

Decision 07-01-024 January 25, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purposes of Revising General
Order 96-A Regarding Informal Filings at the
Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**FOURTH INTERIM OPINION ADOPTING REMAINING
GENERAL RULES AND INDUSTRY RULES FOR
ENERGY AND WATER AS REVISIONS TO GENERAL ORDER 96-A**

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**FOURTH INTERIM OPINION ADOPTING REMAINING
GENERAL RULES AND INDUSTRY RULES FOR
ENERGY AND WATER AS REVISIONS TO GENERAL ORDER 96-A**

1. Summary

In this Fourth Interim Decision, we adopt the bulk of the previously proposed revisions to General Order (GO) 96-A, which governs utility tariffs (including their form, content, and publication) and the advice letters by which they are amended. We adopt the remainder of General Rules that complement the individual rules that we previously adopted in our three interim decisions. Collectively, these General Rules govern all utilities that file advice letters. We also adopt specific rules for utilities in the energy and water industries.

All of the adopted rules will constitute GO 96-B, which will supersede GO 96-A in its entirety. After today's decision, the last element for completing GO 96-B is adoption of the Telecommunications Industry Rules. Parties earlier commented on rules keyed to the New Regulatory Framework (NRF). With the recent replacement of NRF by the Uniform Regulatory Framework, we will publish for comment a revised set of rules tailored to the new framework.

2. Procedural Matters

The Proposed Decision of the assigned Administrative Law Judge (ALJ) was served on February 14, 2001. Comments and reply comments were filed in response to this Proposed Decision. Because of the breadth of the GO and the completeness of the comments, we decided to adopt the rules in a phased manner. As the result of this process, we have adopted three interim decisions. Our decision today is the penultimate step in the adoption of the General and Industry Rules that will comprise a complete GO 96-B.

The parties who have appeared in this proceeding are listed in Appendix D.

3. Interim Decisions

In our First Interim Decision, Decision (D.) 01-07-026 (July 12, 2001), we adopted revisions chiefly concerned with (1) use of the Internet to publish tariffs, and (2) representations made by a utility (in advertising or otherwise) regarding any tariffed service of that utility. These rules have been incorporated into the General Rules set forth in Appendix A to today's decision.

Our Second Interim Decision, D.02-01-038 (January 9, 2002), concerned the notice that a telecommunications utility must provide its affected customers when that utility proposes a rate increase, a withdrawal of service, or certain kinds of transfers. These rules are affected by the Uniform Regulatory Framework. Our revised Telecommunications Industry Rules, to be subsequently adopted, will include conforming changes.

In our Third Interim Decision, D.05-01-032 (January 13, 2005), we adopted comprehensive rules regarding advice letter contents and the review and disposition of advice letters. We also adopted certain requirements to facilitate advice letter review, such as maintenance of advice letter service lists and use of the Internet for the service of advice letters and related documents.

Attachment I is a table listing each rule in the current version of the General Rules with an indication of whether the rule originated in the 2001 Draft Decision or was adopted in the First, Second, or Third Interim Decisions. Attachment II is a table listing each rule originally set forth in the 2001 Draft Decision with an indication of (a) whether the rule was adopted in the First, Second, or Third Interim Decisions or is being adopted today; and (b) the current number for the rule. These attachments allow the reader to see how the General Rules, adopted upon four different occasions, now have been recodified into a comprehensive GO.

While today's decision integrates the General Rules previously adopted with the rest of the General Rules, it also creates Industry Rules where our practices differentiate between energy and water utilities. In doing so, we adopt a major innovation, namely, "tiers" of advice letters. This innovation will affect both the review process and effective dates, so we devote the bulk of our discussion to this innovation.

4. Recent Commission Policy Initiatives

Developing GO 96-B has been a multi-year process. In this part of today's decision, we consider how, if at all, the changes we proposed when we began that process have been rendered out-of-date by recent policy initiatives.

In particular, we have reviewed our most recent "action plans" for energy and water (October and December 2005, respectively), and various reports and ongoing rulemakings for telecommunications. We find that GO 96-B is broadly consistent with these policy initiatives. There is a caveat to this finding: We are actively modifying the regulatory structure of the telecommunications industry (see D.06-08-030). Thus, we will publish revised Telecommunications Industry Rules to reflect our new Uniform Regulatory Framework. Looking to future revisions, GO 96-B anticipates the need for fine-tuning as the Commission addresses change in the regulated industries, and (as we discuss below, see text accompanying footnote 1) the General Rules contain a simple procedure to ensure that GO 96-B is easily updated.

When we say that GO 96-B is "consistent with" our recent policy initiatives, we emphasize that GO 96-B, and the advice letter practice comprehensively governed by GO 96-B, is not itself a substantive program. Rather, advice letters, like applications, are a procedural vehicle by which a

utility seeks a Commission order that the requested relief is consistent with Commission policy, as well as applicable law.

Over the past two decades, we have seen roughly a 10-fold increase in advice letter filings. This increase responds directly to the Commission's need to efficiently manage its decision-making resources to meet increasing demand on those resources. To name two sources of increased demand, our regulation of utilities now must go far beyond traditional ratesetting concerns to include consideration, e.g., of programs for low-income ratepayers, conservation, and protection of the environment. As well, the energy and telecommunications industries have seen sweeping structural changes, and telecommunications carriers continue rapidly to enter and leave the market, develop new services, and expand their operating authority.

Our review of the Commission's current policy initiatives shows that we expect continued rapid change in the energy and telecommunications industries. Further, we have found that many of the same challenges we face in energy regulation are now posed by the water industry. These challenges include ensuring adequate supply, vigorous conservation programs, substantial infrastructure development, and assistance to low-income ratepayers. For all of these reasons, we project that the number and kinds of authorizations requested of the Commission will remain high or will actually increase, even in industries, such as the telecommunications industry, for which regulation is in many respects becoming more light-handed.

GO 96-B is an important tool for managing our decision-making resources. By carefully defining, clarifying, and streamlining the advice letter process, we ensure optimal use of that process, which is much shorter and much less labor-intensive than formal applications. In fact, optimal use of advice letters helps to

ensure that matters for which formal proceedings are necessary, such as those in which we set new policy or those requiring evidentiary hearings, receive proper attention.

Inevitably, aspects of GO 96-B will need updating from time-to-time. GO 96-B provides a simple, generic solution to the updating problem.¹ As needed, Industry Divisions will draft proposed amendments, which the Commission will consider for adoption by resolution after notice and opportunity to comment. This solution avoids having to open a rulemaking simply to conform part of the Industry Rules to a change in our substantive regulation of an industry.

5. Advice Letter Tiers

5.1 Review & Suspension Under Pub. Util. Code § 455

The Public Utilities Code has many requirements for Commission procedures but relatively few requirements specific to advice letters.² In devising our timelines for advice letter review, we have relied chiefly on Pub. Util. Code § 455. That statute only governs tariff changes “not increasing or resulting in an increase in any rate.”³ Section 455 authorizes the Commission to

¹ In contrast, GO 96-A is silent regarding how and when it will be updated.

² One statute that expressly refers to advice letters is Pub. Util. Code § 455.1, authorizing the use of that procedure by water utilities on matters related to “service of recycled water.” Also, Pub. Util. Code § 455.3 appears to contemplate the use of advice letters by oil pipelines in seeking rate changes. Both of these statutes contain their own timelines and provisions for the proposed rates to become effective on an interim basis subject to refund. When dealing with an advice letter whose subject comes within one of these statutes, the applicable Industry Rules follow the specific statutory timeline and not the general review timeline described in the text accompanying this footnote.

³ Rate changes generally are governed by Pub. Util. Code § 454, but that statute, in contrast to § 455, does not contain a timeline for review of proposed changes.

investigate and, if need be, to suspend proposed tariff changes. In relevant part, Section 455 says:

- Such a tariff change that is not suspended by the Commission shall become effective 30 days after filing “or a lesser time[,] subject to the power of the [C]ommission to . . . alter or modify” the tariff change;
- The Commission may “enter upon a hearing” on the proposed tariff change;
- The tariff change will not go into effect (i.e. the change is “suspended) pending the “hearing” and Commission decision; and
- The Commission may continue the suspension for 120 days “beyond the time when [the tariff change] would otherwise go into effect” and may extend this period of suspension “for a further period not exceeding six months.”

In GO 96-B, we propose to use the above timelines (with minor adjustments depending on the tier) for reviewing essentially all advice letters, including those advice letters that increase or result in an increase in rates. The only exceptions are those few advice letters for which a different process or timeline is specified by statute or by other Commission order.

While Section 455 allows up to 330 days (including initial review and periods of suspension) for disposition of an advice letter, we are confident that review of most advice letters under GO 96-B will consume much less time. To speed review and disposition, we (1) expressly delegate authority to the Industry Divisions to handle the review and disposition of many kinds of advice letters, and (2) allow certain noncontroversial advice letters to be immediately effective pending disposition. These two changes to current practice should significantly improve the timeliness of our advice letter dispositions.

Another improvement in GO 96-B over current practice is that, while we expressly authorize the reviewing Industry Division to suspend a proposed tariff change while investigating the change, we also limit the length of time for which the tariff change may be suspended. Regrettably, we will need to use this suspension authority often for advice letters that require disposition by Commission resolution. Resolutions generally must be circulated for public review and comment pursuant to Pub. Util. Code § 311(g)(1). Drafting, placing on the Commission's agenda, and voting on a resolution within the 30-day initial review period contemplated by Section 455 is generally not possible. With rare exceptions, the disposition of Tier 3 advice letters, and of any other type of advice letter for which a Commission resolution is usually required, will consume more than 30 days despite everyone's best efforts.⁴

5.2 Tiers of Review

Historic advice letter practice, as set forth in GO 96-A, has long served us well, but it has become inadequate in relation to the volume and variety of advice letters submitted for Commission review in recent years. For example, GO 96-A does not systematically distinguish advice letters from formal proceedings, or sort advice letters by type, or explain how, when, or by whom an advice letter would be approved or rejected. The proposed tier structure for advice letter review should improve this situation dramatically.

⁴ An exception would be those instances where the reviewing Industry Division can make the disposition on a ministerial basis. For example, if a Tier 3 advice letter depends on a calculation that proves to be mistaken, rejection of the advice letter would be ministerial, and there is no need for a Commission resolution.

We propose to distinguish fundamentally between those advice letters that the reviewing Industry Division may approve or reject (and that may be deemed approved under certain conditions), and those advice letters whose disposition will require a Commission resolution. In short, we separate advice letters into two broad groups: advice letters disposed of by staff, where approval or rejection is ministerial; and advice letters disposed of by Commission resolution, where approval or rejection requires the exercise of discretion.

For advice letters in the water industry, we had originally proposed that the mode of disposition be the only generic distinction we make among advice letters. In light of the Water Action Plan, we now propose that for water, as well as for energy and (eventually) telecommunications, advice letters submitted for staff disposition be further divided between those that are “effective pending disposition,” i.e., they may be implemented before approval (Tier 1), and those that are effective, and may only be implemented, on or after approval (Tier 2). Advice letters requiring a Commission resolution go to “Tier 3” under all of the Industry Rules.

As mentioned above, an advice letter may be deemed approved in limited circumstances. Only an advice letter that the utility has properly submitted for staff disposition (Tiers 1 or 2) may be deemed approved. If such an advice letter is not timely protested, it will be deemed approved at the end of the “initial review period,” unless by that date the reviewing staff either rejects the advice letter or states in writing that review of the advice letter is ongoing.⁵

⁵ We detail the timelines and review processes in our tier-by-tier discussion later. *See* Sections 5.6 to 5.8.

The tier under which a utility submits an advice letter does not irrevocably dictate the mode of disposition of that advice letter. For example, an issue may arise in the review of a Tier 1 or Tier 2 advice letter that requires the exercise of judgment about the meaning of a statute, so instead of the delegation to staff normal for the tier, disposition of that advice letter would be by Commission resolution.⁶ On the other hand, a Tier 3 advice letter may be clearly erroneous, e.g., it may contain errors of arithmetic or clear inconsistencies with the statute or Commission order that purportedly authorizes the advice letter. In those situations, Industry Division staff will reject the advice letter without the necessity of putting a proposed resolution before the Commission. Whenever disposition of an advice letter would be a ministerial act, staff has delegated authority under GO 96-B to make that disposition.

If a utility designates the wrong tier for an advice letter, the appropriate action is for the staff of the reviewing Industry Division to reject the advice letter without prejudice whenever the designated tier is lower than the proper tier.⁷ In other words, if the utility has designated for disposition by staff an advice letter that, under the applicable Industry Rules, belongs in the tier for advice letters to be resolved by the Commission, staff will reject the advice letter on that basis.

⁶ This change in mode of disposition generally will delay the disposition (due to the statutory public review and comment requirements that apply to Commission resolutions), but the utility will not have to re-submit its advice letter, nor will there be a new or extended protest period.

⁷ Staff will also reject an advice letter without prejudice if the subject matter of the advice letter requires a formal filing (typically, an application or petition for modification).

The reason for rejection in this situation is that the utility improperly designating a lower tier could thereby gain improper advantages.

For example, where an advice letter is improperly submitted for filing under Tier 1, the utility generally will have implemented the action proposed in the advice letter without prior regulatory approval. If the action in fact was of a kind that requires prior regulatory approval, implementation without such approval may harm consumers, competitors, or both. Similarly, if a utility designates Tier 2 for an advice letter that should be designated Tier 3, the utility is saying that the advice letter could be deemed approved at the end of the initial review period, whereas Tier 3 advice letters, in fact, can only be approved and become effective pursuant to Commission resolution.

There is one situation where the designation of a wrong tier does not result in rejection without prejudice. Specifically, if a utility designates Tier 3 for an advice letter that should be reviewed under a lower tier, the reviewing Industry Division will approve or reject the advice letter under Tier 2. In other words, the utility cannot compel a Commission resolution on an advice letter that is subject to Industry Division disposition under this GO. However, by the utility's wrongly designating Tier 3 for an advice letter, that advice letter cannot be deemed approved.⁸

Along with tiers of review, GO 96-B introduces two major concepts already mentioned, namely, "effective pending disposition" (Tier 1 advice

⁸ We note that there is also one situation in which the utility may properly designate a higher tier. Specifically, the utility submitting an advice letter that would qualify for Tier 1 may instead designate Tier 2 for that advice letter. We discuss this situation in Section 5.4.1. See text accompanying footnotes 9 and 10.

letters) and “deemed approved” (Tier 1 and Tier 2 advice letters). The following sections of today’s decision contain a detailed explanation of these concepts in practice.

5.3 Concepts Underlying Tier 1

Advice letters are an informal procedure used by the Commission to deal with types of utility requests that are usually minor, noncontroversial, or otherwise appropriate for processing without hearings or a formal evidentiary record. Most often an advice letter is submitted to effect a tariff change to comply with a prior Commission order, or to document the specific implementation of a utility program for which the utility already has general authorization by statute or Commission order. No protest is ever filed in the large majority of advice letters. Also, in many instances, approval or rejection of an advice letter is ministerial, i.e., reviewing staff can determine the advice letter’s validity through objective review of the supporting materials and authority cited by the utility. The Commission may lawfully delegate such determinations to its staff.

In proposing the concept of advice letters “effective pending disposition” (i.e., implemented at some time before their approval), we had in mind certain of those advice letters whose review and disposition can be delegated to our staff. The Industry Rules specify those subject matters that, under the current regulatory structure in those industries, seem appropriate for handling by means of advice letters that are effective pending disposition. We expect that our creating this new “tier” for the review and disposition of such advice letters will both help the Commission and the stakeholders to focus their resources on more controversial matters and ensure that less controversial matters do not fall through the cracks. With thousands of advice letters submitted to the

Commission each year, improving the efficiency of our review process has great benefits for everyone.

The main reason to allow many advice letters to go into effect pending disposition, however, is to better accommodate innovation and competition in the marketplace. According to some commenters, a utility that must publicly announce and then await regulatory approval for a new product or service will often find that competitors are able to copy the program before the utility has had any significant chance to benefit from its initiative. As a result, the incentive to innovate is reduced, nominal competitors tend to “me too” each other so that prices move in lockstep, and any genuinely innovative advice letter is correspondingly more likely to elicit protests from competitors who hope to gain time to catch up with similar proposals of their own. By allowing certain types of advice letters to take effect before regulatory approval, we can fulfill our responsibilities while giving greater scope to market forces.

5.4 Tier 1 in Operation

Most commenters share our enthusiasm for the “effective pending disposition” concept, but their comments demonstrate the need to address certain questions about how the concept works in practice. These questions are: Must the utility implement such an advice letter immediately, or can the utility await approval? What is the procedure when, during review of such an advice letter, an issue arises that must be resolved by the Commission? Finally, what is the procedure when the utility mistakenly or deliberately requests the “effective pending disposition” tier for an advice letter that in fact does not qualify for such treatment? We address these questions below, in the order stated.

5.4.1 An Advice Letter Whose Subject Matter Qualifies for Tier 1 May Be Submitted Under Tier 2 (Effective Upon Staff Approval) if the Utility Chooses

A necessary condition to our allowing any advice letter to go into effect before it has received our approval is that the utility must be prepared to undo any actions the utility has taken to implement the advice letter if the advice letter ultimately is not approved. The kinds of remedies that are appropriate will depend on the particular advice letter.⁹ Beyond such remedies as we may require, the utility in this situation will likely suffer loss of credibility and good will – losses that may be very damaging, especially in a competitive marketplace.

We think the severity of these potential losses helps to ensure the integrity of the Tier 1 process.¹⁰ However, some commenters feel that there may be gray areas where the propriety of a Tier 1 designation is not clear. In any case, they suggest that a utility that prefers to obtain prior regulatory approval should not be forced to implement an advice letter in advance of such approval.

There is a simple way to address this concern, namely, allow the utility submitting an advice letter that would qualify for Tier 1 to nevertheless submit the advice letter for processing under Tier 2 (effective upon staff approval). We have made changes to the General and Industry Rules to give utilities this choice.

⁹ We expect customer refunds to be a common remedy but not necessarily the only remedy. We cannot be more definitive at this time except to say that we expect to approach these (hopefully) rare situations on a case-by-case basis.

¹⁰ We further discuss this point below in connection with the third question, regarding advice letters improperly requesting review under Tier 1.

5.4.2. Industry Division Staff Will Prepare a Proposed Resolution for the Commission's Consideration if an Issue Arises in Advice Letter Review That the Commission Must Address

All of the Industry Rules separate advice letters generally between those whose subject matter seems to be within staff's delegated authority to review and resolve, and those whose subject matter seems to require resolution by the Commission itself. There will be instances, however, where the utility submitting an advice letter has properly designated one of the lower (i.e., staff disposition) tiers and yet, because of the nature of an issue raised by a protestant or discovered by staff, the advice letter requires exercise of discretion to approve or reject, and so must go to the Commission.

If staff determines that a Tier 1 advice letter will require disposition by the Commission, staff will so notify the utility and any protestants by the end of the initial review period. The staff notification does not act to suspend the effectiveness of an advice letter already in effect; however, the notification will extend the review period and prevent the advice letter from being deemed approved.¹¹

Unfortunately, delay in disposition is almost inevitable if a Tier 1 advice letter requires a Commission resolution, because Industry Division staff will

¹¹ Many advice letters that are subject to staff review do not go into effect pending disposition. These are Tier 2 advice letters. When an issue arises in the review of these advice letters that requires Commission resolution, staff will so notify the utility and any protestants. The notification will (1) prevent the advice letter from being deemed approved, and (2) serve as a "suspension" pursuant to Pub. Util. Code § 455 of any advice letter that would otherwise go into effect unless suspended within 30 days of the advice letter's filing. (See General Rule 7.5.) Consequently, the initial review period for Tier 2 advice letters is 30 days, and staff notification that the advice letter will go before the Commission for disposition will be given by the last day of the initial review period.

have to write a proposed resolution, place it on the Commission agenda, and (in many instances) circulate it for public review and comment pursuant to Pub. Util. Code § 311(g)(1). Nevertheless, proposed GO 96-B will improve significantly on current practice in that the utility and any protestants will have better information on the status of pending advice letters and will know the steps for concluding the review process.

We emphasize that a change in the mode of disposition from a staff notification (the usual mode of disposition for advice letters in Tier 1 or 2) to a Commission resolution (the mode of disposition for advice letters in Tier 3) does not in itself trigger a new protest period. Finally, the foregoing discussion relates to advice letters that were properly designated Tier 1 or 2. We turn now to the problem of an advice letter improperly designated Tier 1.

5.4.3 An Advice Letter Improperly Designated Tier 1 Will Be Rejected Without Prejudice and May Require Remedial Action

Because a utility can implement a Tier 1 advice letter before receiving regulatory approval, the erroneous submittal of an advice letter under Tier 1 is consequential. We see two likely scenarios. First, there may be a good faith issue over whether a given advice letter meets the requirements for Tier 1. Second, the erroneous submittal may be knowing and deliberate, e.g., for the sake of competitive advantage.

As we discussed earlier, we expect that few utilities would run the risk of having to undo an action taken to implement an advice letter improperly designated Tier 1. The costs, the damage to the utility's reputation, and the possibility of sanctions (especially in our second scenario) should give pause to any management that contemplates running this risk. Nevertheless, we need to be clear on how staff will respond, should either of these scenarios occur.

Whenever an issue arises over whether an advice letter was properly designated Tier 1, the reviewing Industry Division will analyze the issue, and if staff determines that the Tier 1 designation was improper, staff will reject the advice letter without prejudice, its effectiveness will cease, and the Commission will further direct the utility regarding any other remedial actions necessary to undo the advice letter. If staff is unable, before the end of the initial review period, to determine the propriety of the Tier 1 designation, staff will so notify the utility and any protestants prior to the date that the advice letter would otherwise be deemed approved.

5.5 Advice Letters Deemed Approved

Historically, and still today, many advice letters are simple and uncontroversial, as when a utility submits revised tariff sheets to implement specific directions in a statute or Commission order. The revised tariff sheets are readily checked for conformity with the authority cited, and the large majority of such advice letters do not elicit any objection from the reviewing Industry Division or third parties. The “deemed approved” concept is carefully tailored to this situation.

The concept, in brief, is that an advice letter will be deemed approved at the end of the initial review period¹² if the advice letter satisfies all of the following conditions. First, the advice letter is one whose subject is suitable for Industry Division disposition, pursuant to the applicable Industry Rules. Second, the advice letter is unprotested, i.e., no protest has been submitted

¹² As we will discuss later, the “initial review period” is 30 days from the date of filing for all other advice letters.

within the 20 days following the date of filing. Third, there has been no disposition, and the Industry Division has not extended the review period or suspended the advice letter. The General and Industry Rules govern the types of advice letters that may be deemed approved. In particular, Tiers 1 and 2 under the Industry Rules list the types of advice letters that may be deemed approved.

When an advice letter is deemed approved, no written disposition is necessary; however, the approval will be reported in the Commission's Daily Calendar. Conversely, there will be a written disposition (approval or rejection) for all advice letters except those deemed approved.

5.6 Review of Tier 1 Advice Letters

The initial review period for a Tier 1 advice letter (i.e., an advice letter effective pending disposition) is 30 days; filing, protest, and reply all occur during this period, as described above.¹³ After 30 days have elapsed from the date of filing, the advice letter is deemed approved unless there is a timely protest or the reviewing Industry Division notifies the utility and protestants (if any) that the initial review period is being extended.

The Industry Division may extend the period for various reasons. For example, staff may need to get additional information regarding the advice

¹³ We had originally proposed a 60-day initial review for Tier 1 advice letters, reasoning that until we had gained some experience with Tier 1 in operation, the longer review period would help us find and promptly correct any misuse. We have decided, however, that the extended initial review period would dilute some of the advantages of Tier 1. Moreover, the difference in review periods among the three tiers would be confusing and would significantly complicate the implementation of GO 96-B. Finally, since staff can extend its review of Tier 1 advice letters for up to 120 days beyond the 30-day initial review period in appropriate circumstances, we are confident that these advice letters will be subject to adequate scrutiny.

letter, typically by means of an information request to the utility (*see* General Rule 7.5.1). Staff may also need more time to complete its analysis of the advice letter, or to draft a resolution if staff finds that Commission disposition of the advice letter is necessary. In addition, where there has been a timely protest and there has not been a disposition of the advice letter within the initial review period, staff will extend the review period and notify the utility and protestants of the length of the extension.

Specifically, on or before the 30th day, the Industry Division will notify the utility and any protestants if disposition of the advice letter will not occur within the 30-day initial review period. The notification will state the reason for the extension. An Industry Division extension of the review period is for up to 120 days. During this period, the Industry Decision must proceed promptly to dispose of the advice letter or, if Commission approval is necessary, prepare and submit the appropriate resolution. Staff's authority to extend is limited to 120 days beyond the initial review period; however, if the Commission's consideration of the proposed resolution extends beyond the 120-day period, there will be a further automatic extension until the Commission does act.

If the Commission does not act in 180 days following the 120-day period, the advice letter becomes approved by operation of law. Thus, disposition of a Tier 1 advice letter should not consume more than 330 days (i.e., 30 days for initial review + up to 120 days for 1st extension + up to 180 days for final extension). This overall timeline for Tier 1 advice letters is consistent with Section 455. Since we are allowing Tier 1 advice letters to become effective pending disposition, an extension of the Tier 1 review period means only that disposition of the advice letter will take a little longer; the extension does not cancel the effectiveness of the advice letter.

5.7 Review of Tier 2 Advice Letters

Like Tier 1, Tier 2 advice letters concern matters generally not expected to require a Commission resolution; however, unlike Tier 1, the tariff or other changes proposed in a Tier 2 advice letter do not become effective until the advice letter is approved. As discussed earlier, a utility that prefers prior approval to immediate effectiveness may submit under Tier 2 an advice letter that otherwise would qualify for Tier 1.

The initial and further review periods follow the Section 455 timeline exactly. Thus, a Tier 2 advice letter is deemed approved if, after the 30-day initial review period has ended, there is no timely protest and the reviewing Industry Division has not notified the utility that the advice letter is being suspended.¹⁴ However, the Industry Division may suspend the advice letter to continue its review beyond the initial review period. Our General Rules deliberately use “suspension” rather than “extension” to describe review of a Tier 2 advice letter beyond the initial review period. In contrast to a Tier 1 advice letter, which continues in effect during subsequent review periods, a Tier 2 advice letter is not in effect during the initial review period, and its effectiveness will be suspended throughout any subsequent review period. The suspension is consistent with Section 455 and with the fundamental premise of Tier 2 (and Tier 3) advice letters that approval of these advice letters must occur before any proposed change becomes effective.

¹⁴ The grounds for suspension for Tier 2 advice letters are the same as for extension of the review period for Tier 1 advice letters: getting additional information, completing staff’s analysis, dealing with a protest, or drafting a resolution where Commission disposition of the advice letter proves to be necessary.

We had originally proposed to delegate to staff the ability to impose suspensions cumulatively longer than 120 days for a given advice letter. In D.05-01-032, the Third Interim Opinion, we decided to limit that delegation. As we there explained:

Regarding suspensions by our staff, we already have considerable experience as we authorized this procedure on an interim basis by Resolution M-4801 (April 19, 2001), modified and affirmed as modified by D.02-02-049. We made the interim procedure subject to further modification by order in this proceeding, and we do so today.

Specifically, we limit the delegated suspension authority to a single suspension, namely, the period of up to 120 days expressly provided by Pub. Util. Code § 455. That statute also provides for “a further period [of suspension] not exceeding six months,” but we reserve to the Commission itself the power to impose this “further period.” We make this change because we think that, generally speaking, five months (the initial review period plus a suspension of up to 120 days) is a reasonable amount of time for the reviewing Industry Division to prepare a proposed disposition.

One disposition option open to the Industry Division is to propose a further period of suspension if there is good reason to believe that further consideration of the advice letter will lead expeditiously to a clear approval or rejection on the merits. However, we think the more likely conclusion, where material issues raised by an advice letter remain in doubt after five months, is that the action proposed by the advice letter requires review in a formal proceeding, possibly with an evidentiary hearing. In that situation, a rejection without prejudice is preferable to continued suspension. (Pp. 12-13; footnotes omitted.)

In today’s decision, where we fully implement the tier structure for advice letter review, the initial review periods and the periods that staff can take beyond initial review are uniform for all tiers, namely, 30 days and 120 days, respectively.

5.8 Review of Tier 3 Advice Letters

Tier 3 advice letters concern matters whose disposition is expected to require action by the Commission.¹⁵ As with Tier 2 advice letters, the initial review period is 30 days, but unlike Tier 2, a Tier 3 advice letter may not be deemed approved. Due to the kinds of subjects dealt with in Tier 3 advice letters, proper regulatory oversight requires us to ensure affirmatively the propriety of a Tier 3 advice letter before allowing the proposed changes to take effect, regardless of whether there has been a protest to the advice letter. Since GO 96-B provides that a tariff change proposed in a Tier 3 advice letter may not become effective unless and until the Commission itself approves the advice letter, the suspension of such advice letters under GO 96-B is automatic if (as generally will be the case) disposition does not occur by the end of the initial review period. (*See* General Rules 7.3.5, 7.5.2.)

Because Commission resolutions, like other Commission decisions, are subject to public review and comment under by Pub. Util. Code § 311(g)(1), only in extraordinary circumstances will we be able to dispose of a Tier 3 advice letter by the end of the initial 30-day review period.¹⁶ For virtually all Tier 3 advice

¹⁵ Industry Division disposition of a Tier 3 advice letter is possible, however, where the advice letter contains the kind of defect where rejection of the advice letter would be ministerial.

¹⁶ Pub. Util. Code § 311(g)(2) provides for reduction or waiver of the period for public review and comment in some situations, and § 311(g)(3) allows the Commission to establish, by rule, additional categories of decision subject to such reduction or waiver. We have adopted rules to implement this authority. *See* Rule 14.6(c) of our Rules of Practice and Procedure. These rules, together with statutory provisions for reduction or waiver, should minimize delay beyond the initial 30-day review period for many Tier 3 advice letters, but neither the statute nor the rules are likely to eliminate the need for suspension except in the case of unforeseen emergencies.

letters, the reviewing Industry Division will send a suspension letter to the utility and any protestants by the end of that period. The letter will indicate that staff is drafting a resolution for the Commission's consideration, and will remind the utility that the proposed changes do not become effective during the suspension. The suspension letter will also note whether staff is seeking additional information or is otherwise still completing its analysis of the advice letter. As explained above, the suspensions for Tier 3 mirror those for Tier 2.

5.9 Other Advice Letter Tiers

At an early stage of developing GO 96-B, staff and workshop participants reduced the advice letter tiers to the three we just described. We agree with this recommendation. The tiers we have now depend on fundamental concerns, such as the scope of the authority that we may delegate to staff. Additional tiers are likely to result in complexity and confusion, rather than clarity and ease of administration.

We note, however, that the Legislature has enacted special procedures for certain advice letters.¹⁷ We have assigned these types of advice letter to the tier best approximating the statutory procedures, but we also propose Industry Rules specific to these types of advice letters where necessary to implement the respective statutes.

5.10 Disposition of Advice Letters

Unprotested advice letters in Tiers 1 or 2 may be deemed approved without a written disposition. In all other instances, there will be a written

¹⁷ See Pub. Util. Code §§ 455.1 (recycled water) and 455.3 (rate changes for oil pipelines).

disposition. As discussed earlier, written disposition of Tier 1 and 2 advice letters typically will be by letter from the reviewing Industry Division, while disposition of Tier 3 advice letters typically will be by Commission resolution.

Whatever the mode of disposition, and regardless of whether the disposition is an approval or a rejection, all dispositions will be reported in tabular form at the Commission’s Internet site. The table of dispositions will be updated regularly, so that anyone can readily determine whether and when a particular advice letter was approved or rejected.

On the following two pages, we provide tables summarizing the key provisions of GO 96-B regarding the disposition (Table 1) and effective date (Table 2) of advice letters. These tables distill many provisions of GO 96-B, most notably General Rules 7.6.1 and 7.6.2 (disposition) and General Rules 7.3.1 to 7.3.5 (effective date), and the tiers of review under the respective Industry Rules. While we have made great efforts to ensure the accuracy of these tables, they cannot substitute for careful reading of the relevant rules, the language of which is controlling.

Table 1: DISPOSITION OF ADVICE LETTERS

In general, the reviewing Industry Division, by letter, will approve or reject an advice letter (AL) submitted in Tiers 1 or 2. The Commission, by resolution, will approve or reject ALs submitted in Tier 3. Exceptions will occur, however, due to utility error or issues arising during review. This table shows how exceptions will be handled and what remedial actions a utility may take.

1. Utility Designates Wrong Tier¹⁸

<u>Designated Tier</u>	<u>Proper Tier</u>	<u>Staff Action</u>
1	2 or 3	Reject w/o prejudice

¹⁸ Note that a utility may designate for Tier 2 an advice letter that would qualify for Tier 1. The Tier 2 designation therefore is not “wrong” in this situation.

2	3	Reject w/o prejudice
3	1 or 2	Approve/reject under Tier 2 ¹⁹
Any	none ²⁰	Reject w/o prejudice

2. Utility Designates Correct Tier But . . .

Any tier: AL is clearly erroneous	Reject
Any tier: matter in AL requires hearing	Reject w/o prejudice
Any tier: issue requires exercise of discretion	Prepare resolution

3. Remedial Action by Utility if AL is Rejected w/o Prejudice

The utility may modify and resubmit an advice letter (with an explanation) if the utility believes the modification will moot the reason for rejection. Other possibilities:

Wrong Tier	Utility may submit new AL in proper tier Utility must stop implementation (Tier 1)
Hearing Required	Utility may file formal proceeding
Matter Inappropriate for AL	Utility may file formal proceeding

¹⁹ However, by the utility's wrongly designating Tier 3, the advice letter may not be deemed approved.

²⁰ This situation arises where the subject matter of the advice letter requires a formal proceeding (typically, an application or petition for modification).

Table 2: EFFECTIVE DATE OF ADVICE LETTERS

Normally, under GO 96-B, advice letters will become effective either upon approval (Tiers 2 and 3) or on the date when the utility submits its advice letter to the reviewing staff (Tier 1). Other effective dates are sometimes possible where statute, other Commission order, or the utility itself designates another effective date. This table summarizes the major possibilities, which are detailed in General Rules 7.3.1 to 7.3.5. Regarding the process by which disposition of advice letters occurs, see General Rules 7.6.1 and 7.6.2.

	<u>Tier 1</u>	<u>Tier 2</u>	<u>Tier 3</u>
“Normal” effective date:	On date submitted (may be deemed approved)	Upon approval (may be deemed approved)	Upon resolution approval (no deemed approval)
“Early” effective date:	Per statute, CPUC order	Per statute, CPUC order	Per statute, CPUC order
“Later” effective date:	If requested by utility <u>and</u> not inconsistent w/ statute, CPUC order Per statute, CPUC order	If requested by utility <u>and</u> not inconsistent w/ statute, CPUC order Per statute, CPUC order	If requested by utility <u>and</u> not inconsistent w/ statute, CPUC order Per statute, CPUC order

6. Responses to Comments on General Rules

Parties were provided an opportunity to file comments and replies on the proposed General Rules and Industry Rules during the spring and summer of 2001. The following sections summarize the major issues that were raised in the comments and provide the Commission’s responses. In Section 6.0, we address comments on the General Rules. In Sections 7.0 and 8.0, we address comments on the Energy and Water Industry Rules. In both cases, the responses are limited to portions of the rules that have not previously been adopted by the Commission.

6.1 Introduction

The General Rules have been recodified. We started with a comprehensive proposal for GO 96-B when the first draft decision was distributed on February 14, 2001. Subsequently, we adopted portions of the draft in the First, Second, and Third Interim Decisions.

The comprehensive General Rules now set forth in Appendix A contain both the provisions we have previously adopted and provisions that we adopt today (indicated in shaded text). In many cases, these latter provisions have been modified in response to comments and intervening changes in circumstances. For provisions adopted in the interim decisions, we do not repeat our analysis or further respond to comments.

6.2 “Overview of the General Order” (General Rules 1.1 to 1.5)

The rules in this section explain the overall purpose and structure of the General Rules and Industry Rules. Specific rules include “Structure; Purpose; Applicability” (General Rule 1.1), “Utilities Operating in Different Utility Industries” (General Rule 1.2), “Construction; Waiver or Variance” (General Rule 1.3), “Amendments” (General Rule 1.4), and “Computation of Time” (General Rule 1.5). The last provision, General Rule 1.5, was previously adopted in the Third Interim Decision.

The only General Rule receiving comment was General Rule 1.3, “Construction; Waiver or Variance.” One party commented that existing Commission practice does not allow the Industry Division Director to shorten a time period or waive the procedural requirement of a rule. To do so here, the comment indicated, will create regulatory uncertainty.

We believe that flexibility in appropriate circumstances is a desirable component of regulation. The Industry Division Director’s ability to shorten the

protest and reply period, for “good cause” shown, provides that flexibility. In the revised GO, however, we have eliminated the Director’s ability to waive or vary a “procedural requirement” because of the vagueness of that term.

Although it did not receive comment, we have also modified General Rule 1.4 to clarify the procedure for Industry Divisions to propose Industry Rule amendments to the Commission. These amendments are the principal means by which we intend to ensure that GO 96-B keeps pace with changes to our regulatory programs.

6.3 “Code of Ethics” (General Rule 2)

General Rule 2, the only rule in this section, was adopted in the Third Interim Decision.

6.4 “Definitions” (General Rules 3.1 to 3.16)

In the First, Second, and Third Interim Decisions, we adopted several definitions for terms commonly used in the General Rules and Industry Rules including definitions for “Advice Letter” (General Rule 3.1), “Day; Business Day” (General Rule 3.3), “Industry Division” (General Rule 3.8), “Information-only Filing” (General Rule 3.9), “Protest” (General Rule 3.11), “Response” (portions of General Rule 3.13), and “Utility” (General Rule 3.16).

In this decision, we approve rules providing definitions for other terms used in the General Rules and Industry Rules. These definitions include “Daily Calendar; Date of Filing” (General Rule 3.2), “Deviation” (General Rule 3.4), “Disposition” (General Rule 3.5), “Effective Pending Disposition” (General Rule 3.6), “Formal; Informal” (General Rule 3.7), “Person” (General Rule 3.10), “Reply” (General Rule 3.12), “Response” (portions of General Rule 3.13), “Service” (General Rules 3.14), and “Tariffs” (General Rule 3.15).

Comments were received on only two of these definitions. Concerning General Rule 3.13, “Response,” parties indicated that the filing of responses should be discouraged and should not delay the consideration of an advice letter.

The original version of the rule has already been modified with the addition of a second sentence to the definition in the Third Interim Decision. We believe the opportunity of filing a response provides third parties with a useful means of communicating with the Commission without engaging in litigation with the utility submitting the advice letter.

Other comments were directed to “Tariffs,” General Rule 3.15, and suggested that the use of “publish” in the definition was unclear (“Tariffs’ refer collectively to the sheets that a utility must file, maintain, and publish . . .”). We have not changed the rule. These concerns have been addressed in the Appendix, Section 1, to the First Interim Decision where a detailed explanation of the publishing requirement is set forth.

6.5 “Notice, Access, Filing, and Service Procedures Generally” (General Rules 4.1 to 4.5)

In the First, Second, and Third Interim Decisions, we adopted several provisions concerning “Customer Notices” (General Rule 4.2), “Service Lists” (General Rule 4.3) and “Service by the Internet” (General Rule 4.4).

A version of General Rule 4.2 was adopted in the First Interim Decision for the Telecommunications Industry. We now extend its application to all utilities. General Rule 4.2 is quite narrow:

Unless no notice or a shorter notice period is authorized by statute or Industry Rule or other Commission order, a utility shall give affected customers at least 30 days notice before the effective date of an advice letter requesting higher rates or charges, or more restrictive terms or conditions, than those currently in effect. . . .

By allowing the Industry Rules to provide a shorter notice period or no notice, the General Rule accommodates distinctions between services and industries. We adopt General Rule 4.2 as proposed. We decline to generally authorize newspaper notice as it rarely if ever results in actual notice and should be used only in restrictive circumstances, which we address in the Industry Rules.

Additionally, we now adopt rules expressing our general intent to provide public and customer access to filings related to advice letters (“Commission Policies” (General Rule 4.1)). We also specify the format and procedures for filing documents pursuant to the General Rules and Industry Rules (“Filing Format” (General Rule 4.5)).

Concerning General Rule 4.1, “Commission Policies,” several comments suggested that advice letter and information-only filings should be published in the Daily Calendar within one day of filing. We agree with the suggestion that these filings should be promptly noticed, but we believe our contemporaneous efforts to effectuate electronic service will result in prompt notice to interested persons. Consequently, we have not modified the rule.

Several comments suggested that General Rule 4.5, “Filing Format,” be amended to allow the possibility of electronic filing of advice letters. In the Third Interim Decision, we indicated, in what is now General Rule 7.1, that “[a]ny provision the Commission may make, now or in the future, for electronic notice of, and access to, the Commission’s public records shall apply to such documents.” We agree that electronic filing of advice letters should proceed when an Industry Division determines it has the capacity to receive and process advice letters in this fashion. General Rule 4.5 has been amended accordingly. Also, text concerning deadlines falling on days other than business days has been

added to General Rule 3.3; and the reference to our Rules of Practice and Procedure has been updated.

6.6 “Use of Advice Letters” (General Rules 5.1 to 5.5)

The rules in this section explain the use, filing, and service of advice letters. We have previously adopted requirements concerning “Cover Sheet” (General Rule 5.4) and advice letter “Form and Content” (General Rule 5.5).

We now adopt other rules to complete this section. These rules include “Matters Appropriate to Advice Letters” (General Rule 5.1), “Matters Appropriate to Formal Proceedings” (General Rule 5.2), and “Withdrawal; Rejection Without Prejudice” (General Rule 5.3).

In the comments to this series of General Rules, some parties suggested that the proposed language in the rules narrows the purposes for which advice letters can be used, perhaps denying their use for rate increases or new services. General Rule 5.1, “Matters Appropriate to Advice Letters,” describes the common purposes for which an advice letter may be used. So long as the utility’s action is otherwise authorized by statute or Commission order, the utility may use the advice letter procedure. *See* Appendix, Section 1, of Third Interim Decision.

General Rule 5.2, “Matters Appropriate to Formal Proceedings,” has been changed to track the language of Pub. Util. Code § 454(a).

With reference to General Rule 5.3, “Withdrawal; Rejection Without Prejudice,” several comments argued that advice letters are withdrawn for a variety of purposes and that a utility should not be required to later submit a withdrawn advice letter as a formal application. We did not intend to require the resubmittal by application of withdrawn advice letters in all cases, and the text of this rule has been modified accordingly. However, when a utility has

withdrawn an advice letter based on an Industry Division's notification that the subject matter of an advice letter must be addressed in a formal proceeding, the utility either must modify its advice letter to address the Industry Division's concern or make its request by application.

General Rule 5.5, "Form and Content," has been modified to authorize an Industry Division to modify the contents of an advice letter as appropriate for that industry and to promulgate sample cover sheet formats. (General Rules 5.4 and 5.5 have been renumbered as explained in Section 9 of this Decision.)

6.7 "Information-only Filings" (General Rules 6 to 6.2)

These rules explain how information-only filings (required utility submissions unrelated to a pending request for Commission approval, authorization, or relief) will be filed with the Commission (Filing, Access, Service" (General Rule 6.1)) and processed by staff (Review" (General Rule 6.2)). No comments were received on these rules.

6.8 "Advice Letter Review and Disposition" (General Rules 7.1 to 7.8)

In our Third Interim Opinion, we adopted rules allowing for advice letters to become effective if they have not been protested or suspended by the Industry Division during the 30-day initial review period. Specifically, we adopted the following rules: "Filing Advice Letters and Related Documents" (General Rule 7.1; with the exception of electronic filing provisions which we adopt today), "Serving Advice Letters and Related Documents" (General Rule 7.2), "Filing of Protest" (General Rule 7.4.1), "Grounds for Protest" (General Rule 7.4.2), "Replies" (General Rule 7.4.3), "Late-Filed Protest or Response" (General Rule 7.4.4), "Additional Information; Supplements" (General Rule 7.5.1), "Initial Review Period; Suspension; Status Report" (General Rule 7.5.2), "Industry Division Disposition of Advice Letters" (General

Rule 7.6.1), “Disposition by Resolution” (General Rule 7.6.2), “Review of Industry Division Disposition” (General Rule 7.7.1), “Application for Rehearing of Resolution” (General Rule 7.7.2), and “Petition for Modification; Request for Extension” (General Rule 7.8).

The rules we approve today all pertain to the effective date of advice letters. These rules provide for a different effective date based on statute or Commission order, the utility’s request, or the date set by the Commission when the advice letter is approved by resolution. Under these rules, some advice letters may be effective pending disposition by the reviewing Industry Division.

General Rule 7.3.1, “Effective Date Provided by Statute or Commission Order Other Than This General Order,” indicates that the effective date of an advice letter can be set by statute or a Commission order other than this GO 96-B. One comment indicated that this rule creates confusion about the effective date of advice letters in the event there are conflicting requirements set forth in other Commission decisions. The rule does not create or resolve the type of conflicting requirements suggested by the comment. The rule only indicates that statutory requirements, Industry Rules, and specific Commission orders may provide effective dates besides those contemplated by the GO.

General Rule 7.3.2, “Later Effective Date Requested by Utility,” received no comment. The rule provides that a utility may request that an advice letter become effective on a date later than the one otherwise provided by the GO.

General Rule 7.3.3, “Effective Pending Disposition,” provides immediate effectiveness for advice letters properly submitted as Tier 1 filings.

General Rule 7.3.4, “Effective Date of Advice Letter Submitted for Industry Division Disposition,” provides that when a utility submits an advice letter for Industry Division disposition, the advice letter becomes effective in 30 days,

unless it has been protested or is suspended by an Industry Division. If the advice letter has been protested or suspended, the advice letter becomes effective upon Industry Division approval or upon Commission adoption of an approving resolution. Another provision, General Rule 7.5.2 limits Industry Division consideration of an advice letter to 120 days, beyond the initial review period, by which time the division must approve or disapprove the advice letter or prepare a resolution for the Commission's consideration.

General Rule 7.3.5, "Effective Date of Advice Letter Submitted for Disposition by Resolution," indicates that an advice letter approved by Commission resolution becomes effective upon Commission adoption of the resolution, unless the reviewing Industry Division otherwise properly approves the advice letter. Comments to this General Rule have become moot in light of the effective date rules adopted in our Third Interim Opinion.

One of the main features of today's decision is to allow certain types of advice letters to become effective upon filing, pending Industry Division disposition.²¹ General Rule 7.5.3, "Advice Letters Effective Pending Disposition," gives more definition to this process by indicating when such advice letters can be amended and when implementation must stop based on Industry Division rejection of the advice letter.

One comment suggests a new provision providing for a stay pending resolution upon a showing of irreparable consumer harm, hazard to public safety, or a risk to system or network reliability. Other comments oppose this recommendation. On a separate issue, several comments oppose having to

²¹ The qualifying types of advice letters are described in the Industry Rules and General Rule 8.2.3, "Emergency Service; Service to Government Agencies."

submit a separate advice letter outlining a remedial plan when correcting actions already undertaken under an earlier advice letter effective pending disposition.

We have not modified the rule. We believe the Industry Divisions have sufficient authority to suspend an advice letter in the case of exigent circumstances. Creating a remedial plan set forth in a separate advice letter is not required in all circumstances but is an appropriate planning document when many or complex corrective actions must be undertaken.

6.9 “Tariffs” (General Rules 8.1 to 8.5.8)

The set of rules addresses the content, format, and publication of tariffs. In our First Interim Opinion, we adopted several of these rules including “Publishing Tariffs” (General Rule 8.1.1), “Internet Publication” (General Rule 8.1.2), “Other Publication” (General Rule 8.1.3), “Consistency With Tariffs” (General Rule 8.2.1), and “Service Options and Alternatives” (General Rule 8.2.2).

Some comments on compiling and publishing tariffs (General Rule 8.1.1) are now moot since most have been addressed in the First Interim Opinion. One comment raised the issue of the cost of maps requested by a ratepayer or member of the public. We believe this issue is adequately addressed in Section 8.5.4 regarding the description of service areas.

In this decision, we adopt the remaining rules in Section 8.

General Rule 8.2.3, “Emergency Service; Service to Government Agencies,” authorizes telecommunications utilities to deviate from existing tariffs, so as to provide free or reduced cost service in times of war or natural disasters. The rule also allows utilities other than telecommunications firms to provide free or reduced cost service to government agencies at any time. Although not raised by the comments, we have added formally recognized Indian tribes to the list of government agencies eligible for free or reduced-cost services.

General Rule 8.3, “Notice to Correct Tariffs,” authorizes an Industry Division to issue a notice to a utility directing it to correct any tariff that violates a statute or Commission order. Several comments argued that the rule is an impermissible delegation of authority to staff. Another comment disagreed with this analysis and supported the rule. A third comment suggested that we provide an impartial appeal in the event of a dispute with staff. We believe the proposed rule presents no impermissible delegation of authority. If the utility disagrees with the notice, the Commission itself must determine whether a tariff is unlawful and, if so, approve any refund or other remedy. Except for minor changes to clarify the meaning, we have not changed the proposed rule except to allow substitute sheets.

General Rule 8.4, “Tariff Format and Sheet Numbering,” sets forth specific requirements for preparing and numbering tariff sheets. Most of these requirements are in existing GO 96-A.

Many comments on the rule pointed to the burden and cost of reformatting existing tariff sheets and suggested that these requirements be imposed prospectively. We believe that the tariff sheet numbering system in the proposed rule (which uses Federal Communications Commission format) will afford many benefits in more easily used tariffs. The proposed rule also allows the Industry Divisions to establish compliance schedules for utilities whose tariffs do not conform to the new requirements. This provision will allow utilities a reasonable period to bring their tariff sheets into compliance.

One comment suggested additional language to the content of the footer of tariff sheets, specifically allowing the utility to enter the effective date and providing the resolution number for a Tier 3 resolution under the Industry Rules.

We reject this suggestion because it is inconsistent with existing practices of the Industry Divisions.

One comment suggested that the Industry Divisions be authorized to allow a font size smaller than 10 point if appropriate for the information presented. We adhere to the minimum 10 point requirement since we believe this size helps ensure the readability of tariffs. Similarly, the comment suggested that handwritten text or marks should be allowed in some circumstances. With the availability of sophisticated computer-based graphics programs, we do not believe handwritten text or marks are necessary or desirable.

In comments on the Energy Industry Rules, one entity recommended specific authorization for energy companies, in satisfaction of this rule, to file tariffs in a Federal Energy Regulatory Commission (FERC) format. Rather than modify just the Energy Industry Rules to incorporate this suggestion, a more general change has been made to the last sentence of General Rule 8.4 allowing the Industry Divisions to allow such variances. We do not believe the General or Industry Rules need be burdened with the detailed differences in federal agency and Commission tariff format and numbering requirements.

General Rule 8.5.1, "Title Page," specifies the content of the tariff title page. One comment urged that the title page should identify the utility by the name shown on its Certificate of Public Convenience and Necessity. While such identification would be legally correct, the CPCN name may be so different from the names under which the utility commonly does business as to be misleading to customers and ratepayers. We believe the most commonly used business name also should be used, and we have changed the rule to require both.

General Rule 8.5.2, "Table of Contents," describes the required table of contents and check sheet at the beginning of each volume of a utility's tariffs.

Some comments said “volume” was unclear, but the concept was used in GO 96-A and refers to a group of tariff sheets bound or attached together for the convenience of the user. Other comments were that the check sheet would duplicate the table of contents and would be unnecessary with automated tariff update systems. We have modified the rule to require up-to-date check sheets only for tariffs that are not continuously and reliably updated by an automated system.

General Rule 8.5.3, “Preliminary Statement and Explanation of Symbols,” describes the preliminary statement used in tariffs and the symbols used to indicate types of changes in tariffs. One comment said that, if memorandum accounts are not authorized, they should not be listed in the preliminary statement; accordingly, a slight wording change has been made. Another comment urged that utilities be allowed more flexibility in determining where technical terms should be defined. We have decided to delete the definition requirement here because General Rule 8.5.7(1) requires that utilities define the terms used in their tariffs. Otherwise, the text, drawn from GO 96-A and reflecting current practice, received no comment.

General Rule 8.5.4, “Service Area,” requires the utility to provide a verbal description and map of its service area, unless the service area is state-wide. Several comments objected to the requirement of making maps and legal descriptions of the service area available on the utility’s web site.

We retain the requirements because reasonably detailed service area information is important for informing existing and potential customers and Industry Division staff about the geographic extent of the utility’s operations. The rule does not require legal or GIS descriptions if maps or verbal descriptions are sufficient for identifying service area boundaries (however, the Water

Industry Rules do impose such requirements; *see* Section 8.8). As specified in our First Interim Opinion, only utilities with gross intrastate revenues in excess of \$10 million are required to maintain this information on web sites. We believe that larger utilities will be able to adapt Internet-based mapping software, which is already being used for many business purposes, to meet this requirement. We have, however, modified the rule to allow adequate maps to substitute for a verbal description. We also provide for a transitional period.

Another comment was that the listing of zip codes to describe a utility's service area does not make sense in the case of oil pipeline companies not typically serving residents. The rule uses zip codes only as an example of a "reasonable means" to describe a service area. We have not changed this portion of the rule.

General Rule 8.5.5, "Rate Schedules," requiring utilities to set forth a schedule of their rates in tariffs, received no comment. The rule has not been changed.

General Rule 8.5.6, "List of Contracts and Other Deviations," requires a utility to compile and publish in its tariff a list of all contracts and other deviations under which it provides service or rates different from those described in its tariffs. A comment questioned how this requirement relates to the tier processing and review procedure described in some of the Industry Rules. The Industry Rules provide more specific requirements for those entities falling under those rules.

General Rule 8.5.7, "Tariff Rules," requires a utility to state those rules regarding its rates, charges, and services that are not otherwise set forth in the tariff rate schedule. These tariff rules, in fact, constitute many of the most important and broadly applicable provisions under which a utility serves its

customers, e.g., applying for service or establishing credit, methods for serving notices, treatment of disputed bills, and discontinuance and restoration of service. No specific comment on General Rule 8.5.7 was received, but one comment broadly urged us to require utilities to improve the clarity of their tariffs. While some tariffs may require highly technical language, we believe that the tariff rules specified in General Rule 8.5.7 must be written in clear and readily understandable English. We have revised General Rule 8.5.7 to include this requirement.

General Rule 8.5.8, “Sample Forms,” requires the utility to include in its tariffs those commonly used forms of concern to customers in connection with the utility’s service. One comment said that the rule is unnecessary since most utility-customer transactions occur on the phone. We believe, however, that sample forms reproduced in the tariff provide customers with more information about the details of their transactions with the utility – even if they ultimately use the telephone to conduct the transaction. Also, to the extent a signature is required on a form, it is convenient for the customer to be able to print out forms from the utility’s website.

6.10 “Confidential Treatment” (General Rule 9)

Section 9 and its subdivisions have been substantially amended since the issuance of the 2001 Draft Decision. Since then, the Commission has adopted GO 167, Enforcement of Maintenance and Operation Standards for Electric Generating Facilities (*see* D.04-05-018, adopted May 6, 2004). Sections 10.2 and 15.4 of GO 167 provide the most recent comprehensive statement of the Commission’s confidentiality policies, adopted pursuant to Pub. Util. Code § 583 for information provided to the Commission. The reasons for the GO’s provisions are discussed at pages 38-40 of D.04-05-018. As explained in Section 9

of this decision, the confidentiality provisions have been amended to provide a procedural rule with reliance on Section 583, General Order 66-C (or its successor), and other decisions and statutes for substantive law.

Since GO 167, the Commission has also adopted an Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission (*see* D.06-06-066, adopted June 29, 2006, in Rulemaking (R.) 05-06-040). This interim decision prescribes confidentiality treatment for electric procurement, resource adequacy, and Renewables Portfolio Standard data. As with other superseding statutes or Commission decisions, specific provisions of GO 167 may supersede the confidentiality provisions of GO 96-B in the context of operating and maintaining electric generating facilities and provisions of D.06-06-066 may supersede the confidentiality provisions of GO 96-B in the context of electric procurement and related data.

7. Response to Comments on Energy Industry Rules

In response to the 2001 Draft Decision of the Assigned ALJ, many parties submitted specific comments on the proposed Industry Rules (Energy, Telecommunications, and Water). This section summarizes the comments on the Energy Industry Rules, where changes to the Energy Industry Rules have been made in response to comments, and explains why other comments have not been followed. Section 8.0 provides similar information for the comments made on the Water Industry Rules. Since the Telecommunications Industry Rules are not being adopted at this time, comments on those earlier rules are not reviewed. For all Industry Rules, we have decided to delete sample tariff and advice letter forms and require the Industry Divisions to make such forms available in other ways, such as on the Commission's website.

We have added a definition for “Load Serving Entity,” Energy Industry Rule 1.3, and added a rule describing the compliance filings made by these entities under Pub. Util. Code § 380 (see Energy Industry Rule 9).

The Energy Industry Rules received relatively little comment. There was no comment on the Energy Industry Rule 1, “Additional Definitions,” or Energy Industry Rule 2, “Submitting a Document.”

7.1 “Serving Advice Letters” (Energy Industry Rule 3)

Several comments indicated that requiring the service of advice letters on all potentially affected customers could be costly. We have modified the rule to indicate that a notice of the advice letter may be served if it summarizes the major provisions and indicates where a complete copy may be accessed or requested. General Rule 4.2 describes how notice can be given to customers, including bill inserts. We anticipate that most utilities will be able to refer affected customers, either by printed notice or an e-mail with a link, to the complete advice letter and proposed tariff sheets on the utilities’ web sites.

Also, one comment recommended that the rule not require service of the advice letter on “other providers that may compete within the area to be served” since it is difficult for a utility to ascertain who is likely to compete. We have modified the rule to require service of the advice letter only on those other utilities that are actually providing service in the area to be served by the utility filing the advice letter.

7.2 “Numbering Advice Letters” (Energy Industry Rule 4)

One comment recommended specific authorization for energy companies, in satisfaction of this rule, to file tariffs in a FERC format. We agree, but we have modified General Rule 8.4 to allow a utility (with the Industry Division’s

authorization) to file and number tariff sheets prepared using a federal tariff format or sheet numbering system.

**7.3 “Matters Appropriate to Tier 1 (Effective Pending Disposition)”
(Energy Industry Rule 5.1)**

One comment suggested that withdrawing a service, canceling a schedule, or closing a schedule to new customers should be allowed under Tier 1, rather than Tier 3, if the action is pursuant to a prior Commission decision or resolution. We agree with this suggestion, and accordingly modify both Energy Industry Rules 5.1 and 5.3 (item 6).

**7.4 “Matters Appropriate to Tier 2 (Effective After Staff Approval)”
(Energy Industry Rule 5.2)**

One comment indicated that the rules should clarify that the first use of a newly approved methodology, such as performance-based ratemaking, will be designated as a Tier 2 item. We do not change the rule because Energy Industry Rule 5.2 specifically says that such a subject is not appropriate for Tier 2 consideration (item 1). For performance-based ratemaking, see item 9 under Energy Industry Rule 5.3.

7.5 “Internet Publication” (Energy Industry Rule 6.1)

Several comments suggested a discrepancy between General Rule 8.1.2, already adopted, and this Industry Rule. Under Energy Industry Rule 6.1, the concern is that energy utilities will be required to maintain no longer effective tariffs on their web sites. Because Energy Industry Rule 6.1 applies only to those larger utilities that must maintain a web site under General Rule 8.1.2, we believe that the requirement of maintaining expired tariffs on the web site is not unduly burdensome and provides customers with useful information about how rates and conditions of service have changed over time.

Another comment asked for clarification that the publication of an advice letter attaching the proposed tariff sheets satisfies the requirement of publishing “within five business days each new tariff sheet that it [the utility] submits for review and disposition.” We have amended the rule to make this clarification.

7.6 “Service Area” (Energy Industry Rule 6.2)

As originally drafted, this rule required the use of zip codes to provide a narrative description of a utility’s service area. One comment said this requirement does not make sense for some utilities, such as pipelines. We agree and have eliminated this requirement. Utilities, however, must adhere to the requirements of General Rule 8.5.4 to use “reasonable means for precisely specifying the boundaries of the service area.”

7.7 “Tariff Rules” (Energy Industry Rule 6.4)

One comment said in the case of oil pipelines, the inclusion of the specifically mentioned tariff rules is either duplicative of other tariff language or unnecessary based on the unique nature of the oil pipeline industry. Another comment indicated that tariff rules are often governed by utility-specific Commission requirements. We agree and have modified the rule to address both concerns.

7.8 “Sample Forms”

Several comments were made on the sample forms, which generally illustrate the desired format and content. Some utilities may have unique circumstances justifying some variation or modification of these forms. These needs should be raised with the Energy Division.

8. Water Industry Rules

We have modified the prior versions of these rules to extend Tier 1 treatment for several types of advice letters that appear suitable for review under

Tier 1. Extending Tier 1 to the water industry responds directly to our December 2005 Water Action Plan. The extension also means that both the water and energy divisions will be implementing the Tier 1 concept.

In these rules, we have not authorized an informal general rate case by advice letter (see Water Industry Rule 1.7), but such a procedure is under discussion as the Commission revises its Rate Case Plan for Class A water utilities. If such a procedure is adopted, the Water Industry Rule will be modified.

Other changes are relatively minor and are intended to make these rules easier to use and understand. For example, the terminology and structures now track the General Rules more closely, and there are many more cross-references to the General Rules and, as appropriate, the Commission's Rules of Practice and Procedure and the Public Utilities Code.

Substantively, the new version of the Water Industry Rules clarifies the use of advice letters in two common situations, namely, service extensions into "contiguous" areas, and amortization of under- or over-collections in balancing accounts. Notable among the latter clarifications is that, in making refunds from an over-collected account, a utility will apply a surcredit only to the service charge, thus enabling greater precision in refund calculations and avoiding the disincentive to conserve water that occurs when a surcredit applies to usage. Also, customer notice provisions are clarified, and large (Class A) water utilities are required to publish pending advice letters on their Internet sites.

The California Water Association (CWA), which is a trade association of investor-owned, Commission-regulated water utilities, is the sole commenter on the Water Industry Rules. We have accepted many of CWA's recommendations,

notably, the extension of Tier 1 treatment to a large group of water advice letters. We respond below to other CWA comments on the Water Industry Rules.

8.1 “Contracts” (Water Industry Rule 1.5)

Regarding Rule 1.5, defining “Contract,” CWA would refer to customers or potential customers rather than developer or customer to delimit the persons with whom the utility enters into contracts. However, we will retain the rule as written, which reflects current practice. For example, main extension contracts now distinguish between developers and customers.

8.2 “Memorandum Account” (Water Industry Rule 1.8)

Regarding Rule 1.8, defining “Memorandum Account,” CWA quotes from a Commission resolution, which we believe clarifies the definition. With language added from the resolution, the definition will read:

A deferred charge or credit account that, as described in the Utility’s preliminary statement (see General Rule 8.5.3) has been authorized by the Commission; however, deferred charges or credits shown in the Memorandum Account may be recovered in rates only after a request by the Utility, a showing of their reasonableness, and approval by the Commission.

8.3 “Other Required Notice” (Water Industry Rule 3.3)

Regarding Rule 3.2, “Other Required Notice,” CWA commented that not all Class A water utilities had Internet sites. Since CWA filed its comments, our requirements for Internet publication of utility tariffs (including those of large water utilities) have become effective. (See D.01-07-026.) Thus, there is no longer any impediment to water utilities using their Internet sites to publish notices and advice letters pursuant to this rule. CWA’s comment is moot.

8.4 “Service Area Extension or Transfer of Ownership” (Water Industry Rule 4.2) and “Withdrawal or Withholding of Service” (Water Industry Rule 4.4)

Rules 4.2 and 4.4 contain requirements specific to serving advice letters relating to a proposed service area extension (Rule 4.2) or withdrawal or withholding of service (Rule 4.4); these requirements are incremental to the generic requirements set forth in Rule 4.1 for all water advice letters. CWA recommends deleting Rules 4.2 and 4.4 and addressing them as needed in Standard Practices. However, we will retain Rules 4.2 and 4.4 as written. Proposals to extend service areas or to withdraw or withhold service, if approved, may significantly affect owners of real property in the subject area. Thus, we find reasonable a requirement to serve these owners with advice letters making these proposals. Also, Rule 4.2 requires that an advice letter for service area extension be served on the Local Agency Formation Commission for each county in which service will be extended, as well as each local fire protection agency and subdivision-permitting agency within the subject area. This requirement is consistent with our policy in the Water Action Plan to promote better coordination with local planning efforts.

8.5 “Tier Classifications for Advice Letters” (Water Industry Rule 7.3)

The rules in this section identify the appropriate tier for water-related advice letters.

Regarding acquisition of a mutual or municipal water company, we agree with CWA that approval of post-acquisition rates is appropriately delegated to staff (*see* D.99-10-064). We will include this type of advice letter in Tier 2.

We also agree with CWA’s proposal for advice letters related to non-tariffed investments by a water utility. In D.00-07-018, we created a procedure whereby a utility could establish new non-tariffed business activities and also could re-categorize as an “active” activity one that was currently

categorized as “passive.” CWA recommends that establishment or re-categorization be subject to approval by Commission resolution. We will add this to our list of Tier 3 advice letters.

CWA would like rate base offsets to be included among the ministerial (Tier 2) advice letters, instead of Tier 3 advice letters requiring Commission review and disposition. We believe Tier 3 is the right place for these advice letters. Our experience shows that the requirement of prior Commission approval for a Class A water utility to file a rate base offset does not moot concerns over timing, size, and complexity that frequently arise after project completion. Commission review by way of Tier 3 advice letters enables an appropriate degree of scrutiny.

8.6 “Advice Letter Supplements” (Water Industry Rule 6)

Rule 6 requires advice letter changes to be made by “supplements” served on all parties. CWA would like to continue to use “slip sheets,” which traditionally were not served on all parties, to make what the utility deems to be minor non-substantive changes. Given modern communication technology, we believe strongly that everyone involved in the process should have the correct version of the utility’s advice letter. Overwhelmingly, people are accepting service by e-mail, so the incremental burden on the utility of serving corrections (whether they are termed supplements or slip sheets) is modest. We will retain the rule.

8.7 “Service Extension into Contiguous or Other Area” (Water Industry Rule 8.1)

Regarding Rule 8.1, “Service Extension into Contiguous or Other Area,” we have modified the rule as suggested by CWA such that the acquiring utility

need not already have an adequate supply to serve the area, provided the utility can show it has a plan to develop such a supply.

8.8 “Expense Offset” (Water Industry Rule 8.4) & “Balancing Account Offset” Water Industry Rule 8.5)

CWA recommends deleting Rules 8.4 and 8.5, which set forth criteria for filing expense and balancing account offsets. We disagree. These are among the most important and most frequent subjects for water advice letters, and we have made both types of offset subject to staff disposition. Under these circumstances, clarity on how and when such advice letters should be used will benefit everyone. We will retain these rules with some modifications as noted in Section 9 of this Decision.

8.9 “Service Area Maps” (Water Industry Rule 10)

A new rule has been added to require water utilities to prepare digital maps of their service areas. A common geographic information system format is specified, and the Water Division will provide detailed specifications and adopt a compliance schedule so that all water utilities have submitted digital maps to the Water Division and the appropriate Local Agency Formation Commission (LAFCO) no later than December 31, 2008. This requirement is adopted to assist both the Commission and the LAFCOs in providing efficient utility services to the public.

9. Comments on Proposed Decision

The proposed decision of President Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2 of the Rules of Practice and Procedure. Opening Comments were filed on January 9, 2007, by certain Energy Utilities (Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, San

Diego Gas and Electric Company, and Southwest Gas Corporation); certain Telecommunication Carriers (Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Forest Hill Telephone Company, Global Valley Networks, Inc., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company); Cox California Telcom LLC; Verizon California, Inc., and AT&T California; and the California Water Association (CWA). Reply comments were filed on January 16, 2007, by the Commission's Division of Ratepayer Advocates (DRA) and Surewest Telephone.

9.1 Status of Telecommunications Utilities

All the commenting telecommunications utilities pointed to the uncertainties resulting from the Commission's recent Uniform Regulatory Framework decision (D.06-08-030) and ongoing proceedings in that docket (R.05-04-005). The Telecommunications Carriers, consisting of small local exchange carriers (LECs), commented that they remain rate-regulated carriers and, unless Telecommunications Industry Rules are adopted by July 1st, they face uncertainty about advice letter procedures. Cox California, Verizon California, and AT&T California all urge that the tier system not apply to telecommunications companies until industry-specific rules are adopted in coordination with the ongoing proceedings in R.05-04-005.

The Commission is always at work changing and refining its regulatory policies in all industries under its jurisdiction, and these industries are themselves continually in flux as the result of economic, social, and technical factors. It will never be possible to hold an industry static while a

comprehensive General Order 96-B is adopted. We seek, therefore, to harmonize this General Order with existing Commission policies and provide opportunities for needed modifications during implementation.

In addressing various comments about perceived inconsistencies with the Uniform Regulatory Framework, the proposed General Rules already provide two “savings” provisions that can be relied upon telecommunications carriers to transition to the new Uniform Regulatory Framework envisioned by the Commission. General Rule 7.3.1, concerning the effective date of advice letters provides:

If a statute, Industry Rule, or other Commission order specifically authorizes an advice letter to go into effect on a date different from that otherwise provided by these General Rules, the advice letter shall go into effect on any date (as designated by the utility in the advice letter) that is consistent with the authorization.

Similarly, General Rule 8.1, concerning tariffs, provides in part,

These requirements shall apply except where and to the extent that, by statute, or Commission order, compliance is expressly excused for the specific utility or type of utility, or for the specific services offered by the utility or type of utility.

These sections allow specific authorizations set forth in Uniform Regulatory Framework to supersede otherwise applicable requirements in General Order 96-B. It is incumbent on telecommunications carriers to identify General Order requirements they believe are superseded by the Uniform Regulatory Framework or other decisions or statutes.

In response to the small local exchange carriers, which remain rate-regulated, we anticipate that Telecommunications Industry Rules will be in place by the overall effective date of General Order 96-B. To assist the drafting of these rules in the context of the Uniform Regulatory Framework and other

developments in R.05-04-005, we invite these carriers, as well as other interested persons, to propose within 30 days of the mailing of this decision, what subjects they believe should be listed under each of the three tiers envisioned for the Telecommunications Industry Rules. The ordering paragraphs of this decision have been modified to allow the filing of these comments.

9.2 Grace Period for Filings Under Tier Structure

The Energy Utilities request a five-day grace period to allow utilities to become experienced with the tier structure for advice letter. We appreciate the need for utilities and staff to become more familiar with the workings of these rules. This need is already addressed by the delayed effective date for the General Order, allowing an opportunity for workshops on these topics. We are also confident that our Industry Divisions and utilities will work constructively to improve understanding and resolve difficulties during the implementation of the General and Industry Rules. We conclude, however, that the formal adoption of a five-day grace period would complicate the various effective date scenarios available under the new rules.

9.3 Effective Date

Cox Communications comments on a perceived inconsistency concerning the effective date when an advice letter, otherwise eligible for immediate effect (General Rule 7.3.3), is submitted with the request that it be subject to Industry Division disposition (General Rule 7.3.4). This is not an exception that “swallows the rule,” as state in the comment, but an optional procedure available to a utility that desires the certainty of an Industry Division decision before embarking on the course of conduct outlined in the advice letter. Any conflicts between the suspension periods for advice letters and the Uniform Regulatory have been discussed under “Status of Telecommunications Utilities,” *supra*.

9.4 Tariff Sheet Numbering

The Energy Utilities comment on the problems of shifting to a new tariff sheet numbering system (see General Rule 8.4). We originally proposed to adopt the Federal Communications Commission's (FCC's) tariff sheet numbering system. New utilities would have to use that system, and existing utilities not already using that system would have a transition period within which to comply. We still prefer the FCC numbering system because we find it greatly simplifies the process of locating revised tariffs, particularly compared to the labyrinthine tariff books of many energy utilities. However, we have decided to modify the proposal. As the principal medium of tariff storage and retrieval changes from paper to electronic files, we are reluctant to impose potentially high costs on utilities to refine a paper system that may shortly be abandoned altogether.

While we do not require existing utilities to convert to the preferred numbering system, we impose on all utilities the obligation to maintain their entire historic tariff record, and in that regard to respond promptly to inquiries regarding their tariffs no longer in effect. Ideally, the historic tariffs, like the current tariffs of most utilities, would be available on-line in a searchable database. Absent such a database of historic tariffs, utilities should provide copies of the requested tariffs within a reasonable time, which would depend on the scope of the request.

9.5 Notice Requirements

The Energy Utilities suggest the deletion of General Rule 4.2 because, if we understand the comment, the rule creates the risk of a duplicative notice requirement. We agree with the Energy Utilities' general interpretation that, if the Commission has previously authorized a rate change (e.g., in a general rate

case decision where notice has previously been given to ratepayers and others), there is no requirement to give additional notice (unless specifically required by statute or separate Commission order) when the advice letter effectuating the rate change is filed. Because there are instances where rates and terms and conditions of service may be proposed initially by advice letter, we retain the rule. We also rejected the Electric Utilities' related suggestion to delete subsections (4) and (5) of Energy Industry Rule 3.

9.6 Notices to Correct Tariffs

The Energy Utilities suggest an improvement to General Rule 8.3, concerning the correction of tariff sheets. We agree that the submission of a substitute appropriate sheet may be more expeditious in some circumstances, and we have modified the rule to allow it.

9.7 Penalties and Sanctions

The Energy Utilities and CWA oppose the potential imposition of fines and other sanctions for the failure to submit timely reports or required revisions. (See, e.g., General Rule 6.2 & 7.5.3.) Our Industry Divisions are available to help regulated entities in timely and complete filing of required reports and other documents. In appropriate circumstances, the Commission may use its authority under the Public Utilities Code to address noncompliance with its orders, decisions, or other requirements. (See, e.g., Public Utilities Code Section 2107.) We believe it is useful to bring these consequences to the attention of regulated entities that may not be familiar with these statutory provisions.

9.8 Confidentiality

Several of the comments express concern that the confidentiality procedures set forth in General Rule 9.0 either duplicate or divert from Public Utilities Code Section 583; General Order 66-C, which addresses confidentiality;

or industry-specific decisions on confidentiality. The Energy Utilities urge various changes to General Rule 9.0. The Telecommunications commenters urge wholesale deletion of the rule and reliance on Section 583, General Order 66-C, and specific Commission decisions.

We recognize that General Order 66-C is likely to be updated in Phase II of R.05-06-040, an ongoing Order Instituting Investigation addressing confidentiality. In response to comments, we have decided to modify General Rule 9.0 to create a procedural rule describing the unique steps necessary to assert and address confidentiality claims in the advice letter context. Accordingly, we have chosen to rely on state law, General Order 66-C (or its successor), specific Commission decisions, and other legal sources for the substantive basis for confidentiality claims. We have also adopted other comments concerning cross-references to existing protective orders, the ALJ Division's resolution of confidentiality disputes, and other minor provisions. We see no basis for wholesale exemption of an industry, such as telecommunications, from these confidentiality procedures. Concerns about confidential contract provisions can be addressed under General Rule 9.0 and General Order 66-C. Indeed, our confidentiality provisions strike a balance between the public's right to know of information coming into this agency's possession and the interests of utilities and other persons in certain information not being made public.

California Water Association also expresses its concern about public access to certain types of information – only filings made under General Rule 6.1. Under General Order 66-C, confidentiality may be claimed for eligible documents, and CWA and others will have an opportunity to comment on any future proposal to access information – only filings on the Internet, which is a subject not before us in this proceeding.

9.9 Governmental Agency Contract Procedures

Regarding General Rule 8.2.3, "Emergency Service; Service to Government Agencies," several comments discussed the additional work for all involved if all government contracts must be approved by Commission resolution. The intent of the proposed rule was not to require a resolution approving all such governmental contracts, and language in the second paragraph of the rule has been amended to indicate that such contracts may be effective pending disposition under General Rules 7.3.3 and 7.5.3. However, as indicated by General Rule 7.3.3, "If an advice letter is effective pending disposition, all services rendered pursuant to the advice letter before disposition will be subject to a Commission order requiring refunds or such other or additional adjustments as the Commission may require."

Another comment on General Rule 8.2.3 was why telecommunications utilities are not eligible to provide service to government agencies for free or for reduced cost. This language results from a settlement adopted by the Commission in D.88-08-059, 1988 Cal. PUC LEXIS 641; 29 CPUC2d 376 (1988). In the remaining phase of this proceeding, parties may argue that this General Rule should be modified as the result of superseding Commission decisions concerning the telecommunications industry.

9.10 Other General Rules Changes

We have made other minor changes in the General Rules:

- General Rules 5.4, "Cover Sheet," and 5.5, "Form and Content," have been moved and renumbered as General Rules 4.6 and 4.7, respectively. These rules are more appropriately placed in Section 4.
- In General Rule 8.4, "Tariff Format and Sheet Numbering," we have replaced the "CIS number" with the "U" number for the

utility. (See also minor change to General Rule 8.5.1 to incorporate this correction.)

- In General Rule 8.5.3, "Preliminary Statement and Explanation of Symbol," we have deleted the definition requirement because General Rule 8.5.7(a) already requires that utilities define the terms used in their tariffs (see also page 36-37).

9.11 Comments on Water Industry Rules

In specific comments on the Water Industry Rules, CWA objects to the definitions of "balancing accounts," which are approved by the Commission for recovery or refund, and "memorandum accounts," which may be recovered only after Commission approval. CWA also opposes the listing of memorandum account approval as a Tier 3 item. We have not changed the definitions, the Tier 3 designation, or other related suggestions since we believe these different concepts provide useful flexibility at the Commission. For instance, some formal proceedings may be resolved if there is a deferral of an issue to a later date by allowing the posting of certain expenditures to a memorandum account for future Commission consideration. The Commission's historic practice is that memorandum accounts must be approved for recovery by the Commission. We have substituted "balancing account amortization" for "balancing account offset" in Water Industry Rule 7.3.1 since the former term is more appropriately used in this context (see also change to Water Industry Rule 8.5).

CWA also opposes the current version of Water Industry Rule 8.5 for the reason that the text would modify existing balancing account practices for Class A water utilities as recently set forth in D.06-04-037. DRA responds that Class A utilities undergo a general rate case plan every three years, pursuant to the general rate case plan, and that D.06-04-037 recognizes such general rate proceedings as the appropriate time to amortize under- or over-collections in

these accounts. In DRA's view, proposed Water Industry Rule 8.5 and D.06-04-037 are consistent. We concur in this interpretation of the two provisions, and we have not changed the rule except to describe it as "balancing account amortization."

CWA does not object to the definition of "standard practice" in Water Industry Rule 1.10 but it comments that the use of "procedural guidelines" in the definition raises concerns about the binding nature of the Water Division's standard practices, which are designed to provide guidance on many topics of concern to water utilities. We do not believe this is the appropriate proceeding to address the legal stature of the Water Division's series of standard practices as we prefer such questions to be raised in an actual controversy.

In response to other CWA comments and in explanation of other changes:

- We agree with CWA that the Weather Normalized Means test and U-27-W, as defined in Water Industry Rule 1.12, should be removed from the Water Industry Rules since this test has been imposed only in specific cases.
- We have added minor change to Water Industry Rule R 3.1 to require the utility to provide, in the notice of an advice letter pending approval, the Uniform Resource Locator (URL) locating the advice letter on the utility's Interest site.
- CWA opposes the requirement of notifying LAFCOs of transfer of ownership filings. In furtherance of our cooperation with other governmental agencies, we believe that transfer of ownership information will provide LAFCOs with contact information that may be important as these agencies seek to improve planning, fire protection, and other local governmental services. We also believe that sufficient information can be obtained from county recorder and assessor offices to ascertain real property ownership for purposes of complying with the rule. We do not change the rule.

- The last sentence of Water Industry Rule 7.1 has been deleted since it does not pertain to the initial review of advice letters.
- In Water Industry Rule 7.3.1, we have renamed “step-rate filing” as “escalation” and moved it to a Tier 1 item.
- In Water Industry Rule 7.3.2, we have eliminated “attrition filing” as a Tier 2 item since both attrition filings and step-rate filings are subsumed under the concept of “escalation.”
- In Water Industry Rule 9.1, we agree with CWA’s recommendation of using the term “published.” We do not consider the list of tariff schedules to be comprehensive, but we have added “other water or sewer services” to the list. However, we encourage water utilities to use appropriately named tariff schedules to cover the general water or sewer services they provide.
- CWA also questions the inclusion of Tariff Rule 21 (which includes fire protection service) in Water Industry Rule 9.2. Requiring the tariff does not mean the water utility must offer the service. The tariff can be reserved for possible future use in appropriate circumstances.
- CWA expresses concern about the deadlines for water utilities to comply with the requirement set forth in Water Industry Rule 10 for preparing digital maps of their service areas. CWA indicates that many water utilities may not have the expertise for preparing such maps. CWA’s concern is addressed in General Rule 8.5.4, which instructs the Industry Divisions to establish compliance schedules for those utilities that do not have maps when the rules become effective on July 1, 2007.

10. Assignment of Proceeding

This proceeding is assigned to President Michael R. Peevey and ALJs Steven Kotz and John E. Thorson.

Findings of Fact

1. Our First Interim Decision, D.01-07-026 (July 12, 2001), adopted revisions to GO 96-A chiefly concerned with (1) use of the Internet to publish tariffs, and

(2) representations made by a utility (in advertising or otherwise) regarding any tariffed service of that utility.

2. Our Second Interim Decision, D.02-01-038 (January 9, 2002), concerned the notice that a telecommunications utility must provide its affected customers when that utility proposes a rate increase, a withdrawal of service, or certain kinds of transfers.

3. Our Third Interim Decision, D.05-01-032 (January 13, 2005), adopted comprehensive rules regarding advice letter contents and the review and disposition of advice letters.

4. Today's decision integrates the General Rules previously adopted with the rest of the General Rules. Building upon the February 14, 2001, Draft Decision and comments on that decision, today's decision also adopts Industry Rules where our practices differentiate between energy and water utilities. This decision codifies these sets of rules into GO 96-B.

5. We have drafted GO 96-B with reference to the policy initiatives set forth in our most recent "action plans" for energy and water (October and December 2005, respectively), and various reports and ongoing rulemakings for telecommunications.

6. Because we are actively modifying the regulatory structure of the telecommunications industry (see D.06-08-030), we will publish revised Telecommunications Industry Rules at a latter date to reflect our new Uniform Regulatory Framework.

7. We project that the number and kinds of authorizations requested of the Commission will remain high or will actually increase, even in industries, such as the telecommunications industry, for which regulation is in many respects becoming more light-handed.

8. By carefully defining, clarifying, and streamlining the advice letter process, we ensure optimal use of that process, which is much shorter and much less labor-intensive than formal applications.

9. In devising our timelines for advice letter review, we have relied chiefly on Pub. Util. Code § 455.

10. While Section 455 allows up to 330 days (including initial review and periods of suspension) for disposition of an advice letter, review of most advice letters under GO 96-B will consume much less time.

11. The review of most advice letters under GO 96-B will be more expeditious because we expressly delegate authority to the Industry Divisions to handle the review and disposition of many kinds of advice letters, allow certain noncontroversial advice letters to be immediately effective pending disposition, and limit the length of time for which the tariff change may be suspended.

12. GO 96-B separates advice letters into two broad groups: advice letters disposed of by staff, where approval or rejection is ministerial; and advice letters disposed of by Commission resolution, where approval or rejection requires the exercise of discretion.

13. Advice letters submitted for staff disposition are divided between those that are “effective pending disposition,” i.e., they may be implemented before approval (Tier 1), and those that are effective, and may only be implemented, on or after approval (Tier 2). Advice letters requiring a Commission resolution go to “Tier 3” under all of the Industry Rules.

14. The tier under which a utility submits an advice letter does not irrevocably dictate the mode of disposition of that advice letter. If the utility has designated for disposition by staff an advice letter that, under the applicable Industry Rules,

belongs in the tier for advice letters to be resolved by the Commission, GO 96-B authorizes staff to reject the advice letter on that basis.

15. The Energy Industry Rules and Water Industry Rules provide more detailed requirements for advice letters and tariffs in those industries.

Conclusions of Law

1. GO 96-B is broadly consistent with policy initiatives set forth in our most recent “action plans” for energy and water (October and December 2005, respectively), and various reports and ongoing rulemakings for telecommunications.

2. The General Rules and Industry Rules adopted in our earlier decisions (D.01-07-026, D.02-01-038, and D.05-01-032) and today’s decision should be codified and known prospectively as GO 96-B.

3. Today’s order should be made effective immediately, and GO 96-B, consisting of the General Rules set forth in Appendix A and the Industry Rules set forth in Appendices B and C, should be made applicable to all advice letters submitted on July 1, 2007, or thereafter.

4. Advice letters submitted before June 30, 2007, should be reviewed under GO 96-A, as modified by our First, Second, and Third Interim Decisions.

FOURTH INTERIM ORDER

IT IS ORDERED that:

1. General Order (GO) 96-B, consisting of the General Rules set forth in Appendix A and the Industry Rules set forth in Appendices B and C, is adopted, effective July 1, 2007. GO 96-B shall govern the review and disposition of advice letters submitted on or after its effective date.

2. Except for provisions of GO 96-A previously superseded by our adoption of the First, Second, and Third Interim Decisions (Decision (D.) 01-07-026, D.02-01-038, and D.05-01-032), GO 96-A shall continue to govern the review and disposition of any advice letter submitted on or before June 30, 2007. Any advice letter submitted on or before June 30, 2007, that is unprotested (i.e., no timely protest was filed) and is still pending as of June 30, 2007, shall be automatically approved as of that date unless, on or before that date, the reviewing Industry Division either has (1) placed on the Commission's agenda a draft resolution disposing of the advice letter, or (2) made an unanswered data request or otherwise given written notice to the utility that its advice letter is undergoing active review.

3. The Industry Divisions will make available, on the Commission's website and through other public means, up-to-date sample advice letter and tariff forms.

4. The Executive Director will publish GO 96-B on the Commission's web site and otherwise make it readily available to utilities and interested persons.

5. This proceeding remains open for the adoption of Telecommunications Industry Rules.

6. Within 30 days of the mailing of this decision, telecommunications utilities and other interested persons may file comments in Rulemaking 05-04-005

identifying what subjects they believe should be listed under each of the three tiers anticipated for the proposed Telecommunications Industry Rules. Reply comments may be filed within 15 days thereafter.

This order is effective today.

Dated January 25, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners

Attachment I:

**Current Version of General Rules Showing Provisions
Set Forth in February 14, 2001 Draft Decision and
Provisions Adopted in First (1st), Second (2nd), and Third (3rd)
Interim Decisions**

This	Section	2001	1 st	2 nd	3 rd
1	Overview of the General Order	1			
1.1	Structure; Purpose; Applicability	1.1			
1.2	Utilities Operating in Different Utility Industries	1.2			
1.3	Construction; Waiver or Variance	1.3			
1.4	Amendments	1.4			
1.5	Computation of Time	1.5			1.2
2	Code of Ethics	2			1.1
3	Definitions	3			
3.1	Advice Letter	3.1			1
3.2	Daily Calendar; Date of Filing	3.2			
3.3	Day; Business Day	3.3			1.2
3.4	Deviation	3.4			
3.5	Disposition	3.5			
3.6	Effective Pending Disposition	3.6			
3.7	Formal; Informal	3.7			
3.8	Industry Division	3.8			1
3.9	Information-only Filing	3.9			1
3.10	Person	3.10			
3.11	Protest	3.11			4.1
3.12	Reply	3.12			
3.13	Response	3.13			4.1a
3.14	Service	3.14			
3.15	Tariffs	3.15			
3.16	Utility	3.16	1		
4	Notice, Access, and Filing Procedures Generally	4			
4.1	Commission Policies	4.1			
4.2	Customer Notices	4.2		3b	
4.3	Service Lists	4.3			3.1

4.4	Service by Internet	4.4			3.2
4.5	Filing Format and Procedures; Automatic Extension of Filing Deadlines	4.5			
4.6	[Advice Letter] Cover Sheet	4.6			
4.7	[Advice Letter] Form and Content	4.7			2.1
5	Use of Advice Letters; Filing; Service	5			
5.1	Matters Appropriate to Advice Letters	5.1			
5.2	Matters Appropriate to Formal Proceedings	5.2/ 5.3			
5.3	Withdrawal; Rejection Without Prejudice	5.4			
6	Process for Handling Information-only Filings	6			
6.1	Filing, Access, Service	6.1			
6.2	Review	6.2			
7	Advice Letter Review and Disposition	7			
7.1	Filing Advice Letters and Related Documents	7.1			3.3
7.2	Serving Advice Letters and Related Documents	7.2			3.4
7.3	Effective Date	7.3			
7.3.1	Effective Date Provided by Statute or by Commission Order Other Than This General Order	7.3.1			
7.3.2	Later Effective Date Requested by Utility	7.3.2			
7.3.3	Effective Pending Disposition	7.3.3			
7.3.4	Effective Date of Advice Letter Submitted for Industry Division Disposition	7.3.4			
7.3.5	Effective Date of Advice Letter Submitted for Disposition by Resolution	7.3.5			
7.4	Protests and Responses	7.4			
7.4.1	Filing of Protest	7.4.1			4.1
7.4.2	Grounds for Protest	7.4.2			4.2
7.4.3	Replies	7.4.3			4.3
7.4.4	Late-Filed Protest or Response	7.4.4			4.4
7.5	Review	7.5			4.6
7.5.1	Additional Information; Supplements	7.5.1 7.5.2			4.5

7.5.2	Initial Review Period; Suspension; Status Report				4.6
7.5.3	Advice Letters Effective Pending Disposition	7.5.3			
7.6	Disposition of Advice Letters	7.6			
7.6.1	Industry Division Disposition of Advice Letters	7.6.1			4.7
7.6.2	Disposition by Resolution	7.6.2			4.8
7.7	Review; Application for Rehearing of Resolution	7.7			
7.7.1	Review of Industry Division Disposition	7.7.1			5.1
7.7.2	Application for Rehearing of Resolution	7.7.2			5.2
7.8	Petition for Modification; Request for Extension	7.8			6
8	Tariffs	8			
8.1	Filing, Making Accessible, Revising	8.1			
8.1.1	Publishing Tariffs	8.1.1	2		
8.1.2	Internet Publication	8.1.2	2.1		
8.1.3	Other Publication	8.1.3	2.2		
8.2	Serving Under Tariffs	8.2	3		
8.2.1	Consistency With Tariffs	8.2.1	3		
8.2.2	Service Options and Alternatives	8.2.2	3		
8.2.3	Emergency Service; Service to Government Agencies	8.2.3			
8.3	Notice to Correct Tariffs	8.3			
8.4	Tariff Format and Sheet Numbering	8.4			
8.5	Tariff Contents	8.5			
8.5.1	Title Page	8.5.1			
8.5.2	Table of Contents	8.5.2			
8.5.3	Preliminary Statement and Explanation of Symbols	8.5.3			
8.5.4	Service Area	8.5.4			
8.5.5	Rate Schedules	8.5.5			
8.5.6	List of Contracts and Other Deviations	8.5.6			
8.5.7	Tariff Rules	8.5.7			
8.5.8	Sample Forms	8.5.8			
9	Confidential Treatment	9			
9.1	General Provisions	9			

9.2	Burden of Establishing Confidentiality	9			
9.3	Procedure for Establishing Confidentiality	9			
9.4	Duration of Confidentiality Claim	9			
9.5	Objection to Confidentiality Claim	9			
9.6	Disposition of Confidentiality Claim	9			

Notes:

Shaded text indicates General Rules adopted in this Decision.

a Partially adopted

b Version adopted for telecommunications and made generally applicable by this decision.

(END OF ATTACHMENT I)

Attachment II:

**Indicating Original General Rules,
As Set Forth in Draft Decision (Feb. 14, 2001),
and Provisions Thereof Adopted by First (1st), Second (2nd), and 3rd
Interim Decisions, as Well as Remaining General Rules
to be Adopted in this Decision**

2/14/01		1st	2nd	3d	This
1.	Overview of the General Order				1
1.1	Structure; Purpose; Applicability				1.1
1.2	Utilities Operating in Different Utility Industries				1.2
1.3	Construction; Waiver or Variance				1.3
1.4	Amendments				1.4
1.5	Computation of Time			1.2	1.5
2.	Code of Ethics			1.1	2.
3.	Definitions				3
3.1	Advice Letter			1	3.1
3.2	Daily Calendar; Date of Filing				3.2
3.3	Day; Business Day			1.2	3.3
3.4	Deviation				3.4
3.5	Disposition				3.5
3.6	Effective Pending Disposition				3.6
3.7	Formal; Informal				3.7
3.8	Industry Division			1	3.8
3.9	Information-only Filing			1	3.9
3.10	Person				3.10
3.11	Protest			4.1	3.11
3.12	Reply				3.12
3.13	Response			4.1#	3.13
3.14	Service				3.14
3.15	Tariffs				3.15
3.16	Utility	1			3.16
4.	Notice, Access, and Filing Procedures Generally				4.0
4.1	Commission Policies				4.1
4.2	Customer Notices		2, 3*		4.2

4.3	Maintaining Advice Letter Service Lists			3.1	4.3
4.4	Serving Documents by Internet			3.2	4.4
4.5	Filing Format and Procedures				4.5
5.	Use of Advice Letters				5.0
5.1	Matters Appropriate to Advice Letters				5.1
5.2	Matters Appropriate to Formal Proceedings				5.1
5.3	Changes to Tariffs				5.3
5.4	Withdrawal; Rejection Without Prejudice				5.3
5.5	Advice Letter Cover Sheet			2.1	4.6
5.6	Advice Letter Contents			2.2	4.7
6.	Process for Handling Information-only Filings				6.0
6.1	Filing, Access, Service				6.1
6.2	Review				6.2
7.	Process for Handling Advice Letters				7.0
7.1	Filing, Access			3.3	7.1
7.2	Service			3.4	7.2
7.3	Effective Date				7.3
7.3.1	Effective Date Provided by Statute or by Commission Order Other Than this General Order				7.3.1
7.3.2	Later Effective Date Requested by Utility				7.3.2
7.3.3	Effective Pending Disposition				7.3.3
7.3.4	Effective Date of Advice Letter Submitted for Industrial Division Disposition				7.3.4
7.3.5	Effective Date of Advice Letter Submitted for Disposition by Resolution				7.3.5
7.4	Protests and Responses			4.1	7.4.1
7.4.1	Grounds for Protests			4.2	7.4.2
7.4.2	Replies			4.3	7.4.3
7.4.3	Late-Filed Protest or Response			4.4	7.4.4
7.5	Review				7.5
7.5.1	Supplements			4.5	7.5.1
7.5.2	Additional Information			4.5	7.5.1
7.5.3	Advice Letters Effective Pending Disposition			4.6	7.5.2
7.6	Disposition of Advice Letters			4.7	7.6.1

7.6.1	Industry Division Disposition of Advice Letters			4.7	7.6.1
7.6.2	Disposition by Resolution			4.8	7.6.2
7.7	Reconsideration; Appeal			5	7.7
7.7.1	Reconsideration of Industry Division Disposition			5.1	7.7.1
7.7.2	Application for Rehearing of Resolution			5.2	7.7.2
7.8	Petition for Modification; Request for Extension			6.0	7.8
8.	Tariffs				8.0
8.1	Filing, Making Accessible, Revising				8.1
8.1.1	Publishing Tariffs	2			8.1.1
8.1.2	Internet Publication	2.1			8.1.2
8.1.3	Other Publication	2.2			8.1.3
8.2	Serving Under Tariffs	3			8.2
8.2.1	Consistency With Tariffs	3			8.2.1
8.2.2	Service Options and Alternatives	3			8.2.2
8.2.3	Emergency Service; Service to Government Agencies				8.2.3
8.3	Notice to Correct Tariffs				8.3
8.4	Tariff Format and Sheet Numbering				8.4
8.5	Tariff Contents				8.5
8.5.1	Title Page				8.5.1
8.5.2	Table of Contents; Check Sheets				8.5.2
8.5.3	Preliminary Statement and Explanation of Symbols				8.5.3
8.5.4	Service Area				8.5.4
8.5.5	Rate Schedules				8.5.5
8.5.6	List of Contracts and Other Deviations				8.5.6
8.5.7	Tariff Rules				8.5.7
8.5.8	Sample Forms				8.5.8
9.	Confidential Treatment				9.0

Notes:

* Some provisions from the cited sections of this decision are incorporated in General Rules; other provisions are in the applicable Industry Rules.

Partially adopted.

(END OF ATTACHMENT II)