

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 2, 2003

Agenda ID #2656

TO: PARTIES OF RECORD IN APPLICATION 00-11-038 *ET. AL.*

This is the draft decision of Administrative Law Judge Wong. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ WONG** (Mailed 9/2/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan (U 39 E).

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

**OPINION REGARDING ASSEMBLY BILL 117'S EXPANDED
REGISTRATION OF ELECTRIC SERVICE PROVIDERS
AND REENTRY FEE**

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**OPINION REGARDING ASSEMBLY BILL 117'S EXPANDED
REGISTRATION OF ELECTRIC SERVICE PROVIDERS
AND REENTRY FEE**

Summary

Assembly Bill (AB) 117 (Stats. 2002, ch. 838) went into effect on January 1, 2003. As part of AB 117, Public Utilities Code § 394¹ was amended to expand the registration of electric service providers (ESPs). Prior to the amendment of this code section, only ESPs serving residential and small commercial customers were required to register with the Commission. With certain exceptions, AB 117 expands the registration requirement to all entities offering electric service to customers within the service territory of an electrical corporation. AB 117 also amended § 394.25 by adding subdivision (e), which addresses the reentry fee that might be imposed on an end-use customer if the ESP's customer is involuntarily returned to a utility's electric service.

Today's decision addresses the expanded registration and reentry fee requirements. Unless specifically excluded, all entities that offer electric service to customers within the service territory of an electrical corporation in California shall be required to register with the Commission within 90 days, if they haven't registered already. This expanded registration requirement primarily affects those ESPs who provide electric service to medium to large commercial customers and / or industrial customers.

In order to register these additional ESPs, we direct all California electric utilities to provide a list to the Energy Division of all the entities offering electrical service to customers within their respective service territories. The

¹ Unless otherwise stated, all code section references are to the Public Utilities Code.

Energy Division shall then notify all of these entities of the expanded registration requirement and the deadline for complying with this decision.

The decision also solicits comments from interested persons as to whether the current schedule of the amount an ESP must post with the Commission as security is sufficient to cover the reentry fee.

Background

The registration of certain ESPs was first mandated by statute when former § 394(a) was added by AB 1890 (Stats. 1996, ch. 854). Former § 394(a) required “each entity offering electrical service to residential and small commercial customers within the service territory of an electrical corporation,” except for an electrical corporation as defined in § 218, to register with the Commission. We implemented that registration requirement in Decision (D.) 97-05-040.

Senate Bill (SB) 477 (Stats. 1997, ch. 275) repealed § 394(a) as added by AB 1890, and replaced it with a new § 394(a). Section 394(a) as added by SB 477, states in pertinent part:

“Each entity offering electrical service to residential and small commercial customers shall register with the commission, unless it is an electrical corporation as defined in Section 218, or a public agency offering electrical service to residential and small commercial customers within its own political jurisdiction, or within the service territory of a local publicly owned electric utility.”

The effect of the revision to § 394(a) was to broaden the registration requirement to include ESPs offering electric services to residential and small commercial customers who operate in the service territories of publicly owned electric utilities.

The SB 477 revision to § 394 was addressed in D.98-03-072. D.98-03-072 also implemented the other SB 477 consumer protection safeguards by setting

forth proposed permanent standards for proof of financial viability and proof of technical and operational ability. D.98-03-072 adopted interim standards for proof of financial viability and proof of technical and operational ability pending the adoption of permanent standards by the Commission. The proposed permanent standards were then adopted as the permanent standards in D.99-05-034.

After the permanent standards were adopted, § 394 was further amended by AB 1658 (Stats. 1999, ch. 1005). AB 1658 added wording to § 394(a) which defines what an ESP means for the purpose of § 394.² AB 1658 also added a specific requirement in § 394(b)(8) that each ESP furnish fingerprints as part of the registration process. A fingerprint requirement was included as part of the proposed permanent standards, and adopted as part of the permanent standards in D.99-05-034.

AB 117 then broadened the definition of an ESP. As amended by AB 117, § 394(a) now reads:

“As used in this section, ‘electric service provider’ means an entity that offers electrical service to customers within the service territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and does not include a public agency that offers

² As amended by AB 1658, § 394(a) states: “As used in this section, ‘electric service provider’ means an entity that offers electrical service to residential and small commercial customers, but does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ‘Electric service provider’ includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.”

electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ‘Electric service provider’ includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.”

All of the registration requirements, and proof of financial, technical, and operational ability that were adopted in D.97-05-040, D.98-03-072, and D.99-05-034, were issued in the electric restructuring dockets of Rulemaking (R.) 94-04-031, and in Investigation (I.) 94-04-032. D.03-01-034 closed those two proceedings because the issues in those proceedings were either moot or were being addressed elsewhere. Since those proceedings have been closed, the AB 117 expanded registration requirement will be considered in the rate stabilization proceedings, as shown in the above captions.

Discussion

A. Introduction

AB 117 amends § 394 by broadening the term ESP to include entities that provide electric service to all sizes of customers. That is, an ESP is no longer limited to an entity that provides electric service to residential and small commercial customers. As a result of AB 117, we need to expand our registration procedures to include all ESPs operating within California, except for those entities who are specifically excluded from registration under § 394(a).³ We

³ Based on the holding in City of Pasadena v. Railroad Commission of the State of California (1920) 183 Cal. 526, 536 (disapproved on other grounds in County of Inyo v. PUC (1980) 26 Cal.3d 154, 164, fn. 10) that municipal utilities are not covered by the § 218 definition of an electrical corporation, an argument could be made that § 394 as amended by AB 117 only requires the registration of ESPs who operate in the service territories of the investor-owned utilities. That is, the Legislature did not intend to require the registration of ESPs who operate in the service territory of publicly owned

Footnote continued on next page

presently have a registration framework that can be used to meet the expanded registration requirement. This existing registration framework was developed in D.97-05-040, D.98-03-072, and D.99-05-034.

SB 477 also mandated that the Commission develop standards for proof of financial viability and proof of technical and operational ability. In D.98-03-072, we proposed such standards and solicited comments from the parties. In D.99-05-034, we adopted as the permanent standards, the proposed standards for proof of financial viability and proof of technical and operational ability which appeared at pages 32 to 34 of D.98-03-072. (D.99-05-034, p. 136, OP 7.) The permanent standards are based on and conform to the guidelines that were set forth in §§ 394(b)(9) and (10) as added by SB 477. As a result of the expanded ESP registration requirement made to § 394 by AB 117, one would assume that the permanent standards for proof of financial viability and proof of technical and operational ability should apply to all ESPs as well. However, AB 117 made slight changes to the language of § 394(b)(9), which, as discussed below, impact which ESPs are governed by the permanent standards for proof of financial viability that we adopted in D.99-05-034. In addition, D.99-05-034 was adopted when the only ESPs required to register were those who served residential and small commercial customers.

electric utilities. However, since § 394(a) only excludes “a public agency that offers electrical service to residential and small commercial customers within its jurisdiction or within the service territory of a local publicly owned electric utility” from registering, the Legislature’s intent seems that it still wanted to register all other ESPs operating in the service territories of publicly owned electric utilities. Section 394.2(a) also references that consumer complaints pertaining to electric service provided within the service territory of a local publicly owned utility is to be resolved by the local publicly owned utility’s consumer complaint procedures.

D.98-03-072 also discussed and implemented the other consumer protection safeguards that SB 477 mandated. These are found in §§ 394.1, 394.2, 394.25, 394.3, 394.4, 394.5, 394.7, and 396, among others. These consumer protection safeguards remain in place, and have not been revised as a result of the AB 117 expanded ESP registration requirement.

B. Expanded Registration and Related Proof

AB 117 revised § 394(a) to require the registration of all ESPs, unless excluded by § 394(a). As a result of that legislative change, we are now required to register all those other entities who were not previously required to register. This expanded registration requirement primarily affects those entities who provide electric service to medium and large commercial customers and to industrial customers.

The registration procedures and ESP registration form that we adopted in D.97-05-040, as modified by D.98-03-072 and D.99-05-034, shall serve as the foundation for the registration of all ESPs in California who are required to register. Attached to this decision as Appendix A is the “8/03” revised version of the “Electric Service Provider Registration Application Form.” This form shall serve as the ESP registration form starting today.

One of the requirements in the ESP registration form is that the ESP have an executed “Energy Service Provider Service Agreement” (Service Agreement) with each utility distribution company (UDC) in whose service territory the ESP plans to do business. The form of the Service Agreement was discussed and adopted in D.97-10-087. As part of the direct access tariff, all ESPs, regardless of the type of customers they serve, are required to execute a Service Agreement with the UDC. (D.97-10-087, App. A, § D.)

We have made some revisions to the registration form that was approved in D.99-05-034. These revisions reflect the fact that AB 117 broadened the registration of ESPs, that some code section requirements only apply to ESPs who serve residential and small commercial customers, and that permanent standards were adopted in D.99-05-034 for ESPs who serve residential and small commercial customers, and in this decision for those ESPs who serve medium to large commercial customers and /or industrial customers.⁴

The ESP registration form and procedures, and our discussion of the form and procedures in D.98-03-072 and in D.99-05-034, are integrally related to the permanent standards that we adopted for proof of financial viability and proof of technical and operational ability. The permanent standards that we adopted in D.99-05-034 are as follows:

- (1) Before an ESP may apply for an ESP registration number, and for those ESPs who have already received an ESP registration number, the ESPs are required to provide the Energy Division with a signed copy of their UDC-ESP service agreements for each UDC in whose service territory the ESP plans to do business.

⁴ The ESP registration form and the permanent standards were adopted by the Commission when § 394 only required the registration of ESPs who served residential and small commercial customers. Due to the statutes which existed at the time D.97-05-040, D.98-03-072, and D.99-05-034 were adopted, modification of those decisions to reflect the AB 117 revisions would be inappropriate because AB 117's broadening of which ESPs must register with the Commission did not go into effect until January 1, 2003. Thus, those three decisions need to be viewed in the context of the statutory enactments which existed at the time of adoption. However, the groundwork that was established in those decisions regarding the registration procedures and permanent standards can be used as the basis for establishing similar kinds of procedures and standards for ESPs who serve medium to large commercial customers and /or industrial customers.

- (2) Prior to signing up and initiating a DASR [direct access service request] request on behalf of any residential or small commercial customer, an ESP will be required to post a minimum cash security deposit (cashier's check) or financial guarantee bond in the amount of \$25,000 with the Commission. In the alternative, the registered ESP may open a customer trust account in that amount which is in a format approved by the Commission's General Counsel, and which ensures that residential and small commercial customers have adequate recourse in the event of the ESP's fraud or non-performance. The deposit, bond or trust account shall be established when the Section 394.5 notice is first tendered to the Energy Division.

As the ESP's number of customers increase, the ESP shall be required to increase its security deposit in accordance with the following schedule:

<u># of Customers</u>	<u>Security Deposit Amount</u>
1 – 250	\$25,000
251 – 500	\$50,000
501 – 1000	\$75,000
1001 +	\$100,000

The ESP will be required to increase the amount of the deposit, bond or trust account in accordance with the schedule above if the number of customers reported in the standard service plan filing raises the ESP to a different security deposit amount level.

If a cash security deposit is posted with the Commission, any interest earned on the deposit would be returned to the ESP on an annual basis.

- (3) The ESP registration application form shall contain a section which requests the applicant to name the key technical and operational personnel, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing

the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed as well. If the applicant has been authorized by the California ISO to act as an SC [scheduling coordinator], this requirement is waived. The ESP who has been authorized as an SC shall submit a copy of such authorization as part of the ESP registration application form.

- (4) Each registered ESP is required to submit a copy of its Section 394.5 notice to the Energy Division when the ESP signs up its first customer or when the first standard service plan filing of the ESP is due, whichever is earliest.
- (5) Each ESP is required to submit a copy of all of its SC agreements or a signed declaration from each SC with which it has an agreement and which states that the ESP has entered into a SC agreement with the ESP. The copy or declaration shall be submitted to the Energy Division on or before the date when the ESP signs up its first customer. If the ESP is an SC authorized by the California ISO, this requirement is waived. (D.99-05-034, p. 136, OP 7; D.98-03-072, pp. 32-34.)

The interpretation of the proof of financial viability subsection, found in § 394(b)(9), is affected by AB 117's broadening of which entities must now register with the Commission. This is apparent from a review of how the proof of financial viability subsection was developed.

As added by SB 477, § 394(b)(9) stated as follows:

“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 March 31, 1998. In determining the financial viability of the entity, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatt hours of electricity it expects

to provide, and any other appropriate criteria in order to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.”

AB 1658 (Stats. 1999, ch. 1005, § 10) made three changes to § 394(b)(9), which are italicized below:

“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 March 31, 1998. In determining the financial viability of the *electric service provider*, the commission shall take into account the number of customers the potential registrant expects to serve, the number of *kilowatthours* of electricity it expects to provide, and any other appropriate *criteria to ensure* that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.”

As a result of the change to § 394(b)(9) by AB 1658, two issues arise as we implement the requirements of AB 117. The first issue is whether the permanent standards for proof of financial viability apply to all ESPs as expanded by AB 117, or does it only apply only to ESPs who serve residential and small commercial customers.⁵ The second issue is if the permanent standards for proof of financial viability adopted in D.99-05-034 only apply to those ESPs who serve residential and small commercial customers, then what, if any, standards for proof of financial viability should apply to ESPs who serve medium and large commercial customers and industrial customers.

⁵ In the third sentence of § 394(b)(9), as revised by AB 1658, the reference to residential and small commercial customers suggests that the listed criteria only be used for those ESPs serving those kinds of customers.

To answer these issues, we examine the legislative enactments that were in place when D.98-03-072 and D.99-05-034 were adopted. When D.98-03-072 and D.99-05-034 addressed the proof of financial viability issue, the code section in effect at the time was § 394(a)(9) as added by SB 477. The term “entity” was used in § 394, instead of “electric service provider,” and referred to an “entity offering electrical service to residential and small commercial customers....” (§ 394(a) as added by Stats. 1997, ch. 275, § 13.) Since § 394 only addressed the registration of entities offering electrical service to residential and small commercial customers, the discussion in D.98-03-072 and D.99-05-034 pertaining to proof of financial viability was only in reference to those ESPs serving residential and small commercial customers. (*See* D.98-03-072, pp. 12, 19, 27-31; D.99-05-034, pp. 2, 16-19.)

AB 1658, which became effective on January 1, 2000, replaced the word “entity” with “electric service provider” in § 394, and added the definition of an ESP to § 218.3. However, AB 1658 did not affect which entities must register because registration was still limited to those entities which provide electric service to residential and small commercial customers. Since the entities who were required to register remained the same, AB 1658’s revision of § 394 did not affect the permanent standards for proof of financial viability.

Due to AB 117’s broadening of the definition of which entities must now register with the Commission, and because of the revision to § 394(b)(9) by AB 1658, the two issues regarding subsection 394(b)(9) must now be addressed. Reading § 394 as revised by AB 117, it is clear that subdivision (b) requires, as a precondition to registration, that the ESP, regardless of who it serves, provide

proof of financial viability.⁶ Although D.98-03-072 and D.99-05-034 addressed the proof of financial viability standards, those standards were adopted in the context of ESPs who serve residential and small commercial customers. Thus, the answer to the first issue is that the permanent standards for proof of financial viability that were developed and implemented in D.98-03-072 and D.99-05-034 apply to those ESPs who serve residential and small commercial customers.

That raises the second issue about what standards for proof of financial viability should apply to ESPs who serve larger customers. Although AB 117 revised § 394(a), the preconditions to registration were not altered in § 394(b). Thus, the Legislature clearly intended that the proof of financial viability requirement, found in § 394(b), also apply to those ESPs who serve the larger commercial customers and industrial customers.

Although D.98-03-072 and D.99-05-034 did not address the financial viability standards in the context of ESPs serving larger customers, the standards that we adopted provide a foundation for imposing financial viability standards on ESPs who serve larger customers. We have reviewed the development of the interim and permanent financial viability standards in D.98-03-072 and D.99-05-034. The standards that were adopted for ESPs who serve smaller customers are based on similar concerns for ESPs who serve larger customers. These concerns include: requiring an ESP to have a signed service agreement with the electric utility as a measure of the ESP's financial health and creditworthiness; that a mechanism be developed to ensure that customers have

⁶ Section 394(b) currently reads: "Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall

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adequate recourse should an ESP defraud customers or go out of business, and that the mechanism be sized according to the number of customers; and that ESPs have sufficient capital to fund their operations. (See D.98-03-072, pp. 27-36; D.99-05-034, pp. 16-23.)

We have also considered subdivisions (d), (e) and (f) of § 391 in our deliberations of what financial viability standards should apply to ESPs who serve larger customers. Subdivision (d) notes that “Larger commercial and industrial customers are sophisticated energy consumers that have adequate civil remedies and are adequately protected by existing commercial law....” Subdivision (e) notes that the market structure should not “unduly burden new entrants into the competitive electric market....” Subdivision (f) states that the system of registration and consumer protection be “designed to ensure sufficient protection for residential and small commercial consumers while simplifying entry into the market for responsible entities serving larger, more sophisticated customers.”

Based on similar concerns about the financial well-being of ESPs who serve the larger customer classes, and balancing the Legislature’s intent of ensuring that these ESPs are subject to proof of financial viability standards which are not unduly burdensome, we will adopt the standards for proof of financial viability that we adopted in D.99-05-034 for ESPs who serve residential and small commercial customers as the permanent standards for proof of financial viability for ESPs who serve medium to large commercial customers and industrial customers. Accordingly, the permanent standards labeled “(1)”

provide, under oath, declaration, or affidavit, all of the following information to the commission: ...,” including proof of financial viability.

and “(2),” as reworded below, shall be adopted as the permanent standard for proof of financial viability for those ESPs who serve medium and large commercial customers and industrial customers. Due to the references in permanent standard “(2)” to “residential or small commercial customer,” the § 394.5 notice and the “standard service plan filing,” and because the ESPs that are currently serving the larger customers were never required to register before AB 117 was enacted, we shall reword permanent standard (2) as it applies to ESPs serving medium and large commercial customers and industrial customers. The following standards for proof of financial viability shall be adopted as permanent, and shall apply to ESPs serving medium and large commercial customers and industrial customers:

- (1) Before an ESP may apply for an ESP registration number, and for those ESPs who have already received an ESP registration number, the ESPs are required to provide the Energy Division with a signed copy of their UDC-ESP service agreements for each UDC in whose service territory the ESP plans to do business.
- (2) At the time of registration with the CPUC, an ESP serving medium to large commercial customers and / or industrial customers shall be required to post a minimum cash security deposit (cashier’s check) or financial guarantee bond in the amount of \$25,000 with the Commission. In the alternative, the registered ESP may open a customer trust account in that amount which is in a format approved by the Commission’s General Counsel, and which ensures that the customers have adequate recourse in the event of the ESP’s fraud or non-performance, and to pay any applicable re-entry fee.

If the actual number of customers served by the ESP exceeds 250, the ESP shall be required to immediately increase its security deposit, financial guarantee bond,

or trust account in accordance with the following schedule when its number of customers raises the ESP to the different security deposit amount level.

<u># of Customers</u>	<u>Security Deposit Amount</u>
1 – 250	\$25,000
251 – 500	\$50,000
501 – 1000	\$75,000
1000 +	\$100,000

If a cash security deposit is posted with the Commission, any interest earned on the deposit will be returned to the ESP on an annual basis.

We turn next to the permanent standards for proof of technical and operational ability that should apply to ESPs who serve larger customers. The proposed standards approved in D.98-03-072 and made permanent in D.99-05-034 were adopted in the context of ESPs who served residential and small commercial customers. Those permanent standards, like the standards for proof of financial viability, should also serve as the foundation for establishing permanent standards for proof of technical and operational ability for those ESPs who serve larger customers. The standards that were adopted for ESPs who serve smaller customers are based on similar concerns for ESPs who serve larger customers. These concerns include: requiring an ESP to have a signed service agreement with the electric utility will help measure the ESP's technical and operational experience in energy transactions; requiring a copy of the scheduling coordinator agreement or a signed declaration from each scheduling coordinator will assist in determining the ESP's technical and operational experience; requiring the ESPs to disclose the names and experience of key personnel will assist in screening out entities with little or no experience. (See D.98-03-072, pp. 26-29, 32-34; D.99-05-034, pp. 16-23.)

Based on similar concerns about the technical and operational ability of ESPs who serve the larger customers, and balancing the Legislature's intent in §§ 391 and 394(b) of ensuring that these ESPs are subject to proof of technical and operational ability standards which are not unduly burdensome, we will adopt three of the standards for proof of technical and operational ability that we adopted in D.99-05-034 for ESPs serving medium to large commercial customers and /or industrial customers. Accordingly, the permanent standards labeled (1), (3), and (5) shall be adopted as the permanent standards for proof of technical and operational ability that apply to ESPs serving medium to large commercial customers and /or industrial customers. The permanent standard labeled "(4)" in D.98-03-072 and D.99-05-034 will not be adopted because the § 394.5 notice only applies to an ESP offering electric service to residential and small commercial customers. Permanent standard (1) is listed above, and permanent standards (3), and (5), which has been renumbered as (4), are as follows:

- (3) The ESP registration application form shall contain a section which requests the applicant to name the key technical and operational personnel, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed as well. If the applicant has been authorized by the California ISO to act as an SC [scheduling coordinator], this requirement is waived. The ESP who has been authorized as an SC shall submit a copy of such authorization as part of the ESP registration application form.
- (4) Each ESP is required to submit a copy of all of its SC agreements or a signed declaration from each SC with

which it has an agreement and which states that the ESP has entered into a SC agreement with the ESP. The copy or declaration shall be submitted to the Energy Division on or before the date when the ESP signs up its first customer. If the ESP is an SC authorized by the California ISO, this requirement is waived.

All entities offering electric service to customers within the service territory of an electrical corporation, except for the following: an electrical corporation as defined in § 218, an entity that offers electric service solely to serve customer load consistent with § 218(b), or a public agency that offers electric service to residential and small commercial customers within its jurisdiction or within the service territory of a local publicly owned electric utility, shall register with the Commission as an ESP. Those entities who are currently registered as ESPs with the Commission, and in good standing, do not need to re-register. All other ESPs, who were not required to register with the Commission prior to the effective date of AB 117, or who have failed to register, shall be required to register with the Commission within 90 days from today.

In order to accomplish the registration of ESPs who serve medium to large commercial customers, and industrial customers, we shall direct all the electric utilities to supply the names and addresses of all ESPs who are operating in their service territories, or who have signed Service Agreements. This list of names and addresses shall be delivered to the Director of the Energy Division within 20 days of today's date. Within 30 days of today's date, the Energy Division shall notify all the ESPs on the list of their obligation to register pursuant to AB 117 and this decision, and that such registration must occur within 90 days of this decision.

The Energy Division shall ensure that all of the ESPs, appearing on the lists compiled by the utilities, have registered with the Commission within the 90 days. If an ESP fails to register within the time allotted, the Energy Division is directed to take all necessary action to prevent the unregistered ESP from engaging in the sale of electricity to California customers.

The Energy Division shall also update its registration records in accordance with the provisions of § 392.1, and make the necessary changes to appropriate documents and web pages to reflect the expanded registration requirements, and the permanent standards for proof of financial ability and proof of technical and operational ability for ESPs who serve medium to large commercial customers and / or industrial customers.

C. Use of Electric Service Provider in Other Code Sections

Due to AB 117's expanded registration requirement, clarification of the use of the term "ESP" in other code sections is needed. It is clear from the introductory phrase, "As used in this section," found in Section 394(a) as revised by AB 117, that the term ESP is being defined only for the purpose of § 394. Since the term "ESP" is referred to in other code sections besides § 394(a) as revised by AB 117, there is a need to clarify whether the other references to "ESP" have the same meaning as used in § 394(a,) or whether the references have some other meaning. This clarification is important because some of the other code sections generically refer to all ESPs, while other code sections only apply to those ESPs who serve residential and small commercial customers.

We have reviewed and compared the various legislative enactments which addressed the registration of ESPs and the related consumer protection safeguards. For the most part, these registration requirements and consumer protection safeguards, as implemented in D.98-03-072 and D.99-05-034, have

remained unchanged, even though the registration of which ESPs must register with the Commission has been expanded.

Our research, discussed below, reveals that the term “ESP,” as used in § 394, has the same meaning as used in other code sections, except when the other code sections specifically refer to an ESP that serves residential and small commercial customers.

When the direct access rules were first adopted, we relied on the language set forth in § 394(a), as added by AB 1890, as to which entities had to register with the Commission. We stated the following in D.97-05-040:

“AB 1890 requires that the Commission establish a registration system for ‘each entity offering electrical service to residential and small commercial customers within the service territory of an electrical corporation.’

“The Legislature appears to have intended that only those entities offering electrical service to residential and small commercial customers need to register with the Commission. There is no requirement in AB 1890 that those entities offering electrical service to large commercial customers and industrial customers need to register with the Commission.” (D.97-05-040, p. 54 [72 CPUC2d 441, 477].)

In AB 1658, § 218.3 was added to the code, effective January 1, 2000.

Section 218.3 set forth the following definition of an ESP:

“ ‘Electric service provider’ means an entity that offers electrical service to residential and small commercial customers, but does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ‘Electric service provider’ includes the unregulated affiliates and

subsidiaries of an electrical corporation, as defined in Section 218.”

When AB 117 revised the definition of an ESP in § 394, that legislation also revised the definition of an ESP that appears in § 218.3 as follows:

“ ‘Electric service provider’ means an entity that offers electrical service to customers within the service territory of an electrical corporation, as defined in Section 218, but does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ‘Electric service provider’ includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.”

In the Legislative Counsel’s Digest to AB 117, the revisions to §§ 218.3 and 394 were noted as follows:

“Existing law defines ‘electric service provider’ as an entity that offers electrical service to residential and small commercial customers, but not including an electrical corporation and requires these providers to register with the commission.

“This bill would instead define ‘electric service provider’ as an entity that offers electrical service to customers within the service territory of an electrical corporation, but not including an electrical corporation or a person employing cogeneration technology or producing electricity from other than conventional power sources, for its own use or the use of its tenants or an adjacent property and not for sale of transmission to others.”

A comparison of the revisions to § 218.3 and 394, in particular how an ESP is defined, reveals that the definitions in both code sections are the same. Thus, the references to an ESP in code sections other than § 394 has the same meaning as an ESP as defined in §§ 218.3 and 394, except when the code section references an ESP that serves residential and small commercial customers.

The distinction between the generic reference to an ESP, and to an ESP that serves residential and small commercial customers, is important for determining what code sections apply to an entity who provides electric service in California. The following is a list of the major code sections which apply to all entities offering electric service in California, except as noted in §§ 218.3 and 394(a).

Public Utilities Code §§ 218.3; 394; 394.1; 394.2(a), (c), (d);
394.25; 394.3; 396.

The above list of code sections is not exhaustive, and it is incumbent upon each ESP to determine whether other code section provisions that reference the term ESP apply to the electric services it is offering.

The following is a list of the major code sections which apply to those entities who offer electric service to residential and small commercial customers, except as noted in §§ 218.3 and 394(a):

Public Utilities Code §§ 366.5; 392.1; 394.2(b); 394.4; 394.5;
394.7; 395.

D. Reentry Fee

AB 117 amended § 394.25 by adding subdivision (e). Section 394.25(e) states:

“If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems

is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider or a community choice aggregator, 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, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers."

The addition of subdivision (e) to § 394.25 requires that if a customer of an ESP or a community choice aggregator is returned to utility electric service due to the fault of the ESP or community choice aggregator, any reentry fee imposed by the utility must be paid for by the ESP or the community choice aggregator. Payment of the reentry fee is tied to the posting of a bond or demonstrating insurance sufficient to cover the reentry fee as a condition of registration.

As discussed above, we require an ESP to post a minimum cash security deposit or a financial guarantee bond in the minimum amount of \$25,000 with the Commission, or to open a customer trust account.⁷ (D.99-05-034, pp. 16-24.) Since we already require the posting of a minimum of a \$25,000 cash security deposit or a financial guarantee bond as part of the ESP registration requirement, the issue we need to address is whether the current schedule for deposits is sufficient to cover any reentry fee that might be imposed.

⁷ Under the permanent proof of financial viability standards, as the number of customers increases, the ESP is required to increase the security deposit level as set forth in the schedule in D.99-05-034 and in this decision.

Interested persons are invited to file written comments on whether the current schedule of the deposit amounts is sufficient to cover the reentry fee required under § 394.25(e). Opening comments on this issue shall be filed on or before November 28, 2003, and reply comments shall be filed on or before December 22, 2003. Depending on the comments, the schedule of the deposit amounts could be increased. Accordingly, interested parties are put on notice in accordance with § 1708 that the schedule of deposit amounts adopted in D.99-05-034 and in this decision may be revised.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments on the draft decision were filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. Section 394(a), as added by AB 1890, required the registration of each entity offering electric service to residential and small commercial customers within the service territory of an electrical corporation.
2. Section 394(a), as added by AB 1890, was implemented in D.97-05-040.
3. Section 394(a), as added by SB 477, broadened the registration requirement to include ESPs offering electric services to residential and small commercial customers who operate in the service territories of publicly owned electric utilities.

4. D.98-03-072 addressed § 394(a), as added by SB 477, and also implemented the other SB 477 consumer protection safeguards by setting forth proposed permanent standards for proof of financial viability and proof of technical and operational ability.

5. The proposed permanent standards for proof of financial viability and proof of technical and operational ability were adopted in D.99-05-034 as the permanent standards.

6. Section 394, as amended by AB 1658, added wording to define that an ESP means an entity that offers electric service to residential and small commercial customers.

7. AB 1658 also added a fingerprint requirement as part of the registration process.

8. Due to AB 117, our registration procedures need to be expanded to include all ESPs who were not previously required to register with the Commission.

9. The expanded registration requirement will primarily affect those entities who provide electric service to medium to large commercial customers and / or to industrial customers.

10. The registration procedures and ESP registration form that we adopted in D.97-05-040, as modified by D.98-03-072 and D.99-05-034, should serve as the foundation for the registration of all ESPs who are required to register.

11. One of the requirements of the ESP registration form is that the ESP have an executed Service Agreement with each UDC in whose service territory the ESP plans to do business.

12. As part of the direct access tariff, all ESPs, regardless of the type of customers they serve, are required to execute a Service Agreement with the UDC.

13. Several revisions have been made to the ESP registration form to reflect the following: AB 117's broadening of the registration requirement; that some code section requirements only apply to ESPs who serve residential and small commercial customers; and that permanent standards were adopted in D.99-05-034 for ESPs who serve residential and small commercial customers, and in this decision for those ESPs who serve medium to large commercial customers and industrial customers.

14. The ESP registration form and procedures are related to the permanent standards for proof of financial viability and proof of technical and operational ability.

15. The permanent financial viability standards that were adopted for ESPs who serve residential and small commercial customers provide a foundation for imposing financial viability standards on ESPs who serve larger customers because of similar financial concerns.

16. The permanent technical and operational ability standards that were adopted for ESPs who serve residential and small commercial customers provide a foundation for establishing technical and operational ability standards on ESPs who serve larger customers because of similar technical and operational concerns.

17. The distinction between the generic reference to an ESP, and to an ESP that serves residential and small commercial customers, is important for determining what code sections apply to an entity who provides electric service in California.

18. AB 117 amended § 394.25 by adding subdivision (e).

19. Section 394.25(e) requires that if a customer of an ESP or a community choice aggregator is returned to utility electric service due to the fault of the ESP

or community choice aggregator, that the reentry fee imposed by the utility be paid for by the ESP or community choice aggregator.

20. Payment of the reentry fee is tied to the posting of a bond or demonstrating insurance sufficient to cover the reentry fee as a condition of registration.

21. Interested parties are put on notice that the schedule of the deposit amounts adopted in D.99-05-034 and in this decision may be revised.

Conclusions of Law

1. Section 394, as amended by AB 117, expanded the registration of ESPs, with certain exceptions, to include entities that offer electric service to all sizes of customers.

2. The Electric Service Provider Registration Application Form, revised “8/03” and attached to this decision as Appendix A, shall serve as the ESP registration form for all ESPs starting today.

3. Due to the statutes which existed at the time D.97-05-040, D.98-03-072, and D.99-05-034 were adopted, modification of those decisions to reflect the AB 117 revisions would be inappropriate because AB 117 did not go into effect until January 1, 2003.

4. The interpretation of the proof of financial viability in § 394(b)(9), is affected by AB 117’s broadening of which entities must now register with the Commission.

5. The permanent standards for proof of financial viability that were developed and implemented in D.98-03-072 and D.99-05-034 apply to those ESPs who serve residential and small commercial customers.

6. Even though § 394 was revised by AB 117, the preconditions to registration were not altered in § 394(b).

7. The Legislature's intent is that the proof of financial viability requirement in § 394(b) also apply to ESPs who serve the larger commercial customers and industrial customers.

8. Section 391 expresses a concern that the market structure for ESPs who serve larger customers should not be unduly burdensome.

9. Permanent standards labeled (1) and (2), adopted in D.99-05-034 for ESPs who serve residential and small commercial customers, should be adopted, with slight modifications to (2), as the permanent standards for proof of financial viability for ESPs who serve medium to large commercial customers and industrial customers.

10. The permanent standards for proof of technical and operational ability that were developed and implemented in D.98-03-072 and D.99-05-034, apply to those ESPs who serve residential and small commercial customers.

11. Permanent standards labeled (1), (3) and (5), adopted in D.99-05-034 for ESPs who serve residential and small commercial customers, should be adopted as the permanent standards for proof of technical and operational ability for ESPs who serve medium to large commercial customers and / or industrial customers.

12. All entities offering electric service to customers within the service territory of an electrical corporation, except as specifically excluded in § 394, shall be required to register with the Commission as an ESP within 90 days of today's date unless the ESP is currently registered and in good standing.

13. The electric utilities subject to our jurisdiction should be directed, within 20 days of today's date, to supply the names and addresses of all ESPs who are operating in their service territories or who have signed Service Agreements.

14. Within 30 days of today's date, the Energy Division should notify all the ESPs on the list of their obligation to register pursuant to AB 117 and this decision, monitor their compliance, take all necessary action to prevent unregistered ESPs from engaging in the sale of electricity to California customers, and update its records and documents to reflect the expanded registration requirements.

15. The term "ESP," as used in § 394, has the same meaning as used in other code sections, except when the other code sections specifically refer to an ESP that serves residential and small commercial customers.

16. Comments on whether the current schedule of the deposit amounts are sufficient to cover the reentry fee required under § 394.25(e) should be solicited.

ORDER

IT IS ORDERED that:

1. Except for those electric service providers (ESPs) who have previously registered with the Commission and are in good standing, and as specified in Public Utilities Code § 394 as amended by Assembly Bill (AB) 117 (Stats. 2002, ch. 838), all entities who offer electric service to customers in California are required to register with the Commission.

- a. All such entities who are required to register with the Commission shall do so within 90 days from today's date using the Electric Service Provider Registration Application Form, which is attached to this decision as Appendix A.
- b. All entities who are required to register with the Commission shall provide all of the information, documents, fees, and deposits required by Public Utilities Code §§ 394 and 394.3, which requirements have been

incorporated into the Electric Service Provider Registration Application Form.

2. The permanent standards for proof of financial viability and proof of technical and operational ability that were adopted in Decision (D.) 99-05-034 shall continue to apply to all ESPs who offer electric service to residential and small commercial customers.

3. The following standards for proof of financial viability and proof of technical and operational ability shall be adopted as the permanent standards for all ESPs who offer electric service to medium to large commercial customers and / or to industrial customers:

- (1) Before an ESP may apply for an ESP registration number, and for those ESPs who have already received an ESP registration number, the ESPs are required to provide the Energy Division with a signed copy of their UDC-ESP service agreements for each UDC in whose service territory the ESP plans to do business.
- (2) At the time of registration with the CPUC, an ESP serving medium to large commercial customers and / or industrial customers shall be required to post a minimum cash security deposit (cashier's check) or financial guarantee bond in the amount of \$25,000 with the Commission. In the alternative, the registered ESP may open a customer trust account in that amount which is in a format approved by the Commission's General Counsel, and which ensures that the customers have adequate recourse in the event of the ESP's fraud or non-performance, and to pay any applicable re-entry fee.

If the actual number of customers served by the ESP exceeds 250, the ESP shall be required to immediately increase its security deposit, financial guarantee bond, or trust account in accordance

with the following schedule when its number of customers raises the ESP to the different security deposit amount level.

<u># of Customers</u>	<u>Security Deposit Amount</u>
1 – 250	\$25,000
251 – 500	\$50,000
501 – 1000	\$75,000
1001 +	\$100,000

If a cash security deposit is posted with the Commission, any interest earned on the deposit will be returned to the ESP on an annual basis.

- (3) The ESP registration application form shall contain a section which requests the applicant to name the key technical and operational personnel, their titles, and a description, including the time period, of each key person's experience in the sale, procurement, metering, and billing of energy services or similar products. If someone other than the ESP will be doing the metering or billing on behalf of the ESP, the names of the companies providing those services and their experience shall be disclosed as well. If the applicant has been authorized by the California ISO to act as an SC [scheduling coordinator], this requirement is waived. The ESP who has been authorized as an SC shall submit a copy of such authorization as part of the ESP registration application form.
- (4) Each ESP is required to submit a copy of all of its SC agreements or a signed declaration from each SC with which it has an agreement and which states that the ESP has entered into a SC agreement with the ESP. The copy or declaration shall be submitted to the Energy Division on or before the date when the ESP signs up its first customer. If the ESP is an SC authorized by the California ISO, this requirement is waived.

4. Within 20 days of today's date, PacifiCorp, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Edison Company, and Southern California Water Company, shall provide the Director of the Energy Division with the names and addresses of all ESPs providing electric service in their respective service territories, or who have signed an Energy Service Provider Service Agreement.

5. Within 30 days of today's date, the Energy Division, using the names and addresses of the ESPs supplied by the electric utilities, shall notify all ESPs in writing of the expanded registration requirement in Public Utilities Code § 394, as amended by AB 117, and of this decision, the process and deadline for registering with the Commission if they have not already registered, and their opportunity to comment on the current schedule of deposits and its relationship to the reentry fee.

- a. The Energy Division shall ensure that all of the ESPs, who appear on the lists compiled by the utilities, have registered with the Commission within the 90 days.
- b. If an ESP fails to register within the time allotted, the Energy Division is directed to take all necessary action to prevent the unregistered ESP from engaging in the sale of electricity to California customers.
- c. The Energy Division shall update its registration records in accordance with the provisions of Public Utilities Code § 392.1, and make the necessary changes to all documents to reflect the expanded registration requirements and permanent standards for proof of financial viability and proof of technical and operational ability for ESPs who serve medium to large commercial customers and/or industrial customers.

6. Interested persons are invited to file comments on whether the current schedule of the deposit amount that each registered ESP must post is sufficient to

cover the reentry fee that an ESP or a community choice aggregator may be obligated for in accordance with Pub. Util. Code § 394.25(e).

- (1) Opening comments shall be filed with the Commission's Docket Office, and served on the parties to this proceeding, on or before November 28, 2003.
- (2) Reply comments shall be filed with the Docket Office on or before December 22, 2003, and served on the parties.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

0462-800

ELECTRIC SERVICE PROVIDER REGISTRATION APPLICATION FORM

PLEASE PRINT OR TYPE

ESP No. _____

1. Exact Legal Name of Registrant: _____

If registrant is conducting business in California under a fictitious business name, list all the names under which the registrant is doing business as (DBA) in California, and the date and county in which the fictitious business name statement was filed. (Attach additional page if necessary.) For each DBA, provide a copy of the proof of publication of the fictitious business name, or a copy of the certified fictitious business name statement. (See Business & Professions Code Sections 17910, 17917, 17926.)

_____	_____	_____
DBA	Date	County
_____	_____	_____
DBA	Date	County
_____	_____	_____
DBA	Date	County
_____	_____	_____
DBA	Date	County

2. Current Address: _____

Address		
_____	_____	_____
City	State	Zip Code

3. Current Telephone Number: _____

4. Type of Ownership:

- ☐ Individual
 ☐ Partnership
 ☐ Corporation
 ☐ Limited Liability Company
☐ Government Entity
☐ Other

Complete and mail this application along with \$100.00 certified check (write 0462-800 on front of check) and complete fingerprint cards (see question no. 21 to:

State of California
 Public Utilities Commission
 Energy Division - ESP
 Registration
 505 Van Ness Avenue
 San Francisco, CA 94102

INCOMPLETE
APPLICATIONS
CANNOT BE
PROCESSED

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FOR CPUC USE ONLY

Application Processed

By: _____

Date: _____

5. If a non-California corporation, limited liability company, or limited partnership, attach a copy of the certificate from the California Secretary of State permitting the entity to transact business in California. (See Corporations Code Sections 2105, 15692, 17451.)

6. a. If registrant is a corporation, the state in which the registrant is incorporated and date of incorporation: _____ (State of Incorporation)
_____ (Date)

b. List names and titles of corporate officers. (Attach additional page if necessary):

7. If a partnership list all general partners. (Attach additional page if necessary.)

8. If a limited liability company list all managers and / or officers and their titles. (Attach additional page if necessary.)

9. If registrant has listed type of ownership as “government entity” provide a brief description of the government entity, and list the names and titles of the personnel responsible for managing the sale of electricity to residential and small commercial customers. (Attach additional page if necessary.)

10. If registrant has listed type of ownership as “other” describe the type of ownership, list the names and titles of all managers or officers, and attach a copy of the document establishing the entity as well and the bylaws or similar governing document of the entity. (Attach additional page if necessary.)

11. If the type of ownership is a corporation, provide a listing of the name and address of all persons or entities that directly or indirectly own, control, or hold the power to vote ten percent or more of the outstanding voting securities of the registrant. In the alternative, attach any report required by the Securities and Exchange Commission which details such an interest.

12. List all of the names and addresses of all the corporate registrant's affiliates in which the registrant owns, controls or hold five percent or more of the affiliate. If this information is contained in any report required by the Securities and Exchange Commission, that report may be submitted in lieu of the information. See the "NOTICE" section for the definition of an "affiliate."

13. The street address and telephone number of the registrant's principal place of business if *DIFFERENT* from current address and telephone number listed in line numbers 2 and 3:

	Street Address		
City	State	Zip Code	
Telephone Number			

14. a. Please provide a brief description of the electrical services you plan to offer.

- b. Check the box or boxes which best describe your business. (See P.U. Code Section 331.)

☐ Marketer ☐ Aggregator ☐ Broker

- c. Check the box or boxes which describe what customer classes you plan to serve.

☐ Residential Customers ☐ Small Commercial Customers

☐ Medium to Large Commercial Customers

☐ Industrial Customers

d. Check the box or boxes which best describe the geographic area in which you plan to offer electrical services..

- ☐ Statewide ☐ Northern California Counties
☐ Central California Counties ☐ Southern California Counties

e. Indicate the number of customers you plan to serve.

f. Indicate the average number of kWhs you expect to provide per month.

15. Before you can apply to register as an electric service provider (ESP), you are required to execute a service agreement with each utility distribution company (UDC) in whose service territory you plan to do business. State the name of each UDC for which you have a signed UDC-ESP service agreement. Attach to this form an executed copy of each UDC-ESP agreement.

Name of UDCs:

16. a. Provide the names and titles of the key personnel that are involved in the technical and operational aspects of the business.

b. On a separate attachment, describe each key person's experience in the sale, procurement, metering, and billing of energy sources or similar products, including the time period of such experience.

c. If your company is not providing metering or billing services, provide the names of the companies who will provide those services on your behalf, and provide a description of their experience in those areas.

17. Has your company been authorized by the California Independent System Operator to act as a scheduling coordinator.

☐ No ☐ Yes If yes, attach a copy of such authorization.

18. The name, title, address and telephone number of the person to whom correspondence or communication regarding customer complaints or inquiries are to be addressed.

Name			
Title			
Address			
City	State		
Zip Code			
Telephone Number	FAX Number (If Available)	E-Mail Address (If Available)	

19. Name and Address of Agent for Service of Process:

(Must Be Located In California) (See Corporations Code Sections 1505, 15800, 17057, 17060.)

Name: _____

Street _____

Address: _____

City and State: _____ Zip Code: _____

20. Has the registrant, or any of the general partners, or corporate officers or directors, or limited liability company members, managers, and officers, ever been convicted of any felony?

☐ No ☐ Yes If yes, please explain on additional page.

Within the last ten years, have any of these persons had any civil, criminal, or regulatory sanctions imposed against them pursuant to any state or federal consumer protection law or regulation?

☐ No ☐ Yes If yes, please explain on additional page.

21. Provide a full set of fingerprints of: (1) if a sole proprietorship, the registrant; (2) if a partnership, all general partners; (3) if a corporation, all corporate officers; and (4) if a limited liability company, all of the members, managers and officers. Use the fingerprint cards included with this application. Additional fingerprint cards may be obtained from the Commission. The fingerprints shall be performed by a law enforcement agency, or other person which is qualified to provide fingerprint services. The ESP registrant shall also provide the name and address of the entity or person which provided the fingerprint services, and the date on which the service was provided.

NOTICE

Each ESP registered with the California Public Utilities Commission (CPUC) should be familiar with all the laws and decisions pertaining to the offering of electrical services to customers in California. This notice mentions some of the provisions that the ESP must abide by.

If your ESP registration application is approved, you are required to provide the CPUC with a cash (cashier's check) security deposit in the minimum amount of \$25,000 or post a financial guarantee bond in favor of the CPUC in that amount. For ESPs serving residential or small commercial customers, this deposit must be received by the CPUC before you sign up and initiate a direct access service request on behalf of the customer. For ESPs serving medium to large commercial customers and/or industrial customers, this deposit is due at the time of

registration. The deposit or financial guarantee bond shall be delivered to the Energy Division address listed on the first page of this form. In the alternative, the ESP may elect to open a customer trust account in a format approved by the CPUC's General Counsel. Pending such an approval, the ESP must post the cash deposit or the financial guarantee bond. This deposit requirement is subject to change.

Unless you are an ESP who has been authorized by the California Independent System Operator to act as a scheduling coordinator, each registered ESP is required to submit to the Energy Division a copy of all of its scheduling coordinator agreements. The agreements are to be submitted on or before the date when the ESP signs up its first customer.

Prior to signing up and initiating a direct access service request on behalf of any residential or small commercial customer, all registered ESPs serving such customers are required to provide the potential customer with a written notice which describes the price, terms, and conditions of service. The notice shall include all of the elements required by Public Utilities Code § 394.5, and the requirements set forth in the CPUC's consumer protection decision, D.98-03-072, as modified by D.99-05-034.

Public Utilities Code § 394.7 prohibits all ESPs from soliciting those residential and small commercial consumers whose names appear on the list that is maintained pursuant to that code section.

In order to change the electricity provider of a residential or small commercial customer, all ESPs must follow the verification procedures set forth in Public Utilities Code § 366.5.

Every registered ESP serving residential or small commercial customers is required to submit on a periodic basis information regarding its standard service plans. This information is to be submitted on the form adopted by the CPUC. (Public Utilities Code § 392.1(a); D.98-03-072.)

Every ESP who offers to sell electricity to end-use customers is required to disclose its electricity sources to those customers in accordance with Public Utilities Code § 398.4 and as directed by the California Energy Commission.

In addition to the \$100 registration fee, you are required to pay the annual fee required by Public Utilities Code § 394.3(b). This fee is assessed on each registered ESP on September 1st of each year.

For the purposes of this form, the following definition of an "affiliate" applies:

"Affiliate" means any legal entity in which five percent or more of the outstanding shares are owned, controlled, or held with power to vote, directly or indirectly either by the ESP or any of its subsidiaries; or by the ESP's controlling entity or any of its subsidiaries; or by any company in which the ESP, its controlling entity, or any of the ESP's affiliates, exert substantial control over the operation of the company or indirectly have substantial financial interests in the company which is exercised through means other than ownership. For purpose of this definition, "substantial control" include, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of the company. A direct or indirect voting interest of five percent or more by the ESP in an entity's company creates a rebuttable presumption of control.

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 ESP's telephone number or address, which shall be reported within five days of such a change. (Public Utilities Code § 394.1(d).)

Submit the original signed form together with all required documents, and three additional copies.

DECLARATION

If this registration form is verified outside of California, the verification must be made by an affidavit sworn or affirmed before a notary public.)

I, (print name and title) _____

hereby certify that I am empowered to act on behalf of

_____ (registrant's name) and to make this application on its behalf. I declare under the penalty of perjury under the laws of the State of California that I have read the above notice, that the above statements and information submitted in connection with this application are true and correct, and that any documents furnished in connection with this application are true and correct copies.

Dated this _____, at

(date)

(place of execution)

Signature: _____