or compensation based upon the number of sales confirmed.

(2) The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company or by arranging for the third-party

verification company to call the customer to confirm the sale.

(3) The third-party verification company shall obtain the customer's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data described in Section B. The record shall be available to the customer upon request. Information obtained from the customer through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved customer against the entity or its employees who are responsible for the violation.

E. No change in the core transport agent for any residential customer may be made via an Internet transaction, in which the customer accesses the website of the core transport agent, unless both of the following occur with respect to confirming the change:

(1) In addition to the verification data described in Section B above, and any other information gathered in the course of the transaction, the customer shall be asked to read and respond to a separate screen that states, in 14-point type or larger, the following: "I acknowledge that in signing this contract or agreement, I am voluntarily choosing to change the entity that supplies me with natural gas."

(2) The separate screen shall offer the customer the option to complete or terminate the transaction.

F. No change in the core transport agent for any residential customer may be made via a written transaction unless the change has been confirmed, as provided in this Section F. In order to comply with this Section F, in addition to the verification data described in Section B above and any other information gathered in the course of the transaction, and in addition to any other signature required, the customer shall be asked to sign and date a document separate from that written transaction, containing the following words printed in 16-point type or larger: "I acknowledge that in signing this contract or agreement, I am voluntarily choosing to change the entity that

supplies me with natural gas service." These words shall be written in the customer's primary language.

(1) The acknowledgment document described in this Section F may not be included with a check or in connection with a sweepstakes solicitation.

G. Any core transport agent offering natural gas service to residential and non-residential core customers that switches the natural gas service of a customer without the customer's consent shall be liable to the core transport agent offering natural gas service previously selected by the customer in an amount equal to all charges paid by the customer after the violation and shall refund to the customer any amount in excess of the amount that the customer would have been obligated to pay had the customer not been switched.

H. A core transport agent shall keep a record of the confirmation of a change pursuant to Sections C, D, E, or F for three years from the date of that confirmation, and shall make those records available, upon request, to the customer and to the California Public Utilities Commission (CPUC) in the course of a CPUC investigation of a customer complaint or an investigation pursuant to Public Utilities Code Section 983(c).

I. Public agencies are exempt from this rule adopted pursuant to Public Utilities Code Section 985(c) to the extent they are serving customers within their jurisdiction.

J. Notwithstanding Sections E and F above, the CPUC may require third-party verification for all residential changes to core transport agents if it finds that the application of Sections E and F results in the unauthorized changing of a customer's gas service provider.

K. A gas corporation is exempt from this rule for customers that default to the service of the gas corporation.

L. Consistent with Public Utilities Code Section 985(c), core transport agents and gas corporations may charge for a change in service provider in the event of early termination of service, provided that any fee or penalty changed by the supplier

> associated with the early termination of service, shall be disclosed in the contract of the core transport agent or in the applicable tariff of the gas corporation.

The Joint Consumers recommend that the Commission should adopt a number of measures regarding the training and supervision of, and marketing activities of, CTA representatives and their agents. Although such rules could be adopted to protect consumers, it would also require the Commission to micromanage the CTAs by adopting rules to cover a multitude of issues and situations that could arise. In addition, § 981(c) provides that the registration of CTAs "does not authorize the Commission to regulate the rates or terms and conditions of service offered by" CTAs. We decline to adopt additional rules governing such conduct in today's decision.

Just Energy points out that Sheet 4 of PG&E's Gas Schedule C-GT, requires the customer to remain with the CTA for a period of 12 months, and each month thereafter is on a month to month basis regardless of the provisions or terms of any agreement between the customer and the CTA.[45] PG&E's Gas Schedule C-GT also provides that "each new Customer Authorization will establish a new twelve (12) month term of service with continuing month to month thereafter." Just Energy contends that the 12 month period a customer of a CTA is required to stay with a particular CTA is too long, and leads to the customer's inability to choose the provider that it wants. Just Energy suggests that this 12-month minimum stay requirement in the utilities' tariffs be eliminated entirely, or that it be reviewed by a working group.

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[45] Similar provisions appear in SDG&E's Rule 32, § A.1.a, and SoCalGas' Rule 32, § A.2.d.

The 12-month term of service originated in the settlement that was adopted in D.91-02-040 (39 CPUC2d 360, Appendix A, § 3(a)). D.91-02-040 was the decision which adopted the final rules for gas transportation service for core gas customers who purchase gas supplies from service providers of their choice. Those service providers are now known as CTAs.

A 12-month term may be too restrictive, and may discourage customers from seeking out more competitive service options on a more frequent basis. At the same time, we recognize that frequent switching of providers is likely to lead to additional switching-related costs as the Joint Utilities point out. This proceeding was not designed to change the other core transportation and aggregation rules that were previously adopted by the Commission. Instead, this proceeding was initiated only to implement the requirements of SB 656. For that reason, we do not order a change to the 12-month term in today's decision.

However, it is appropriate to require PG&E, SDG&E, and SoCalGas to file a joint application to revisit the rules regarding core transportation, core aggregation, and CTAs. This will allow the utilities and interested parties to weigh in on whether changes should be made to these programs, such as possible changes to the verification process, and a change to the 12-month term of service commitment. Accordingly, these three utilities are directed to file a joint application by January 30, 2019, to propose whether the other rules pertaining to core transportation, core aggregation, and the CTAs need to be revised.

Before the filing of the joint application, a Core Transportation and CTA Forum will be held in the second or third quarter of 2018 to discuss the rules adopted in today's decision, and suggestions to improve these rules, as well as the rules governing the core transportation program.

2.8.5. Written Notices – § 985(d)

Section 985(d) provides as follows:

> Written notices. Notices describing the terms and conditions of service as described in Section 986, service agreements, notices of late payment, notices of discontinuance of service, and disconnection notices addressed to core gas customers shall be easily understandable and shall be provided in the language in which the core transport agent offered the services.

The Scoping Ruling asked parties to comment on what rules should be adopted to implement the minimum standard for written notices.

The Joint Utilities recommend that the Commission follow the guidance in Civil Code § 1632 that the notice and information "should be made available in alternative languages, such as Spanish, Chinese, Tagalog, Vietnamese, and/or Korean based on the demographics of the respective service territory and consistent with the language offerings provided by the serving utility." (Joint Utilities, April 7, 2017 Comments at 6.)

Section 985(d) does not prescribe what kinds of written notices must be published. Instead, this code provision focuses on the presentation of the notices, and states that the notices "shall be easily understandable and shall be provided in the language in which the core transport agent offered the services."

To implement the minimum standard set forth in § 985(d), we adopt the following rule:

> Notices describing the terms and conditions of service as described in Section 986, service agreements such as a written or oral contract or agreement, notices of late payment, notices of discontinuance of service, and disconnection notices addressed to core gas customers, shall be easily understandable and shall be provided in the language in which the core transport agent offered the services. This language requirement for the written notices is consistent with the intent of Civil Code § 1632(b) that a business which negotiates (orally or in

> writing) primarily in a language other than English, shall deliver to the other party to the contract or agreement in the language in which the contract or agreement was negotiated.

2.8.6. Billing – § 985(e)

Section 985(e) sets forth the following minimum standards:

> Billing. All bills shall have a standard bill format, as determined by the commission or the governing body, and shall contain sufficient detail for the customer to recalculate the bill for accuracy. Any late fees shall be separately stated. A core transport agent shall provide on all customer bills a telephone number by which customers may contact the core transport agent to report and resolve billing inquiries and complaints. A core transport agent contacted by a customer regarding a billing dispute shall advise the customer at the time of the initial contact that the customer may file a complaint with the commission if the customer's dispute is not satisfactorily resolved by the core transport agent.

The Scoping Ruling asked parties to comment on what rules should be adopted to implement the minimum standard for billing.

The Joint Utilities recommend that a standardized billing format be developed for the CTAs, and that such a format should allow a customer to compare the price of gas on a cents per therm basis.

The Joint Consumers note that § 985(e) requires all bills to have a standard format, and that it contain certain required information. The Joint Consumers recommend the "bills for customers of CTAs include a box or line in the CTA portion of the bill that displays a calculation of what that consumer would have paid if they had remained with their default distribution utility or the price charged by the distribution company so that the consumer can generate a calculation based on their usage." (Joint Consumers, April 7, 2017 Opening Comments at 34.)

The parallel provision to § 985(e) for ESPs is found in § 394.4(e). In D.98-03-072, the Commission adopted a standard bill format consistent with § 394.4(e). The standard bill format for the ESPs serves as a useful template for adopting a rule that implements the minimum billing standard set forth in § 985(e). The bill format that was adopted for the ESPs has been modified slightly to reflect the differences between the electricity and natural gas markets, and to incorporate additional protections as provided for in § 985(h). Accordingly, we adopt the following rules as the standard bill format that CTAs must provide, and that a gas corporation must include if it is performing the billing on behalf of the CTA and itself:

> Pursuant to Public Utilities Code Section 985, core transport agents (CTAs) who provide natural gas services to core gas customers shall use in their billing to customers the standard bill format set forth in this rule.
>
> If the CTA is performing consolidated billing on behalf of the CTA and gas corporation, the CTA's bill shall clearly identify that the CTA is billing on behalf of the gas corporation and itself. If a CTA performs consolidated billing, the CTA shall be responsible for ensuring that all of the charges that are required to appear on the gas corporation's bill also appear on the CTA's consolidated bill. Such a requirement is consistent with the objective that customers should have information about the services that they are paying for, and with Public Utilities Code Section 985(e) that the bill "shall contain sufficient detail for the customer to recalculate the bill for accuracy."
>
> The CTA's bill shall indicate the customer's name, account number, the gas meter number, the number of days in the billing cycle, the gas usage during that cycle expressed in therms, and the total amount of all charges being billed to the customer. If the gas usage is an estimated amount, the bill shall clearly state that the gas usage amount has been estimated. To the extent possible, the bill should also include the prior meter read and the current meter read. This kind of meter and usage information will allow the customer to

verify whether it was the customer's meter that was read, and to recalculate the bill for accuracy.

In addition to the total amount billed to the customer, the CTA's bill shall separately identify and itemize the CTA's charge for the cost of the natural gas to the customer, and shall separately identify and itemize all other kinds of charges.[46] If the CTA is doing consolidated billing for the gas corporation, the gas corporation's transportation charge shall also be separately identified and itemized, along with any other charges of the gas corporation. In accordance with Public Utilities Code Section 985(e), any late fees are to be separately stated on the bill. In addition, the CTA's bill shall indicate the cost of the natural gas on a per therm basis. All of these items will enable a customer to recalculate the bill for accuracy.

The CTA's bill may contain a comparison for the current billing month and what was used by the same customer in the prior year at that same address. This shall be an optional format field. This usage information is beneficial to customers because it allows them to compare their usage history and to take conservation measures should they believe it to be necessary.

The CTA's bill shall include a due date for the payment. This will ensure that a customer is aware of the date when the payment becomes due so that the customer can timely pay the amount due without incurring any late charge.

In addition to the above-described items, the CTA shall add a line item for the previous balance amount, any payment amount received, and the total amount due. The CTA's bill may also reflect other useful information that a customer may need to understand the bill or the services offered.

As required by Public Utilities Code Section 985(e), the CTA's bill shall include a telephone number by which customers may contact the CTA to call for any billing inquiries or complaints, along with a

[46] These other kinds of charges could include, for example, such things as any applicable taxes, deposits, and returned check charges.

description that this telephone number is for any billing inquiries or complaints regarding the CTA. Although we do not require it, the hours of operation for this telephone number may be listed so that customers will know when they can call. Also, as required by Public Utilities Code Section 985(e), when a customer contacts the CTA regarding a billing dispute, the CTA shall inform the customer at the time of the initial contact that the customer may submit an informal complaint to the California Public Utilities Commission (CPUC), provide the customer with the telephone number of the CPUC's Consumer Affairs Branch and the Public Advisor's office, and if the informal complaint is not satisfactorily resolved, the customer may file a formal complaint with the CPUC or in civil court pursuant to Public Utilities Code Section 983.

The CTA's bill shall contain the following information about the rights of customers. This information shall include, at a minimum: a description of when the bill is considered past due; the amount of deposit that is required and when it will be refunded; a summary of the complaint procedures as provided for in Public Utilities Code Section 983; and that service cannot be discontinued over a billing dispute if the escrow procedure for an informal complaint set forth in Decision 17-__-___, or for a formal complaint set forth in Public Utilities Code Section 983(d), is followed. The CTA is free to add other kinds of customer rights information on the bill.

If the gas corporation is performing consolidated billing on behalf of the CTA and itself, the gas corporation's bill shall clearly identify that the gas corporation is billing on behalf of the CTA and itself. The gas corporation's consolidated bill shall itemize the charges of the CTA and the charges of the gas corporation, and include a total amount for all charges. The gas corporation's consolidated bill shall provide an explanation of the charges of the gas corporation. The consolidated bill shall also list the customer's gas usage information, the gas meter number, and the rate charged for gas used by the customer. The gas corporation's consolidated bill shall also include a summary of the complaint procedures set forth in Public Utilities Code Section 983 that a customer can take if it has a billing dispute or complaint with the CTA.

We decline to adopt as part of our adopted billing rules, the Joint Consumers' recommendation that the bill compare the amount being charged by the CTA for the gas, and how much the gas corporation would have charged for the gas during the billing period. Such a requirement would impose a burden on the CTA to calculate the estimated amount that would have been charged by the gas corporation. Also, the CTA's estimate of what the gas corporation would have charged may differ from the gas corporation's calculation of what it would have charged.

2.8.7. Meter Integrity – § 985(f)

Section 985(f) sets forth the following minimum standards for meter integrity and states as follows:

> Meter integrity. A gas customer shall have a reasonable opportunity to have his or her meter tested to ensure the reasonable accuracy of the meter. The commission or governing body shall determine who is responsible for the cost of that testing.

None of the parties commented on this code provision. In D.98-03-072, the Commission addressed a similar metering integrity provision for the ESPs. We adapt some of the concepts in that decision to the rule that we adopt today for meter integrity.

In addition, the utilities' tariffs already contain provisions that address meter integrity issues.[47] Since the CTAs are not authorized to install their own gas meters or to maintain the meters for their customers, the meters remain the property of the utilities. (See § 985(b).) For those reasons, if a CTA customer

[47] For PG&E, meter error, billing error, and bills for unauthorized use are set forth in PG&E's Rules 17, 17.1, and 17.2, respectively. For SDG&E, meters tests and the adjustment of bills is set forth in SDG&E's Rule 18. For SoCalGas, meter tests, and adjustment of bills is set forth in SoCalGas' Rules 15 and 16, respectively.

requests that its gas meter be tested for accuracy, the cost of that meter testing shall be based on the gas corporations' applicable tariff provisions.

Accordingly, we adopt the following rule for meter integrity:

> A gas customer of a Core Transport Agent shall have a reasonable opportunity to have the customer's meter tested to ensure the reasonable accuracy of the meter. In the event of a billing dispute, the gas customer may ask either the CTA or the gas corporation to test the meter to ensure the reasonable accuracy of the meter. If the gas customer asks the CTA to test the meter, the CTA shall advise the customer to contact the gas corporation directly. If the gas corporation is contacted by the customer of the CTA, the gas corporation shall verify that the customer is indeed the customer of the CTA before testing the meter in accordance with the applicable tariff. The cost of the meter testing shall be in accordance with the gas corporation's applicable tariff.

2.8.8. Customer Deposits – § 985(g)

Section 985(g) sets forth the minimum standard for what a CTA may request from a customer for a deposit, and provides as follows:

> Customer deposits. Core transport agents may require customer deposits before commencing service, but in no event shall the deposit be more than the estimated bill for the customer for a three-month period.

Similar customer deposit language for the ESPs is found in § 394.4(g), which was addressed in D.98-03-072. In D.98-03-072, the Commission adopted the requirement that if an advance deposit is required by the ESP, an explanation of the deposit is to be included in the ESP's § 394.5 notice to the customer that sets forth the price, terms and conditions of service. We incorporate the same requirement into the following rule that we adopt to implement § 985(g):

> Pursuant to Public Utilities Code Section 985(g), a core transport agent may require a customer to provide a deposit before commencing gas service to that customer. However, the customer

> deposit shall not be more than the estimated bill for the customer for a three-month period.
>
> As part of the written notice requirement set forth in § 986(a)(3), the core transport agent shall include in the written notice an explanation of any deposit requirement that the CTA may require of the customer, and the following statement: "If an advance deposit is required, Public Utilities Code Section 985(g) provides that the deposit cannot be more than your estimated bill for a three-month period."

A core transport agent shall not discriminate against prospective customers by requiring a deposit of one person but not of another similarly situated person.

2.8.9. Additional Protections – § 985(h)

Section 985(h) provides that "The commission … may adopt additional core gas consumer protection standards that are in the public interest."

As discussed above, we have incorporated some additional protections into the adopted § 985 rules. No additional protections are needed at this time.

2.9. Written Notice of Service – § 986

2.9.1. Background

Section 986(a) provides as follows:

> Except for a gas corporation, or a local publicly owned gas utility offering gas service to core gas customers within its service territory, a core transport agent offering gas service to core gas customers shall, prior to the commencement of service, provide the potential customer with a written notice of the service describing the price, terms, and conditions of the service."

This notice of service is to include all of the following as described more fully in § 986(a)(1) through (a)(6):

- A clear description of the price, terms, and conditions of service, including all of the following: (a) the price of gas expressed in a format that makes it possible for core gas customers to compare

and select among similar products and services on a standard basis; (b) separate disclosure of all recurring and nonrecurring charges associated with the sale of gas; and (c) if services other than gas are offered, an itemization of the services and the charge or charges associated with each.[48]

- A description of the potential customer's right to rescind the contract without fee or penalty as described in § 989.1.
- An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.
- The CTA's registration number.
- The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract.
- A description of the availability of low-income assistance programs for qualified customers and how customers can apply for these programs.

The Commission stated in D.14-08-043 at 25 that the determination of the uniform format and information required in the § 986 notice would be addressed in this phase of the proceeding. As an interim measure, the Commission in D.14-08-043 directed the CTAs to "provide Energy Division with a draft notice to customers describing the price, terms and conditions of service consistent with the proposed Registration Form." The Commission stated in D.14-08-043 that once a decision is issued adopting the final format of the § 986 notice, the CTAs are to submit an updated § 986 notice to the Energy Division.

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[48] Section 986(a)(1)(A) provides that the Commission shall adopt rules to implement the written notice of the service that describes the price, terms, and conditions of the service.

Section 986(b) provides that the Commission may assist the CTAs in developing the § 986 notice, and that the Commission "may suggest inclusion of additional information it deems necessary for the consumer protection purposes of this section." Section 986(b) further provides that a CTA is to provide the Commission with a copy of the § 986 notice on at least a semiannual basis as part of the CTA's standard service plan filing as described in § 984.5.

The Scoping Ruling asked the parties to comment on how the written notice requirements of § 986 should be implemented, and to comment on the specific requirements of § 986(a) and (b). The Scoping Ruling also asked parties to comment on the following:

> One issue raised by § 986(a)(1) and (a)(6) is the discount to customers enrolled in the California Alternate Rates for Energy (CARE) program. Comment is sought on how the CARE discount will be handled by the CTAs, and how the CARE discount should be addressed in the § 986 notice.
>
> Comment is also sought on what the Legislature may have intended by the phrase in § 986(a)(1)(A) of "The price of gas expressed in a format that makes it possible for core gas customers to compare and select among similar products and services on a standard basis." Does that mean the notice should be in a standard format for all CTAs, and if so, what type of format should be adopted to allow core gas customers to compare and select.

In addition, comment is also sought on whether the Commission needs to include any additional information in the written notice as provided for in § 986(b), and if so, what that information should be, and why such information is needed for consumer protection purposes. Parties should also comment on whether the semiannual provisioning of this notice to the Commission, as provided for in § 986(b), is sufficient.

2.9.2. Position of the Parties

The Joint Utilities support the implementation of a standardized written notice of the price, terms, and conditions of each CTA's services. The Joint Utilities contend that such a written notice, as described in § 986, is important to protect consumers, and will allow consumers to understand the charges and to compare them among competing service providers.

The Joint Utilities recommend that the Commission "develop a standard format for the disclosure so that it may be used for posting on the Commission's website for side-by-side comparisons with the total price of gas offered by other CTAs and the respective utility, … and to specify that the information provided by the CTAs is subject to audit by the Commission." (Joint Utilities, April 7, 2017 Opening Comments at 3.)

The Joint Utilities recommend that the calculation of the total price of gas specify the following as separate line items:

> (1) the rolling twelve-month average commodity cost of gas, in cents per therm; (2) the baseline transportation charge, in cents per therm; (3) the customer charge, including all charges other than the commodity cost of gas, such as the transportation charge, and applicable taxes and surcharges, in dollars per meter per day; (4) whether the gas price term is monthly or annual; (5) whether the 20% CARE discount is offered to eligible customers; (6) whether the offered rate is an introductory offer; (7) the minimum term of the contract; and (8) whether an early termination fee may apply.[49] (Joint Utilities, *supra* at 3.)

On the issue of how often the written notice of the price, terms, and conditions should be provided, the Joint Utilities support updating the notice

[49] Examples of what the Joint Utilities recommend that the CTAs be required to provide are shown in Attachment A of the Joint Utilities' April 7, 2017 comments.

two times a year. The Joint Utilities recommend that this be arranged to correspond with the summer and winter average prices.

If a CTA fails to timely submit the required pricing information for the written notice, the Joint Utilities contend that this "should result in some serious consequence such as the suspension of the CTA's ability to enroll new customers for a minimum of 30 days or until resolved, or some similar measure." (Joint Utilities, April 7, 2017 Comments at 6.)

Although the Joint Utilities recognize that the CTAs' gas commodity pricing products are not regulated by the Commission, the written disclosure required by § 986 may be subject to differing interpretations. For that reason, the Joint Utilities suggest that a workshop be held so that parties can express their views and attempt to resolve any points of disagreement. Some of the other parties also support that workshops be held.

Just Energy recommends that a workshop be held to address the written notice requirement in § 986, and the "standard format" for the filing of the "terms and conditions" of the standard service plan referenced in § 984.5(a). Just Energy also contends that § 986 should be applied in the same manner as how the ESPs are treated in the parallel provision contained in § 394.5.

Just Energy and IGS contend there is no statutory support for the Joint Utilities' recommendation that the CTAs' prices be posted on the Commission's web site for a side-by-side comparison with the utilities. Just Energy and IGS point out that no similar requirement applies to the ESPs. Just Energy and IGS also contend that there should be "transparent access to actual available products in the market without favoritism to one product." (Just Energy and IGS, April 28, 2017 Reply Comments at 9.) In addition, Just Energy and IGS point out that § 981(c) provides that the Commission has no authority to regulate a CTA's

rates or terms or conditions of service, which means that the Joint Utilities' recommendation that the CTAs' prices be subject to audit is without statutory support. Just Energy and IGS recommend that the Commission reject the Joint Consumers proposal for a shopping comparison website, and instead recommend the website of the Public Utilities Commission of Ohio as a workable model that this Commission could emulate.[50]

Regarding the recommendation for a website side-by-side comparison, the Joint Consumers propose that the past year prices be shown, as well as the current price for natural gas. If the rate is variable, the estimated variable rate should be listed.

Just Energy suggests that the "written notice" referred to in § 986(a) be combined with the terms and conditions contained within a standard service plan as referred to in § 984.5(a). Just Energy contends that this will allow for "clear and conspicuous disclosure of all required information in a concise manner to avoid consumer confusion." (Just Energy, April 7, 2017 Comments at 19.)

Commercial Energy contends that it is reasonable to impose mandatory disclosure requirements on CTAs who serve residential customers so that customers can make an informed choice about signing up for CTA service. However, in designing and adopting consumer protection standards, Commercial Energy contends that the mandatory disclosures of § 986 should not apply to commercial and master-metered apartment and condominium

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[50] The Public Utilities Commission of Ohio's website at www.energychoice.ohio.gov allows a customer to compare the natural gas and electric service offerings of the incumbent utilities and the competitive providers.

customers, who are generally more sophisticated market participants, are able to make informed decisions about the price and terms of their gas service, and have greater bargaining power. Commercial Energy points out that in D.14-08-043, the Commission adopted different cancellation rights for CTA contracts for residential and commercial customers because the Commission recognized that commercial customers were more likely than residential customers to make informed business decisions about waiving their cancellation rights.

With respect to how the CTAs should make their customers aware of the CARE discount, the Joint Utilities recommend that the CTAs be required to disclose in the written notice whether the CTAs will offer the CARE discount on its gas charges.

Several of the CTAs agree with the Joint Consumers that the Commission should ensure fair and consistent treatment of CARE customers, and that CTA CARE customers should receive the same discount applicable to utility CARE customers. However, the CTAs point out that each utility's tariff treats the CTAs' CARE customers differently when it comes to the CARE discount.

Shell Energy contends that the disclosure by the CTAs of their standard service plans to prospective customers should be administered in a manner that does not impose an unreasonable burden on affected CTAs. Since § 981(c) provides that the rates, terms and conditions of service offered by a CTA to core customers are not regulated, Shell Energy contends that any requirement for a CTA to disclose the price, terms and conditions of its standard service plan to the Commission should be strictly limited.

The Joint Consumers contend that Shell Energy's recommendation to strictly limit the type of information to be disclosed to consumers, is contrary "to one of the stated purposes of SB 656, which is to provide more information to the

Commission." (Joint Consumers, April 28, 2017 Reply Comments at 7.) Instead of limiting the type of information that should be disclosed, the Joint Consumers contend that § 984.5(a) requires the Commission to compile "information to assist consumers in making service choices…." The Joint Consumers contend that the required disclosures need to "be accurate so that a customer can rely on the information disclosed in the notices as a tool for making decisions." (Joint Consumers, April 28, 2017 Reply Comments at 8.)

With respect to variable rate contracts, the Joint Consumers contend that "variable rate contracts are extremely hard for consumers to understand and budget for, particularly if there is no upper limit or cap on potential increases in rates." (*Id*. at 34.) The Joint Consumers note that, as experienced in other states, variable rates can lead to rate shock, especially when a low teaser rate expires "and the new rate is well above what consumers had expected or were told to expect by the sales agent." (*Id*. at 35.) The Joint Consumers recommend that a variable rate contract should not be allowed to renew automatically, and that there should be an affirmative customer consent to any renewal.

The Joint Consumers also recommend that affirmative consent be required for any substantial changes in the terms and conditions. The Joint Consumers recommend that consumers "be given adequate notice at multiple points of change in their service, including: before a CTA contract is near the point of renewal; before a contract moves from a fixed rate to a variable rate; and before any dramatic increase (Joint Consumers propose 30%) in a variable rate." (*Id*. at 35.)

The Joint Consumers also recommend the following safeguard for the marketing materials and contract disclosures associated with variable rate contracts:

> If there is no price cap on the variable rate or limit placed on how high the variable rate could increase, the contract must clearly, simply and in large font make explicit that there is no limit on how much the price may change from one billing cycle to the next. (Joint Consumers, April 7, 2017 Opening Comments at 36.)

The Joint Consumers contend that consumers should be allowed to easily cancel their service, and that the Commission should require the cancellation request to be processed in a timely manner by the CTA, or if not timely processed by the CTA, that the utility be allowed to process the change.

2.9.3. Discussion

2.9.3.1. Introduction

The parallel written notice requirement for the ESPs is found in § 394.5. The Commission adopted a uniform format for the written notice in D.98-03-072, and concluded that the uniform format was in compliance with § 394.5.[51] (79 CPUC2d at 291, 317.) In D.98-03-072, the Commission allowed the ESPs to develop their own § 394.5 written notice, so long as the required elements specified in § 394.5(a) are included. Alternatively, the ESPs were allowed to use the uniform format as the § 394.5 notice.

We adopt a similar format for the written notice required by § 986. This uniform format is attached to this decision as Appendix C. Due to the numerous comments on the written notice requirement contained in § 986, we address each of the ten elements that must be included in the written notice, and have drafted a uniform format for each element. In accordance with § 986(b), we have developed the rules and requirements applicable to the § 986(a) written notice

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[51] The uniform format for the § 394.5 written notice was attached to D.98-03-072 as Appendix C. (See 79 CPUC2d at 335-340.)

through a review of the code provisions in § 986(a), the parties' comments, and the provisions applicable to the ESPs. In addition, as part of the rules we adopt today to implement § 986(a), we have added some additional passages that must be included in the written notice.

To comply with the written notice requirement of § 986, CTAs may use the uniform format set forth in Appendix C of today's decision, or prepare a notice which meets all of the elements set forth in Appendix C.

The written notice requirement in § 986 overlaps with the standard service plan required by § 984.5. Section 984.5(a) directs the Commission to adopt a standard format for the standard service plan. The standard service plan is to describe the terms and conditions of the CTA's service plan. The written notice is to describe the price, terms, and conditions of the CTA's service. For the purposes of implementing SB 656, the standard service plan and the written notice shall be considered the same thing. Separate filing of the standard service plan is required by § 984.5(a), and separate submission of the written notice is required by § 986(b).

2.9.3.2. Written Notice of Service

The first required element of § 986(a) is that all CTAs operating in the service territories of the gas corporations in California are required to provide a potential core gas customer, before commencement of the CTA service, with a written notice describing the price, terms, and conditions of the service.[52] This first element is incorporated into the first paragraph of Appendix C of this

[52] As discussed later, § 986(b) also provides that a copy of the written notice is to be provided to the Commission.

decision under the heading of "Notice of Price, Terms, and Conditions of Service."

The CTAs may use Appendix C of this decision as the template for the required written notice, or the CTA may create its own written notice. If the CTA creates its own written notice, the notice must set forth all of the required elements that are included in Appendix C, and which are described in this section of this decision.

2.9.3.3. Price, Terms, and Conditions of Service

The second required element of § 986 is that the written notice must include a clear description of the price, terms, and conditions of the service. In accordance with this code provision, the CTAs are to ensure that the written notice is clearly written, and describes the price, terms, and conditions of the CTA's service. This required second element has been incorporated throughout the uniform format set forth in Appendix C.

2.9.3.4. Price of Gas

The third element of the written notice is set forth in § 986(a)(1)(A). Section 986(a)(1)(A) requires that the written notice provide a clear description of the price, terms, and conditions of service, including "The price of gas expressed in a format that makes it possible for core gas customers to compare and select among similar products and services on a standard basis." The total price of the gas is to be disclosed "on a cents-per-therm basis, including the costs of all gas services and charges regulated by the commission." Section 986(a)(1)(A) also requires the written notice to provide "estimates of the total monthly bill for the gas service at varying consumption levels, including the costs of all gas services and charges regulated by the commission." Section 986(a)(1)(A) allows the Commission to "consider alternatives to the cents-per-therm disclosure if other

information would provide the customer with sufficient information to compare among alternatives on a standard basis."

In addition, the second sentence of § 986(a)(1)(A) authorizes the Commission to "adopt rules to implement this subdivision." We interpret the term "subdivision" to refer to § 986(a). (See Public Utilities Code Section 10.) Thus, § 986(a)(1)(A) permits the Commission to adopt rules to implement the price, terms, and conditions requirement of § 986(a).

Some of the parties commented that the CTAs may charge a variable rate for the price of gas, and that the variable rate should not be disclosed in the written notice due to competitive concerns. We agree that if a variable rate is charged to a customer, that the variable rate should not be disclosed due to competitive and proprietary concerns. However, as part of our adopted rules, we require the CTA to disclose that if the price of gas is based on a variable rate, that the notice state that the actual price of gas may vary from customer to customer because of the variable rate, which may affect the total price of the gas delivered to the home or business, and that for illustrative purposes the CTA has provided an estimate of the cost of gas in the written notice. Such a requirement will provide notice to potential customers that the cost of gas to the customer may vary, while the estimated price along with the disclosure about the variability of the rate fulfills the § 986(a)(1)(A) requirement to disclose the total price of the gas delivered to the home or business so that core customers can "compare and select among similar products and services on a standard basis."

In addition, as part of our adopted rule, the CTAs may peg their gas price to an easily accessible publicly available natural gas price index with a plus or minus variation, along with the notice that the actual price charged to the

customer may vary. If the price of gas is pegged to a price index, the CTA is still required to provide an estimated amount for the price of gas.

2.9.3.5. Recurring and Nonrecurring Charges

The fourth element of the written notice is the § 986(a)(1)(B) requirement that there be a "Separate disclosure of all recurring and nonrecurring charges associated with the sale of gas." The CTAs are required to separately list and describe all the recurring and non-recurring charges that the CTAs plan to charge. In addition, we require the CTAs to separately list the charges that the gas utility plans to charge to transport the gas to the end-user. The disclosure of the utility's charges is consistent with § 986(a)(1)(A) of "including the costs of all gas services and charges regulated by the commission." Appendix C of this decision reflects the disclosure of the CTA's and the utility's recurring and non-recurring charges.

2.9.3.6. Other Services

The fifth element of the written notice is the requirement in § 986(a)(1)(C) that if the CTA offers services other than the provisioning of gas, that such services be itemized, along with the charges associated with each service. The CTAs are required to itemize any other service it offers, and the itemization shall include a description of each service offered, and the charge for each service. This requirement is reflected in Appendix C.

2.9.3.7. Right to Rescind

The sixth element is the requirement in § 986(a)(2) that the written notice include "A description of the potential customer's right to rescind the contract without fee or penalty as described in Section 989.1."

Section 989.1(a) provides that "In addition to any other right to revoke an offer, core gas customers of gas service, have the right to cancel a contract for gas

service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase."

In D.14-08-043, the Commission addressed the customer's right to cancel a contract with a CTA within a certain time period, and distinguished between the cancellation rights of residential customers and commercial customers. For residential customers, the Commission in D.14-08-043 extended the time for a residential customer to cancel a contract with the CTA concluding that the three-day cancellation provision in § 989.1(a) was insufficient time for residential customers to exercise their right to cancel. "To ensure residential customers have a fair chance to cancel CTA service agreements without penalty," the Commission extended "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." (D.14-08-043 at 31.)

For small commercial core gas customers,[53] the Commission in D.14-08-043 allowed the CTAs to provide those customers with a separate written waiver of their § 989.1 cancellation right at the time the contract with the CTA and the customer is executed.[54] These small commercial core gas customers also retain the right under § 989.1(a) to cancel their contract with the CTA "for gas service

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[53] D.14-08-043 characterized these small commercial core gas customers as "customers who are currently receiving or would by default receive gas service under one of their IOU's commercial customer classes." (D.14-08-043 at 29-30.)

[54] The Commission also requires that CTAs "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," and that "The Commission will have 30 days from the date of filing to either approve or deny the proposed waiver form," and that any "subsequent changes to the form will require Commission approval." (D.14-08-043 at 31.)

until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase."

The CTAs are directed to include in their written notices that a potential customer has the right to rescind the contract with the CTA. As part of the rules adopted in this decision to implement § 986, we require the CTAs to include in the written notice a description of how core gas residential and commercial customers can rescind their contracts with the CTAs, and the applicable time periods in which the customers may exercise this right. In addition, for core gas commercial customers, the CTA shall inform them in the written notice that the customer may also waive its right to cancel by signing the separate written waiver of cancellation that is presented at the time the contract or offer to purchase is entered into with the CTA. Appendix C contains a sample of the required language.

2.9.3.8. Customer's Financial Obligations

The seventh required element that the written notice is to contain is "An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints." (§ 986(a)(3).)

The customer's financial obligations include such things as any required deposits, early termination fees, and the recurring and non-recurring charges described in § 986(a)(1) that a customer will face while service is provided to the customer by the CTA. The CTAs are required to comply with the financial obligations provision of § 986(a)(3) by including in its written notice a description and explanation of what the customer owes to the CTA at the time gas service begins, on a monthly basis, and when gas service to the customer is terminated by either the customer or the CTA. Appendix C explains that the

CTA is to describe and explain in its written notice all of the financial obligations a customer obtaining gas service from a CTA will be obligated for.

Section 986(a)(3) also requires the CTA to explain the procedures regarding past due payments, and discontinuance of service. Past due payments and discontinuance of service are closely tied to physical disconnection of the customer from receiving gas. In accordance with § 985(b), only a gas utility may disconnect an end user of a CTA from the gas pipeline serving the home or business. Also, pursuant to § 779.2(a), the gas utility may not terminate gas service to a residential customer when that customer owes a debt to an entity or person who is not the gas utility. Thus, if a customer owes the CTA an unpaid amount, the gas utility may not disconnect the end use customer because of that specific debt. Due to §§ 779.2(a) and 985(b), the gas utility may only disconnect an end use gas customer under certain situations. Appendix C incorporates language which explains the procedures regarding past due payments owed to the CTA, when an end use customer can be returned to the gas utility by the CTA, and when service to the end use customer may be disconnected. The CTAs shall include in its written notice an explanation of the procedures regarding past due payments owed to the CTA, when an end use customer can be returned to the gas utility by the CTA, and when service to the end use customer may be disconnected.

Section 986(a)(3) also requires the CTA to explain in its written notice the procedures regarding billing disputes and service complaints. As discussed earlier, § 983 covers the informal and formal complaint processes that a CTA customer may pursue at the Commission, and the option to pursue a complaint in civil court. The CTAs are required to include an explanation of these

procedures in their written notices. Appendix C incorporates language which meet these requirements of § 986(a)(3).

2.9.3.9. CTA Registration Numbers

The eighth required element that the written notice is to include is the CTA's registration number, if applicable. (§ 986(a)(4).) As noted earlier, a public agency that that offers gas service to customers in its own service territory is not required to register with the Commission as a CTA. All CTAs who are required to register as a CTA shall also be required to include its CTA registration number as part of the § 986 written notice it provides to core gas customers. Appendix C incorporates language to that effect.

2.9.3.10. Right to Change Providers

The ninth required element is § 986(a)(5) which requires the CTA to include in its written notice "The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract." This code provision allows a customer of a CTA to change its gas supplier. However, since D.91-02-040 (39 CPUC2d at 371) requires a one-year term when a customer enters into a contract with a CTA, a CTA may assess the customer a fee or penalty if the customer decides to change its gas supplier before the one-year term has expired. Appendix C incorporates that requirement, and CTAs are required to include that requirement in their written notices.

2.9.3.11. Low-Income Programs

The tenth required element of the written notice is the requirement that the CTA include in its written notice "A description of the availability of low-income assistance programs for qualified customers and how customers can apply for

these programs." (§ 986(a)(6).) The primary low-income assistance program that applies to the gas utilities is the CARE program. (See § 739.1 and § 327.)

Since the Commission has limited jurisdiction over the rates or terms of conditions of service offered by a CTA as provided for by SB 656, a discount similar to the CARE discount cannot be imposed on the CTAs. However, § 986(a)(6) requires the CTA to provide in its written notice a description of the availability of low-income assistance programs, and how customers can apply for such programs. Accordingly, the CTA shall be required to state in its written notice whether or not the CTA offers any low income assistance programs to its customers, and if so, how the prospective customer can apply for the program. In addition, the CTA shall be required to include any low-income assistance programs that may be available for the gas transportation service provided for by the gas utility, and that the customer should contact the gas utility to apply for the discount. Appendix B incorporates that required language.

2.9.3.12. Compliance with § 986

In accordance with § 986 and effective immediately, all CTAs are directed to comply with this code section by providing all potential core gas customers with a written notice that meets the requirements set forth in § 986(a), and the rules that were adopted to implement § 986(a) as discussed above. Additionally, the CTAs are directed to provide the latest copy of the written notice to any core gas consumer upon request. The written notice will allow potential customers to understand the price, terms, and conditions of the gas service that the CTA is providing.

To comply with the § 986 requirement, the CTAs may use the notice format that appears in Appendix C, along with the CTA's specific information, or the CTA may prepare its own written notice so long as the requirements of § 986,

and the additional rules that we have added as described above, are met. The written notice that the CTA uses shall not be misleading or contain statements that are untrue.

Pursuant to the second sentence in § 986(b), all currently registered CTAs shall provide the Director of the Energy Division, and the Director of CPED, with a copy of the written notice that complies with the requirements and rules adopted in this decision within 45 days of today's date.

For prospective CTAs, they shall provide a copy of their written notice that complies with the requirements and rules adopted in this decision at the time they submit their CTA Registration Form.

The written notice shall also serve as the standard service plan that is required by § 984.5(a). To comply with the filing requirement of § 984.5(a), and to minimize duplication of effort by the CTAs, all registered CTAs shall submit a letter, along with the written notice required by § 986, to the Director of the Energy Division and the Director of CPED within 45 days of today's date, that explains that today's decision allows the written notice attached to the letter to serve as both the written notice required under § 986, and the standard service plan required under § 984.5(a).

For prospective CTAs who have not yet registered with the Commission, the written notice required by § 986, which is to be submitted at the time the prospective CTA submits its CTA Registration Form, shall also serve as the standard service plan filing required by § 984.5(a).

Pursuant to § 986(b), we will also require all registered CTAs to provide the Director of the Energy Division and the Director of CPED with a copy of their most recent version of the written notices on a semi-annual basis beginning on June 15, 2018, and on January 15, 2019, and every six months thereafter on

June 15 and January 15.[55] This semi-annual submission of the written notice shall also be considered as a semi-annual filing of the standard service plan of the CTA.

2.10. Denial of Service – § 986(c)

2.10.1. Background

Section 986(c) provides:

> Any core transport agent offering gas services who declines to provide those services to a consumer shall, upon request of the consumer, disclose to that consumer the reason for the denial in writing within 30 days. At the time service is denied, the core transport agent shall disclose to the consumer his or her right to make this request. Consumers shall have at least 30 days from the date service is denied to make the request.

The Scoping Ruling invited parties to comment on the process for implementing § 986(c).

2.10.2. Position of the Parties

The Joint Utilities recommend that if a consumer makes a request to a prospective CTA for the reason why service was denied, and the consumer is denied an explanation or is unsatisfied with the explanation, the consumer should be allowed to make an informal complaint to the Commission's CAB unit, or to file a formal complaint under the process set forth in § 986(b).

Commercial Energy contends the requirement in § 986(c) that a CTA must disclose the reason why it is denying service to a potential customer, should not apply to CTAs who serve commercial and master-metered customers.

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[55] In the event the future dates of January 15 and June 15 fall on a weekend or holiday, the written notices are to be submitted on the next business day. (See Rule 1.15 of the Commission's Rules of Practice and Procedure.)

Commercial Energy contends that these larger customers are capable of negotiating with a different CTA or they can take service from the gas utility.

The Joint Utilities oppose the recommendation of Commercial Energy, and contends the CTAs should be required to disclose to all potential core gas customers the reason why the CTA refused to provide service to the customer.

2.10.3. Discussion

Section 986(c) requires a CTA who offered gas service to a consumer, but then declined to serve that consumer, to disclose to the consumer upon request the reason for denying service. The CTA is required at the time the CTA denies service, to inform the consumer it has the right to request the CTA to provide in writing the reason why the CTA denied service, and that the consumer shall have at least 30 days from the date service is denied to make such a request. The CTA is required by § 986(c) to provide the consumer the reason for denial within 30 days of the consumer's request.

The Legislature did not intend that commercial core gas customers be excluded from the provisions of § 986(c) as requested by Commercial Energy. This is clear from § 986(a) which requires that a CTA "offering gas service to core gas customers shall" provide the § 986(a) written notice to potential customers. (Emphasis added.) Thus, if a core gas consumer is taking service from the gas utility under a residential or commercial tariff, the denial of service requirement in § 986(c) still applies.

Accordingly, all CTAs who offer to provide gas service to core gas consumers, but refuse to do so in a particular case, must inform consumers that they have the right to request the CTA to provide the reason in writing as to why service was denied by the CTA. The CTA must inform the consumer of their right to make such a request, and that the request be made within 35 days from

the date service is denied by the CTA. We adopt the period of 35 days for a consumer to make the request due to the language in § 986(c) which states that the consumers "shall have at least 30 days from the date service is denied to make the request." The words "at least 30 days" requires a minimum of 30 days, while our adopted limit of 35 days puts an end date on when the consumer can make such a request.

The Joint Utilities recommend that if a consumer has been provided a written reason by the CTA as to why the consumer was denied service by a CTA, and the consumer disputes the reason, that the consumer should have a right to file a complaint. To determine whether an "appeal" of the CTA's written denial should be allowed, we examine the complaint processes set forth in § 983.

Section 983(a) addresses the informal complaint process and states that "The commission shall accept, compile, and attempt to informally resolve consumer complaints regarding core transport agents." (Emphasis added.) The formal complaint process set forth in § 983(b) allows a core gas customer the option of proceeding with a complaint against a CTA through an action filed with the Commission or in civil court. However, the fourth sentence of § 983(b) provides that the Commission's authority "in these complaint proceedings is limited to adjudication of complaints regarding core gas service provided by a core transport agent…." (Emphasis added.)

Based on the language in § 983, a consumer who has requested and received a written notice from the CTA as to why the CTA refused to serve the consumer, and disagrees with the reason for the denial, may submit an informal complaint to the Commission in an attempt to informally resolve the denial of service issue. Our reasoning for allowing a consumer to pursue this step is because this informal process was established by the Legislature to informally

resolve consumer complaints. The informal complaint process does not require that the complaint involve a service or billing related problem.

However, the consumer who has requested and received a written notice from the CTA as to why the CTA refused to serve the consumer, and disagrees with the reason for the denial, cannot file a formal complaint with the Commission pursuant to § 983(b). That is because of the requirement that a complaint filed against a CTA at the Commission must involve a complaint "regarding core gas service provided by a" CTA. In the situation where the CTA refuses to provide gas service to a consumer who has requested such service, the CTA has not provided gas service to the consumer, and therefore cannot file a formal complaint against the CTA at the Commission.

We do not address the issue of whether a consumer who has requested and received a written notice from the CTA as to why the CTA refused to serve the consumer, can file a complaint in civil court. Section 983(b) does not specifically address that kind of situation, and it should be left to the judicial court system to determine whether such a complaint should be allowed to proceed.

As discussed above, all CTAs are required to provide in their § 986 written notice the right of the consumer to request the reason for the denial of service in writing, the time period in which the consumer can request the reason for the denial of service, the time period in which the CTA has to provide the written reason for the denial of service, and the consumer's right to submit an informal complaint to the Commission if the consumer disagrees with the CTA's reason for denying service. The uniform format written notice set forth in Appendix C contains sample language addressing these rights.

2.11. Do Not Call List – § 987

2.11.1. Background

Section 987(a) provides for the establishment of a do not call list to prevent core gas customers from being "solicited by telephone, by a gas corporation, marketer, broker, or aggregator for gas service, to subscribe to or change their core transport agent." The Commission is prohibited from assessing a charge to include a customer on the list, and the list is to be updated on at least a quarterly basis.

Section 987(b) provides that this do not call list:

> shall include sufficient information for gas corporations, marketers, brokers, or aggregators of gas service to identify customers who do not wish to be solicited, including a customer's address and telephone number. The list shall be made accessible electronically from the commission to any party regulated as a gas corporation or registered at the commission as an electric marketer, broker, or aggregator of gas service.

Section 987(c) provides that these entities "shall not solicit, by telephone, any customer on the list prepared pursuant to subdivision (a). This code section also provides that if any of these entities or their representatives solicits any customer on the do not call list more than once, the entity is liable to the customer for $25 for each contact in violation of § 987(c).

The Scoping Ruling stated the following about § 987:

> Section 987 will require outreach by the Commission and the gas utilities to make consumers aware of such a list, and of their right to be included on the list. To conduct this outreach, this may include the development of an advertising campaign, and the use of bill inserts, to make gas customers aware of this no call list. In addition, the Energy Division will need to coordinate with the Commission's Information Technology Services Branch to host a secure website where customers can request that they be included on the list, and where the utilities and CTAs can access this list.

2.11.2. Position of the Parties

Just Energy notes that the do not call provision for the CTAs in § 987 is identical to the code provision in § 394.7 for ESPs, which has been in effect since August 1997. Just Energy and Tiger recommend that the Commission implement § 987 in the same way § 394.7 has been implemented for the ESPs.

The Joint Utilities recommend that the following procedures be implemented:

- Coordinate with the Commission's Information Technology Services Branch to host a secure website where customers can request that they be included on the CTA opt-out/do not call list.
- The list should be accessible electronically to the utilities and the CTAs.
    - The list should be updated periodically, but no less than quarterly.
    - The list should include sufficient information to identify customers who do not wish to be solicited, including the customer's address and telephone number.
    - When a customer on the do not call list notifies their utility to let them know that a CTA has contacted them, the utility will relay this information to the Commission and the offending CTA will be subject to a fine.
    - The utility will inform customers who contact the utility with concerns about CTA marketing activities about the availability of the do not call list and will direct customers to the appropriate Commission website to process a request to be added to the list.

The Joint Utilities support a fee or fine for a CTA's violation of the do not call list. The Joint Utilities recommend that the fee or fine be designed to cover the costs incurred by the Commission to investigate any violations, and a portion

of the fee or fine could be paid to the customer. Just Energy and IGS point out that § 987(c) already establishes a fee of $25 for a violation of the do not call list.

The Joint Consumers contend that the steps to be included on the do not call list should be included in the bill of rights brochure. In addition to the do not call list in § 987, the Joint Consumers contend there are other federal, state, and local laws that the CTAs must abide by regarding telephone and door-to-door marketing.

The Joint Consumers recommend that the process of paying a customer $25 for a CTA's violation of the do not call list should be streamlined so an aggrieved customer can be made whole in a timely manner. If the UEB is responsible for enforcing the consumer protection rules, the Joint Consumers recommend the UEB should be given the authority to issue a citation to the CTA if a violation of the do not call list occurs. The consumer whose do not call listing was violated should be given the choice of having the supplier credit the consumer's account, or having the CTA deliver the $25 payment to the consumer.

To ensure that the information in the do not call list remains secure, the Joint Consumers recommend "that any CTA or its agents granted access to this list are forbidden to use the information on this list outside of its intended purpose," and that violations of this "could lead to suspension or revocation of the CTA's registration." (Joint Consumers, April 7, 2017 Opening Comments at 45.)

The Joint Consumers also support the use of a processing fee for suppliers to cover the Commission's cost of developing the no contact list, and to cover the citation and investigation costs.

2.11.3. Discussion

The Commission addressed and implemented a similar do not call procedure for the ESPs in D.98-03-072 (79 CPUC2d at 288-290). As described in that decision, the establishment of such a process is a time consuming and labor-intensive effort for the Commission to undertake.

Commission staff will need to develop a database for the do not call list, and to make the database available to all registered CTAs and to public entities providing gas service in a gas utility' service territory. To make this database available, there needs to be sufficient Commission staff and resources to develop, compile, and maintain this database, to work with the gas utilities in sending out bill inserts about the do not call list, developing other notices to inform the public about signing up to be included on the do not call list, and working with and sharing the do not call list with the gas utilities, CTAs and public entities.

To compile the do not call list, Commission staff will need to determine the procedures for how customers can sign up to be included on the do not call list, and to perform statewide outreach to educate core gas customers about their right to be included on this list. This outreach may require the gas utilities to provide bill insert notices that describe the purpose of the do not call list, and how customers can be included on the list. Other informational brochures may also have to be developed to inform consumers about the do not call list.

There are also privacy, confidentiality, and internet security concerns to consider. Since the do not call list will contain the names of customers and their telephone numbers, the gas utilities, CTAs and the public entities providing CTA services in a gas utility's service territory shall be required by today's decision to keep all of the information on this list confidential, and shall be prohibited from selling, releasing, or disclosing any information on the do not call list to any third

party, or using the do not call list for any other purpose.[56] Commission staff shall incorporate the restrictions on the use of the do not call list as a pre-condition to access to the list by the gas utilities, the CTAs, and the public entities providing CTA services in a gas utility's service territory.

When the do not call list is made available, the Commission staff must ensure that electronic access to the list is secure and available only to authorized entities. This will require that information technology security processes are in place to safeguard this information.

Since § 987 refers to "core gas customers who do not wish to be solicited by telephone," we interpret "solicited by telephone" to include direct person to person telephone calls, automated robo-call dialing, and texting to customers.

One point that needs to be addressed is that § 987(b) refers to the no call list being made available to "an electric marketer." We decline to make the no call list available to electric marketers. The reason for that is because the intent behind § 987 is to create a list of core gas customers who do not want to be solicited by telephone. It appears that the reference to "electric marketer" in § 987(b) occurred because it was mistakenly carried over from a similar provision that appears in § 394.7, which established a do not call list for the ESPs. Consistent with the intent of § 987, the do not call list will be made available to regulated gas corporations, and to registered marketers, brokers or aggregators of gas service.

The procedures and details of setting up the do not call list, getting customers' names and telephones onto the list, and providing the do not call list

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[56] The failure to abide by the confidentiality restrictions can lead to enforcement actions against the offending entity pursuant to the code sections and provisions listed in § 983.5.

to eligible entities, are too numerous to set forth in this decision. Instead, to implement § 987, the Director of the Energy Division should form an internal task force of staff from various divisions to create the do not call list database, to set up a secure website so that eligible CTAs and public entities can access the do not call list, to decide how consumers can be educated and informed of their right to be included on the no call list, and to determine if the gas utilities should be required to send out bill inserts to their customers to make them aware of the do not call list and how they can sign up to be included on the list.[57] This task force should review how the Commission implemented the § 394.7 opt-out list as directed in D.98-03-072, and how similar do not call lists have been implemented.

Another process that the task force should look at is whether the UEB of the Commission's Consumer Protection & Enforcement Division should be allowed to set up a citation process to enforce the violation penalty of $25 that is set forth in 987(c). The Scoping Ruling recognized the following:

> If a CTA violates the non-solicitation list, a process is needed to enforce the provision that the customer will receive the violation penalty set forth in § 987(c). Such a process could involve a citation-type process, consisting of an investigation by Commission staff, collection of the violation penalty, and remitting the penalty amount to the customer. In accordance with § 984(b), the Commission could also assess a processing fee to reimburse the Commission for the cost of the citation and investigation process.

The Joint Utilities do not oppose a citation program for the CTAs that is similar in form and function to the citation program in place for the

[57] As discussed in the section on the "Registration Fee and Annual Determination of the Costs of the Registration Program," the Commission's time and resources of setting up and carrying out § 987 provides an example of why the Commission should consider imposing an annual fee on the registered CTAs.

gas and electric utilities. Several of the CTAs oppose the adoption of a citation program for the CTAs, and note that they are unaware of any citation program that was adopted for the ESPs.

If the task force decides that a citation program is appropriate to enforce the $25 penalty set forth in § 987(c), the UEB is authorized by today's decision to bring a resolution before the Commission to implement such a citation mechanism.

2.12. Local Publicly-Owned Utilities – § 988

Section 988 provides:

> Notwithstanding any other provision of this chapter, requirements placed on a core transport agent shall not apply to gas services provided by a local publicly owned gas utility to customers within the jurisdiction or service territory of that local publicly owned gas utilities.

This code section, as well as § 980(b), makes clear that the Commission has limited authority over a local publicly owned gas utility who is acting as a CTA. When the local publicly owned gas utility is providing gas services within the jurisdiction or service territory of that local publicly owned gas utility, the Commission cannot impose any of the CTA requirements on the local publicly owned gas utility.

However, when a public entity provides gas services <u>within a gas corporation's service territory</u>, the public entity is subject to the rules imposed on the CTAs unless specifically exempted. These rules include: requiring the public entity to register as a CTA; having complaints against the public entity resolved by the processes described in this decision; providing the Commission with information about the terms and conditions of any standard service plan;

providing the Commission and potential customers with the § 986 written notice; and adhering to the rules regarding access to, and use of, the do not call list.

Nothing further needs to be done in this proceeding to implement § 988.

2.13. Unclaimed Refunds – § 989

Section 989 provides that "Unclaimed refunds ordered by the commission, and any accrued interest, may be used by the commission to fund additional consumer protection efforts."

The most likely situation of any unclaimed refund is in the context of a formal complaint or in an OII of a CTA. If a refund goes unclaimed, the Commission will need to issue a decision in that proceeding on how the unclaimed refund should be disbursed, and whether it should be used to fund additional consumer protection efforts. Nothing further needs to be done in this proceeding to implement § 989.

2.14. Right to Cancel

The right to cancel provision in § 989.1 has already been addressed in the written notice section on price, terms, and conditions of service, as well as in D.14-08-043. Nothing further needs to be done to implement § 989.1.

2.15. Recovery Rights – § 989.5

Section 989.5 addresses the relief that a consumer may seek from a CTA for a violation of Chapter 4.7 of the Public Utilities Code as added by SB 656. The relief that a consumer is entitled to pursue under § 989.5 are actual damages, the consumer's reasonable attorney's fees and court costs, exemplary damages in the amount the courts deems proper, and equitable relief as the court deems proper.

It is apparent from reading § 989.5 that this code section refers to the remedies that a consumer can seek in a civil court, and not at the Commission. This interpretation of § 989.5 finds support in § 983(b), which provides that the

Commission's authority in a complaint proceeding against a CTA is limited to reparations, and "shall not be expanded to include an award of any damages through regulation of the rates or charges of the" CTA.

As noted in the Scoping Ruling, and in which the parties' comments agree, no further action is needed in this proceeding with regard to § 989.5.

2.16. Section 980(a) Definitions

2.16.1. Background

In D.14-08-043, issues were raised about the meaning of a "core gas customer," "core customer," and "small commercial customer." The Commission agreed in D.14-08-043 that § 980(a) "provides an exemption from registration for CTAs whose small commercial accounts are exclusively loads associated with noncore customer loads." In D.14-08-043 at 32, the Commission deferred to this phase "whether specific rules for implementing this exemption are necessary." The Scoping Ruling asked parties to comment on whether specific rules should be adopted to implement this exemption.

2.16.2. Position of the Parties

The Joint Utilities disagree with the recommendation of Commercial Energy that the definition of a small commercial customer be revised to include master-metered residential customers. The Joint Utilities contend that this will result in these customers being treated as a commercial customer for one purpose, and as a residential customer for other purposes. The Joint Utilities also disagree with Just Energy's proposal to define a small commercial customer based on their annual historical gas usage. The Joint Utilities contend that the Commission approved rates and tariffs should determine the customer's classification.

Just Energy contends that no additional work is needed to implement § 980(a). Just Energy contends that D.14-08-043 at 32 is clear on how this code provision is to be interpreted, and will allow § 980(a) to be implemented in a manner which exempts core small commercial customer accounts that are ancillary to large noncore commercial customer accounts.

Commercial Energy recommends that the definition of a "small commercial customer" be clarified. Some of the other CTAs also support clarification of this term. Commercial Energy notes that the utilities' current gas rules define "small business customer" or "small nonresidential service" to be a customer that uses less than 10,000 therms per year. Commercial Energy contends that a uniform definition is needed to clarify that a master-metered customer should be considered a large commercial customer, and not a small commercial customer. Such a revision is appropriate because under PG&E's rate schedules, new master-metered customers will take service from PG&E under its commercial schedules. Commercial Energy also contends that master-metered customers have the same characteristics as a commercial customer in the following manner:

> … there is a single client, the building owner; the client is sophisticated and capable of making informed choices about its gas service; the client has more options for obtaining gas service than a lone residential customer; and the client is capable of negotiating the terms of its service agreement with the CTA as a sophisticated market participant. (Commercial Energy, April 7, 2017 Comments at 12.)

The Joint Consumers contend that a workshop should be held if clarification is needed to determine who are "core customers" or "small commercial customers." The Joint Consumers also note that "additional

protections" pursuant to § 985(h) may be needed to ensure that the tenants of a master metered building are aware of the complaint process.

2.16.3. Discussion

We do not believe any additional action is needed to define who qualifies or who should be included in the definition of a small commercial customer. As noted by some of the parties, there is no standard definition for a "small commercial customer" among the gas utilities, and it varies depending on the individual gas utilities' tariffs.

In addition, the code provisions added by SB 656 applies to CTAs who provide gas service to core gas customers. SB 656 does not distinguish between core gas customers who take service as a residential, commercial, or industrial customer. In addition, the definition of who qualifies as a core gas customer varies among the gas utilities depending on what is set forth in their tariffs.

Accordingly, we do not redefine in this proceeding whether the term "core gas customer" should be broken down into different classifications. For the purposes of implementing SB 656, all of the code sections added by that legislation apply to all core gas customers located within a gas utility's service territory unless a code provision added by SB 656 or D.14-08-043 or today's decision provides otherwise.

3. Comments on Proposed Decision

The proposed decision of the Commissioner 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. Opening and reply comments were filed by several parties. Those comments have been reviewed and considered, and appropriate changes have been made to parts of this decision.

4. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.14-08-043 adopted the registration procedures for CTAs, and ordered all CTAs, unless exempted, to register with the Commission.

2. D.14-08-043 adopted interim standards for proof of financial viability, and proof of technical and operational ability.

3. In resolving the scope of issues in this phase of the proceeding, we have considered the code sections added by SB 656, the Scoping Ruling, the parties' comments to the Scoping Ruling, and the parties' other pleadings.

4. The May 17, 2017 ruling determined that no workshops or evidentiary hearings would be held due to the specificity of the code sections added by SB 656, the processes in place for the ESPs, and the parties' comments.

5. The CTA Registration Form that was adopted in D.14-08-043 is modified by today's decision to reflect the adopted outcomes in this phase of the proceeding.

6. All CTAs who are registered with the Commission, as well as prospective CTAs, are required under § 982(d) to update their registration information within 60 days of any material change in the information that was provided.

7. In D.14-08-043, the Commission adopted interim financial viability standards.

8. D.14-08-043 deferred the issue of how much the minimum security deposit amount should be to this phase of the proceeding.

9. None of the parties commenting on the security deposit issue have raised concerns about using the financial resources schedule that was adopted for the

ESPs for the CTAs, nor did anyone comment on the schedule's relationship between the number of customers and whether the amount to be posted is inadequate.

10. The requirement to post financial resources, as well as providing proof of technical and operational ability, will ensure that CTAs are in a position to deliver gas to its customers in a safe and reliable manner.

11. After the financial resource amount is posted with the Commission, the Energy Division will need to verify that the amount submitted by the registered CTA correlates to the amount of customers that the CTA presently has.

12. For an expedited hearing held pursuant to § 982(b), the hearing is to be transcribed by a court reporter.

13. Due to the timeframe in § 983.5(a)(3) for opening a proceeding to hold an expedited evidentiary hearing and to issue a decision within 45 days after holding the hearing, a shortened process needs to be adopted which sets aside a party's right to make a preemptory challenge to the assignment of an ALJ, removes the need for a scoping memo, and waives the comment period for a proposed decision.

14. When possible, a statute should be construed to promote the purpose of the statute.

15. The various remedies in § 983.5 allow the presiding officer in a suspension or revocation proceeding to develop a remedy which best fits and responds to the actions that the CTA may have engaged in.

16. A consumer usually contacts the service provider before the consumer seeks an alternative method of trying to resolve the issue.

17. CAB currently tracks informal complaints and the same type of information that the Joint Utilities request be maintained.

18. A review of the data that CAB collects from the informal complaint process is consistent with the objectives in §985(h) of protecting core gas consumers.

19. It is in the CTA's interest to cooperate when informal or formal complaints are before the Commission.

20. In order to involve the CTAs in the informal complaint resolution process, the CTAs will need to access the informal complaint web portal platform that CAB uses, provide certain information to the Commission, and supply the resources to address any informal complaints.

21. The CTA consumer protection rules contained in PG&E's gas Rule 23 were added as part of a settlement reached in PG&E's Test Year 2011 gas transmission and storage proceeding, and was approved by the Commission in D.11-04-031.

22. The settlement approved in D.11-04-031 states that the "Settlement Period" covers the period from January 1, 2011 through December 31, 2014.

23. Section 983(b) allows a core gas customer the option of filing a complaint against a CTA with the Commission or in civil court.

24. Section 983(d) is clear that if a formal complaint is filed with the Commission by a customer against a CTA, the CTA shall not discontinue service to the customer if the customer has deposited the disputed amount into an escrow account.

25. Section 983(d) does not specifically address whether a CTA can discontinue gas service to a customer during the time an informal complaint is pending resolution by CAB.

26. CAB and the Commission's Fiscal Office currently use an escrow process for informal complaints.

27. Section 984 addresses the registration fee for CTAs, and provides for an annual determination of the costs of administering the CTA registration program.

28. The CTA registration fee may be adjusted in the future.

29. Resolution M-4797, which was issued in response to D.98-03-072, imposes an annual fee of $1,000 on each registered ESP.

30. The staff responsible for the § 984(b) annual review need to be cognizant of the costs of activities required by SB 656, especially §§ 984.5 and 987, and to weigh whether a proposed increase in the annual fee will deter market entry by prospective CTAs.

31. Section 984.5 addresses certain consumer protection related work that the Commission is required to undertake.

32. In addition to compiling the list of the CTAs, § 984.5(a) requires the Commission to compile information to assist consumers in making service choices among CTAs, and to compile information about 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.

33. Section 984.5(a) will require Energy Division to write up information for consumers describing the core transport and the CTA program, the ability of core gas customers to choose gas service from the utility provider of natural gas or from a CTA, and the factors core gas customers should consider in selecting a CTA for natural gas service.

34. In drafting up consumer information about the CTAs, the Energy Division needs to be cognizant of the directive in § 984.5(c) that the Commission shall not make specific recommendations, rank the relative attractiveness of specific

service offerings of registered CTAs, or provide customer-specific assistance in the evaluation of CTAs.

35. Pursuant to § 984.5(a), the filing of information describing the terms and conditions of the standard service plan is to assist the Commission in compiling information to assist consumers in making service choices.

36. Section 984.5(b) authorizes the Commission to issue a public alert when an entity is attempting to provide core transport service in an unauthorized or fraudulent manner.

37. In issuing a public alert pursuant to § 984.5(b), the Commission and Commission staff need to exercise restraint before a public alert is issued, especially when the public alert names a particular entity.

38. Section 984.5(d) directs ORA to perform certain tasks regarding the core transportation program.

39. Section 985 addresses certain minimum standards the CTAs must adhere to in their dealings with customers.

40. The 12-month term of service originated with the settlement that was adopted in D.91-02-040.

41. This proceeding was initiated to implement the requirements of SB 656, and was not designed to change the other core transportation and aggregation rules that were previously adopted by the Commission.

42. D.14-08-043 addressed the customer's right to cancel a contract with a CTA within a certain time period, and distinguished between the cancellation rights of residential customers and commercial customers.

43. Since the do not call list will contain the names of customers and their telephone numbers, there are privacy, confidentiality, and internet security concerns to consider.

44. The reference to "electric marketer" in § 987(b) appears to have occurred because it was mistakenly carried over from a similar provision that appears in § 394.7, which established the do not call list for ESPs.

45. The procedures and details of setting up the do not call list, getting customers' names and telephones onto the list, and providing the do not call list to eligible entities, are too numerous to set forth in this decision.

46. Section 989.5 refers to the remedies that a consumer can seek in civil court, and not at the Commission.

47. Nothing further needs to be done in this proceeding to implement §§ 988, 989, 989.1 and 989.5.

48. With the adoption of today's decision, there are multiple administrative tasks that the different units of the Commission will need to undertake in order to implement SB 656.

Conclusions of Law

1. The registration process described and adopted in D.14-08-043 and in today's decision, which reflects the requirements of § 981, should be adopted as the permanent registration process for those CTAs who are required to register with the Commission.

2. The Commission should adopt as the permanent standard for proof of financial viability the following: a CTA must have a service agreement and an approved credit application with each utility in whose service territory the CTA plans to operate in, and adequate financial resources in the amount corresponding to the financial resources schedule set forth in today's decision and be in the form of a cash security deposit, a financial guarantee bond, or a customer trust account in a form approved by the Commission's General Counsel.

3. Requiring the CTAs to provide financial resources is consistent with § 981(a)(9), § 985(h), and what has been required of the ESPs.

4. If the financial resource posted with the Commission is in the form of a security deposit, any interest that the Commission earns on the posted amount shall be returned to the CTA shortly after the CTA gives up its CTA registration or its registration is rescinded by the Commission so long as there are no outstanding disputes at the Commission involving the CTA.

5. All currently registered CTAs shall provide within 30 days of the issuance of this decision the financial resource amount that corresponds to the number of customers the CTA has in California, and as the number of customers increase, bringing the CTA to the next customer threshold level, the CTA shall within 10 days of that triggering event increase the financial resource amount to the applicable amount.

6. For prospective CTAs who have not yet registered with the Commission, they shall be required to post financial resources in the initial amount of $25,000 at the time of registration, and as the number of customers increase, bringing the CTA to the next customer threshold level, the CTA shall within 10 days of that triggering event increase the financial resource amount to the applicable amount.

7. If a CTA refuses to increase its financial resource amount to match the next customer threshold level, the Energy Division may recommend action be taken to suspend or rescind the CTA's registration number pursuant to § 983.5.

8. Nothing in § 983.5(d) prevents the Commission from utilizing the § 981(a)(9) financial resource amount to also cover the reentry fees in § 983.5(d).

9. If Energy Division believes that the amount of the financial resource set forth in the adopted § 981(a)(9) schedule is insufficient to cover the risks

contemplated in both § 981(a)(9) and § 983.5(d), it may draft a Resolution for the Commission as to why the amounts in the schedule should be increased.

10. If any party believes that the amount of the financial resource set forth in the adopted § 981(a)(9) schedule is insufficient to cover the risks contemplated in both § 981(a)(9) and § 983.5(d), it may file a petition to modify the financial resource schedule adopted in today's decision.

11. The Commission should adopt as the permanent standard for proof of a CTA's technical and operational ability, the standards that were discussed and adopted in D.14-08-043, and in Appendix A of that decision.

12. The processes described in today's decision for the approval or denial of an application to become a registered CTA should be adopted, and the various staff of the Commission should be directed by the Commission's Executive Director to develop and implement such processes.

13. All CTAs who are required to register with the Commission are subject to §§ 2102, 2103, 2104, 2105, 2107, 2108, and 2114, and the Commission may bring an action against a CTA to enforce those code provisions.

14. All CTAs who are required to register with the Commission are subject to §§ 2111 and 2112.

15. In § 983.5(a)(3), the Legislature clearly wants to promote a timely hearing on the suspension and revocation of a CTA's registration, and a timely decision.

16. To promote the objective of § 983.5(a)(3), to avoid conflict with other code sections, and pursuant to §§ 311(g)(3) and 701 and due process, the Commission should adopt the processes described in today's decision for the suspension or revocation of a CTA's registration.

17. Due to the differences in the suspension and revocation process for ESPs as adopted in D.98-03-072, and the process for the CTAs as adopted in today's

decision, the ALJ Division and other affected divisions should be directed to look into whether these two processes should use a single uniform process, and to determine how these processes can be improved or streamlined while fulfilling the objectives of §§ 394.25 and 983.5.

18. In accordance with § 983.5(b) and (c), the Commission may immediately suspend or revoke a CTA's registration at the time the Executive Director issues its finding and notice letter to the CTA.

19. The immediate suspension of the registration on an interim basis does not violate due process when there is a compelling state interest and a timely hearing is provided.

20. Due to potential overlap and duplication with the suspension and revocation process, a citation process should not be used.

21. If the UEB believes a citation process should be implemented as a precursor to the suspension and revocation process, the UEB may propose to establish such a procedure by way of a Resolution.

22. The Commission does not have any jurisdiction over a complaint involving a public agency offering gas service to customers within the public agency's jurisdiction, or within the service territory of a local publicly owned gas utility.

23. Since the Legislature has directed the Commission, and not the CTAs, to informally resolve consumer complaints, CAB should be involved at the outset for any informal complaints.

24. IGS' recommendation that the Commission should distinguish between a customer's "inquiry" and an "informal complaint" is not adopted.

25. CAB should be directed to review the information data categories it collects when informal complaints are submitted, and to make revisions to the

type of data it collects if it believes that will improve the Commission's monitoring of consumer protection issues involving CTAs.

26. CAB should be directed to review the online informal complaint form and the PAO (in conjunction with the ALJ Division) should be directed to review the formal complaint form, to determine whether these forms and the applicable webpages should be revised.

27. Pursuant to § 983(c) and D.14-08-043, all CTAs shall provide access to their accounts, books, papers, and documents that are relevant to the complaint or investigation, and to provide the necessary resources to attempt to resolve informal complaints consistent with § 983(a).

28. All registered CTAs should be directed to follow the procedures described in Section 2.4.2.3. of today's decision to address any informal complaints that may be submitted against the CTA.

29. If during the informal complaint process CAB suspects that a CTA is engaging in a pattern of customer abuses, CAB shall notify the Energy Division and the UEB to look into whether an OII should be initiated.

30. At the conclusion of the informal complaint process, if CAB cannot resolve the informal complaint against the CTA to the customer's satisfaction, CAB shall inform the customer that it may file a formal complaint using the process in § 983(b).

31. Due to SB 656, and the expiration of the Settlement Period of the settlement adopted in D.11-04-031, the consumer protection rules set forth in SB 656, as interpreted and implemented through D.14-08-043 and in today's decision, supersede the consumer protection rules set forth in PG&E's gas Rule 23.

32. PG&E, along with the other gas corporations, will need to revise their applicable tariffs pertaining to the CTA program to conform to today's decision and to be similar to one another.

33. CAB and the PAO (in conjunction with the ALJ Division) should be directed to work with ITSB to revise the web pages that discuss informal and formal complaints against CTAs to include a discussion about § 983(b) and § 983(d).

34. CAB and the Commission's Fiscal Office should review whether the necessary escrow processes are in place to handle disputed amounts from customers of CTAs when an informal complaint against a CTA is submitted.

35. To implement § 983(d), the Commission's Fiscal Office should be directed to set up the processes to handle disputed amounts from customers of CTAs when a formal complaint involving the CTA is filed with the Commission.

36. Due to the reference in § 983.7 to "gas corporation," that code section only applies to the investor-owned gas utilities.

37. The gas corporations are directed to inform their customers of § 983.7 when a customer files a claim with the gas corporation for damages to property resulting from the curtailment of gas service.

38. As provided for in § 984(a), if the Energy Division believes an adjustment of the CTA registration fee is needed to recover the cost of administering the CTA program, it, with the assistance of other divisions of the Commission, may prepare a proposed resolution for the Commission's action.

39. A second fee on the CTAs is supported by the recurring annual fee imposed on the ESPs in D.98-03-072, and the statutory language in § 984(b) including the language that "The commission shall only collect those costs not already being collected elsewhere."

40. In accordance with today's decision, the Executive Director should be directed to have staff annually determine the costs of administering the CTA registration program pursuant to § 984(b), and to prepare a report and a proposed resolution for the Commission by March 1, 2018, recommending an annual recurring charge for the CTAs, or if an increase in this annual fee is warranted.

41. Once the Commission approves the resolution for an annual fee to be imposed on all registered CTAs, the Executive Director should be directed to have staff prepare and send out a bill for this annual fee by July 1, 2019, and each subsequent July 1 of each year thereafter, along with a statement that if the bill is not paid within 30 days, that a 15% late penalty will be incurred consistent with § 984(b).

42. Pursuant to § 984.5(a), the Commission's Energy Division should be responsible for compiling, maintaining, and updating the list of registered CTAs, and those publicly owned utilities who request that they be included on the list.

43. The Director of the Energy Division should be directed to ensure that a process is established to create the list of registered CTAs, and those publicly owned utilities who request to be included on this list.

44. Pursuant to the second and last sentence of § 984.5(a), the publicly owned utilities who request to be included on the CTA are required to provide the Commission with the terms and conditions of their standard service plans.

45. The standard format that is adopted for the filing of the terms and conditions of the standard service plan required by § 984.5(a) consists of the following: a summary of the price being charged (or if the price is negotiated with each customer, an explanation that each price is negotiated individually with each customer, and an explanation of what factors the CTA considers in

arriving at the negotiated price); a general overview of the principal terms and conditions of a standard contract; and a disclosure of all recurring and nonrecurring charges associated with the contract.

46. Those entities required under § 984.5(a) to file information that describes the terms and conditions of the standard service plan shall do so in the timeframe discussed in Section 2.7.1.4. of this decision.

47. The Commission and Commission staff should consider the factors described in Section 2.7.2.3. of today's decision before a public alert is issued.

48. The UEB staff, with the assistance of other divisions of the Commission, should lead the effort in deciding whether a public alert should be issued, and to follow the procedures set forth in Section 2.7.2.3. of today's decision for issuing a public alert.

49. Based on the information provided by the UEB, the Executive Director is delegated the authority to decide whether a public alert should be issued immediately.

50. The legislative intent of § 984.5(c) is for the Commission to provide information that allows a consumer to understand its core transport service options, and that the information and tools are objective and neutral and do not favor the gas utilities or the CTAs.

51. The parties' suggestion that the Commission's information and tools should compare the price of service between the utility and the CTAs is not adopted.

52. The recommendation that the information and tools requirement of § 984.5(c) should not apply to core commercial, master metered, and industrial customers is not adopted.

53. The requirement of informational guides and other tools contained in § 984.5(c) applies to all customers who meet the § 980(a) definition of a "core gas customer."

54. The Energy Division, with the assistance of other divisions of the Commission, should be delegated the responsibility to draft up the informational guides and other tools required by § 984.5(c) using the guidance and topics set forth in Section 2.7.3.3. of today's decision.

55. The recommendation that ORA should be directed to analyze the claim that customers will save money by taking service from CTAs rather than the utility is not adopted.

56. To implement the minimum standards set forth in § 985, all CTAs operating in the service territories of the gas corporations shall adhere to the adopted standards in Section 2.8. of today's decision, and set forth in Appendix B of today's decision.

57. The recommendation that the Commission should adopt a number of measures regarding the training and supervision of, and marketing activities of, CTA representatives and their agents is not adopted.

58. PG&E, SDG&E, and SoCalGas should be directed to file a joint application to propose whether the other rules pertaining to core transportation, core aggregation, and the CTAs need to be revised.

59. The recommendation that the bill format compare the amount being charged by the CTA for the gas, and how much the gas corporation would have charged for the gas during the billing period, is not adopted.

60. If a customer is charged a variable rate, the variable rate should not be disclosed due to competitive and proprietary concerns.

61. If the price of gas is based on a variable rate, the written notice required by § 986 shall state that the actual price of gas may vary from customer to customer because of the variable rate, which may affect the total price of gas delivered to the home or business, and that for illustrative purposes, an estimate of the cost of gas is included in the written notice.

62. Alternatively, the CTAs may peg their gas price to any publicly available price index with a plus or minus variation, along with a notice that the actual price charged to the customer may vary.

63. To implement the written notice of service set forth in § 986, all CTAs operating in the service territories of the gas corporations shall use the adopted uniform format that is set forth in Appendix C of today's decision and discussed in Section 2.9.3. of today's decision, or an alternative written notice that complies with those adopted requirements.

64. All currently registered CTAs, and all prospective CTAs, shall be directed to provide copies of the written notices to the Commission in accordance with today's decision and §§ 984.5(a) and 986.

65. Any core gas customer who is denied service by a CTA may request the reason for the denial of service pursuant to § 986(c).

66. All CTAs who offer to provide gas service to core gas consumers must inform consumers pursuant to § 986(c) and today's decision that they have the right to request the CTA to provide the reason in writing as to why the consumer has been denied service by the CTA, and to provide a response within 30 days of the consumer's request.

67. After a core gas consumer receives the § 986(c) written reason for denial of service, and the core gas consumer does not agree with the CTA, the consumer

may submit an informal complaint to the Commission in an attempt to informally resolve the denial of service issue.

68. A core gas consumer who receives the § 986(c) written reason for denial of service cannot file a formal complaint at the Commission because § 983(b) requires a formal complaint to involve core gas service provided by the CTA to the consumer.

69. The do not call list in § 987 is interpreted to include person to person telephone calls, automated robo-call dialing, and texting to customers.

70. Consistent with the intent of § 987, the do not call list will be made available to regulated gas utilities, and to registered marketers, brokers or aggregators of gas service.

71. The Director of the Energy Division should form an internal task force from the various divisions to consider and to implement the activities to carry out the do not call list.

72. If the task force decides a citation program is appropriate to enforce the $25 penalty set forth in § 987(c), the UEB is authorized to bring a resolution before the Commission to implement such a citation mechanism.

73. Unless specifically exempted, when a public entity provides gas services within a gas corporation's service territory, the public entity is subject to the rules imposed on the CTAs.

O R D E R

IT IS ORDERED that:

1. The registration process described and adopted in Decision 14-08-043 and in today's decision, and as set forth in Appendix A (Core Transport Agent

Registration Application Form) of today's decision, is adopted as the permanent registration process for core transport agents who are required to register with the Commission.

a. All prospective core transport agents shall complete the Core Transport Agent Registration Application Form, as shown in Appendix A of this decision, in order to apply for registration in this state as a core transport agent.

b. All registered core transport agents shall update their registration information set forth in Public Utilities Code Section 981(a) within 60 days of any material change in the information that was provided, and any material changes to any other information is to be updated annually.

c. The Commission adopts the following as its permanent standard for proof of financial viability: a core transport agent must have a service agreement and an approved credit application with each gas utility in whose service territory the core transport agent plans to operate in; and post adequate financial resources, or the equivalent, in the amount corresponding to the following schedule:

Number of Customers	Amount of Financial Resource
1 - 250	$25,000
251-500	$50,000
501-1000	$75,000
1001 and above	$100,000

d. The Energy Division, with the assistance of the Commission's Utilities Enforcement Branch, the Executive Director, and the Administrative Law Judge Division, shall follow the processes described in Section 2.3.2. of this decision to approve or deny an application to become a registered core transport agent.

e. All registered core transport agents are subject to the assessment of an annual fee as described in Public Utilities Code Section 984(b) and in today's decision.

i. The annual fee is expected to be assessed beginning on July 1, 2018, and on July 1 of each subsequent year.

f. All entities required to be registered in this state as core transport agents shall comply with Public Utilities Code Sections 980 through 989.5, and with all Commission decisions addressing the core gas transportation program, and with the registration and consumer protection issues addressed in Decision 14-08-043 and in this decision.

2. To comply with the financial resources component of a core transport agent's proof of financial viability, all registered core transport agents and all prospective core transport agents shall do the following:

a. Within 30 days of the issuance of this decision, all currently registered core transport agents shall provide the financial resource amount, or its equivalent, that corresponds to the number of customers that the core transport agent has in California, to the Fiscal Office of the Commission.
b. All prospective core transport agents who have not registered with the Commission, shall provide the financial resource amount, or its equivalent, in the amount of $25,000 at the time they submit their applications to become registered core transport agents.
c. As the number of customers increases for the core transport agent, bringing it to the next customer threshold level on the schedule listed in Ordering Paragraph 1.c., within 10 days of that triggering event the core transport agent shall increase the financial resource amount to the applicable amount.

3. The standards set forth in Appendix B of this decision, which are addressed in Section 2.8. of today's decision, are adopted as the standards that core transport agents must adhere to in their dealings with customers.

a. All core transport agents shall abide by the standards set forth in Public Utilities Code Section 985 as adopted and addressed in today's decision.

4. As described in Section 2.9.3. of today's decision, Appendix C of this decision is adopted as the uniform format for the written notice required by Public Utilities Code Section 986.

   a. As required by Public Utilities Code Section 986, all core transport agents shall provide prospective customers, and any core gas consumer who requests a copy, with a written notice of the service describing the price, terms, and conditions of the service.

      i. A core transport agent may use the format in Appendix C as the format for its written notice, or it may use an alternative format so long as the requirements of Public Utilities Code Section 986, and the additional rules adopted in today's decision, have been met.

      ii. All currently registered core transport agents shall provide the Director of the Energy Division and the Director of the Consumer Protection and Enforcement Division with a copy of the written notice within 45 days of today's date.

      iii. For prospective core transport agents, they shall provide a copy of their written notice at the time they submit their core transport agent registration form.

   b. The written notice required by Public Utilities Code Section 986 shall also serve as the standard service plan filing required by Public Utilities Code Section 984.5(a) and today's decision.

   c. Pursuant to Public Utilities Code Section 986(b), all registered core transport agents shall provide their most recent version of the written notice on a semi-annual basis beginning on June 15, 2018, and on January 15, 2019, and every six months thereafter on June 15 and January 15.

      i. The semi-annual submission of the written notice shall also be considered as a semi-annual filing of the core transport agent's standard service plan.

5. The Commission's Executive Director shall ensure that the affected divisions of this Commission undertake the necessary work to establish the

processes, and to implement and carry out the various activities, required by today's decision.

a. These processes and activities include the following:

he process and activities around the posting, verification, and return of the financial resources as addressed in Section 2.2.2.3. of today's decision.

i. The suspension and revocation process addressed in Section 2.3.3. of today's decision.

ii. The informal complaint process as addressed in Section 2.4.2.3. of today's decision.

iii. The formal complaint process as addressed in Sections 2.4.3. and 2.4.4. of today's decision.

iv. The escrow deposit of a disputed amount for informal and formal complaints as addressed in Section 2.4.4. of today's decision.

v. On an annual basis, determine the costs of administering the registration program and other facets of consumer protection related to core transport service and core transport agents, and to prepare the resolutions for the recurring charge as addressed in Section 2.6.3. of today's decision.

1. The initial review, report, and proposed resolution shall be submitted to the Commission by March 1, 2019.

vi. Once the annual fee is approved by the Commission, staff shall prepare and send out a bill for the annual fee to all registered core transport agents as addressed in Section 2.6.3. of today's decision.

vii. Compile, maintain, and update the list of registered core transport agents as addressed in Section 2.7.1.2. of today's decision.

viii. Compile, design, write up, and post the informational guides and tools, along with the customer complaint information, as addressed in Sections 2.7.1.3. and 2.7.3.3. of today's decision.

ix. That all registered core transport agents file with the Energy Division a written summary of the terms and conditions of the standard service plan, and to review those summaries and incorporate them into the consumer information guide, as addressed in Section 2.7.1.4. of today's decision.

x. Issuing a public alert as addressed in Section 2.7.2.3. of today's decision.

xi. Ensuring that core transport agents comply with the adopted standards of Public Utilities Code Section 985 as addressed in Section 2.8 of today's decision.

xii. Ensuring that core transport agents comply with the written notice requirement of Public Utilities Code Section 986 as addressed in Section 2.9.3. of today's decision.

xiii. As addressed in Section 2.10. of today's decision, use the informal complaint process in the event a core gas consumer appeals a denial of service by the core transport agent.

xiv. Implement the process and activities for the do not call list as addressed in Section 2.11. of today's decision.

b. If Energy Division believes there is a need, it, with the assistance of other divisions of the Commission, may draft a resolution to increase the financial resource schedule as addressed in Sections 2.2.2.3. and 2.2.3.3. of today's decision.

c. If the Commission's Utilities Enforcement Branch believes that a citation process should be implemented as a precursor to the suspension and revocation process, or to enforce the do not call list, the UEB may draft a resolution as addressed in Sections 2.3.3.5. and 2.11.3. of today's decision.

6. In accordance with Public Utilities Code Section 983(c), all core transport agents shall provide the Commission with access to their accounts, books, papers, and documents, that are relevant to customer complaints or investigation regarding a core transport agent.

7. All core transport agents shall provide the necessary resources in an attempt to resolve an informal complaint that may be submitted against a core transport agent.

   a. All registered core transport agents shall follow the steps for the informal complaint process that are described in Section 2.4.2.3.1. of today's decision.

8. All core transport agents shall file a summary of their terms and conditions of their standard service plans using the adopted standard format described in Section 2.7.1.4. of today's decision.

   a. Within 45 days of today's date, each registered core transport agent shall file its summary with the Energy Division.

   b. Each core transport agent applying for registration shall provide the summary at the time it submits its registration form.

9. Each publicly owned utility who has requested to be included on the list of entities offering core transport services in California shall file its summary of the terms and conditions of its standard service plan within 45 days of today's date, or at the time the publicly owned utility requests to be added to the list of entities offering core transport services in California.

10. Pursuant to Public Utilities Code Section 984.5(d), the Office of Ratepayer Advocates shall analyze the customer complaints involving core transport agents and determine if changes need to be made to the consumer protection rules.

11. The gas corporations shall coordinate to create identical revisions to their tariffs and rules to conform to today's decision. The gas corporations shall utilize the same, consistent tariff language across corporations.

   a. Within 45 days of today's date, the gas corporations shall each submit a Tier 2 advice letter filings containing identical tariff and rule revisions to their tariffs and rules to conform to today's decision.

12. When a customer files a claim with a gas corporation for damages to property resulting from the curtailment of gas service due to the failure of the gas corporation to reasonably provide service or restore service within a reasonable time, the gas corporation shall inform the customer pursuant to Public Utilities Code Section 983.7 that it may pursue the claim in small claims court or Superior Court depending on the amount of the claim.

13. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company, shall file a joint application by January 30, 2019 to propose whether the other rules pertaining to core transportation, core aggregation, and the core transport agents, should be revised.

    a. A Core Transportation and CTA Forum will be scheduled for the second or third quarter of 2018 to discuss relevant issues.

14. Rulemaking 14-03-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.