

# **COMPETITION IN NATURAL GAS STORAGE MARKETS**

## **A Review of Gas Storage and Transportation Regulations**

Prepared for the Ontario Energy Board

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# COMPETITION IN NATURAL GAS STORAGE MARKETS

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## INTRODUCTION

In the recent Natural Gas Electricity Interface Review proceeding, the Ontario Energy Board determined that appropriate operating and reporting procedures are necessary for a competitive natural gas storage market.<sup>1</sup> In making this determination, the Board endorsed the following principles:

- a level playing field for market participants,
- rules and practices to govern affiliate behaviour that protect the public interest,
- open and non-discriminatory access to gas transportation services,
- transparent storage and transportation markets, so market participants can make informed decisions.

This report identifies options for supporting competition and economic efficiency in natural gas storage markets by looking at the regulations and policies of selected jurisdictions in Canada, the United States, and the United Kingdom.

The regulations and policies of the following regulatory agencies were investigated:

- Federal Energy Regulatory Commission (FERC)
- California Public Utilities Commission (CPUC)
- Michigan Public Service Commission (MPSC)
- Oklahoma Corporation Commission (OCC)
- British Columbia Utilities Commission (BCUC)
- Office of Gas and Electricity Markets (Ofgem)

The FERC has direct jurisdiction over interstate pipelines and storage operators, and also regulates interstate sales of storage services by intrastate pipelines and local gas distribution companies (LDCs). The FERC has promoted the development of new natural gas storage capacity by allowing companies to sell storage services at market-based rates. The FERC has tried to ensure a level playing field by requiring gas

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<sup>1</sup> Decision with Reasons issued November 7, 2006 (EB-2005-0551)

pipelines to unbundle storage and transportation services, and through regulations prohibiting undue discrimination or preference in the provision of service. To create more transparent markets, the FERC has expanded the types of information that transportation and storage companies must report, and has required that much of this information be posted on publicly-available websites.

Over the past 15 years the CPUC has restructured its regulation of the two large gas companies in the state to encourage the development of independent storage. Among the key issues addressed by the CPUC is equivalent access to transportation services for independent storage operators and the utility's own storage operations. As a result of these initiatives, independent storage grew from nothing in 1997 to over 20 percent of the market at the end of 2007, with additional independent storage currently in development.

Michigan has the most underground storage capacity of any state in the U.S. Multiple interstate and intrastate companies operate pipeline and storage facilities in the state, creating competition for services upstream of the LDC citygate. Storage operated by gas distribution companies is generally earmarked for in-franchise markets, and the MPSC carefully scrutinizes the costs and revenues associated with this storage in the context of rate cases and gas cost review proceedings. The MPSC has generally adopted a light-handed approach to regulating non-LDC storage operators under its jurisdiction.

In 1999 the OCC deregulated the storage business of the state's principal gas distribution company, Oklahoma Natural Gas Company, at which time the LDC's storage assets were transferred to a new unregulated company. Regulation by the OCC has focused on non-discriminatory access requirements and utility procurement practices, in order to ensure that regulated gas and electric utilities do not give preference to their non-regulated affiliates when contracting for gas transportation and storage services.

In 2007 the BCUC asserted jurisdiction over Aitken Creek Storage, which Unocal had operated as an unregulated facility since 1987. Although the BCUC could not determine that Aitken Creek--the sole underground storage operator in the province--lacked market power, the BCUC decided to exempt the storage facility from rate regulation. The BCUC

created a complaint-based procedure to monitor the pricing of transactions between Aitken Creek and its LDC customer, Terasen Gas.

The gas transmission system in Great Britain is operated by a single System Operator, National Grid Gas, which is subject to operating and reporting requirements overseen by Ofgem. Regularly scheduled auctions are used to allocate existing transportation capacity and guide the construction of new facilities. Underground storage operators are subject to varying degrees of regulation, depending on market share and the potential for affiliate transactions.

## FEDERAL ENERGY REGULATORY COMMISSION

### 2.1 NATURAL GAS STORAGE MARKET

The Federal Energy Regulatory Commission (FERC) has primary jurisdiction over 25 interstate companies that operate more than half the total working storage capacity in the U.S. This includes large, integrated gas pipeline companies and a growing number of independent gas storage operators. FERC also regulates 18 intrastate companies that are authorized to provide interstate storage services under Section 311 of the Natural Gas Policy Act. The remaining underground storage facilities are operated by LDCs or other intrastate companies where the gas stored is consumed within the same state. These companies are regulated solely by state regulatory authorities and are not subject to FERC jurisdiction.

**Table 2: Interstate and Intrastate Natural Gas Storage Capacity**

Storage Operator Type	Number of Sites*	Working Gas Capacity	
		(Bcf)	(Percent)
<b>Interstate Pipelines</b>	172	2,197	55%
<b>Intrastate Pipelines &amp; LDCs</b>			
Operators Providing Interstate Service	39	516	
Intrastate Service Only	<u>109</u>	<u>776</u>	
Total	148	1,292	32%
<b>Independent Storage Operators</b>			
Operators Providing Interstate Service	34	344	
Intrastate Service Only	<u>40</u>	<u>177</u>	
Total	74	521	13%
<b>All Types</b>			
Operators Providing Interstate Service	245	3,057	76%
Intrastate Service Only	<u>149</u>	<u>953</u>	<u>24%</u>
Total	394	4,010	100%

\*A storage company will often operate storage facilities at multiple sites.

Source: Energy Information Administration, "U.S. Underground Natural Gas Storage Developments: 1998-2005" (October 2006).

## **2.2 SIGNIFICANT ORDERS AND POLICY STATEMENTS**

Over the last 15 years the FERC has expanded service unbundling, increased reporting requirements, and strengthened protections against discriminatory actions favouring affiliates. The FERC has also allowed greater flexibility in pricing, including market-based rates for natural gas storage services, and promoted the development of secondary markets for transportation and storage services through its capacity release regulations.

Major orders and policy statements issued during this period include:

### **Order 636 (1992)**

- Unbundled gas commodity sales from pipeline transportation services
- Pipelines with storage must offer storage services on a stand-alone basis
- Defined firm shippers' rights to alternate receipt and delivery points
- Required capacity release programs for transportation and storage services

### **Alternative Rates Policy Statement (1996)<sup>2</sup>**

- Allowed pipelines to negotiate rates, as long as customers could also obtain the same service at a cost-based recourse rate
- Established guidelines for approving market-based rates

### **Order 637 (2000)**

- Required pipelines with nomination or scheduling penalties to offer imbalance management services, such as park and loan service
- Expanded reporting requirements

### **Order 2004 (2003)**

- Created common standards of conduct for gas and electric companies
- Extended rules to Energy Affiliates that are not marketers or merchants

### **Order 678 (2006)**

- Expanded the definition of services or resources that could be considered competitors for storage in market power studies

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<sup>2</sup> 74FERC61,076(1996)

- Extended eligibility for market-based rates to certain storage operators that are unable to demonstrate a lack of market power.

## 2.3 REGULATIONS AND POLICIES

FERC regulations establish the standards that interstate gas transmission and storage companies and intrastate companies operating in the interstate market must follow. The practical implementation of these standards has been addressed in individual proceedings, some of which are discussed in Section 2.7.

### **Non-Discriminatory Access to Transportation and Storage Services**

FERC regulations require that firm and interruptible transportation services must be provided without undue discrimination or preference.<sup>3</sup>

- 284.7(b)(1) Any interstate pipeline or intrastate pipeline that offers transportation service on a firm basis ... must provide such service without undue discrimination, or preference, including undue discrimination or preference in the quality of the service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind.
- 284.9(b) The provisions regarding non-discriminatory access, reasonable operational conditions, and limitations contained in 284.7(b), (c), and (f) apply to pipelines providing interruptible service under this section.

Interstate pipelines must provide the same quality of firm transportation service for all gas supplies, whether the gas is purchased from the pipeline or another seller (Section 284.7(b)(2)). The same principle applies to transportation service used to access third-party storage services, as illustrated by this excerpt from ANR Pipeline's tariff:

- 2.10(g) When a request is made for transportation service that is associated with third-party storage, such service shall be available to similarly situated Shippers on the same terms and conditions as is transportation service associated with Transporter's storage service.

Storage service must be offered on an unbundled basis, and should not be tied to transportation service. FERC does allow pipelines to combine transportation and

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<sup>3</sup> Under Section 284.1(a), the definition of "transportation" also includes storage.

storage service to provide no-notice transportation service, or on a case-by-case basis where the configuration of facilities or other operating factors require storage and transportation to be linked. The Commission has also approved firm transportation services with enhanced hourly delivery rights that utilize storage capacity the pipeline has retained for operational purposes.<sup>4</sup>

Potential customers must have a fair and open opportunity to contract for proposed new transportation or storage capacity. The FERC's Certificate Policy Statement encourages interstate pipeline and storage operators to hold an open season prior to submitting an application to construct new facilities or expand existing facilities. The reasons for conducting an open season are to demonstrate need for the project, to prevent the withholding of capacity, and to ensure that service is awarded to the customers who value it most.<sup>5</sup> Companies proposing to build new facilities are also expected to conduct a reverse open season allowing existing customers to permanently turn back capacity to avoid unnecessary construction.

The FERC requires interstate pipeline and storage operators to include the procedures for processing requests for service and the methodology to be used in evaluating bids for available capacity in their tariffs, so that the criteria will be known in advance to all bidders. The procedures and evaluation methodologies vary by company, but must conform to FERC policy and precedent. Companies generally award capacity through an open season or auction based on the net present value (NPV) of the bids received. Where bids with discounted or negotiated pricing are allowed, Commission policy is to include only the guaranteed revenue stream in the evaluation to avoid the use of discretion in estimating variable revenue when the customer's load factor is not known. Companies can negotiate service arrangements with individual customers, but such pre-arranged deals may still need to go through a transaction-specific open season. In this case, if another bidder offers a higher NPV, either by offering a higher price or a longer initial term, the original customer has the option of matching the competing bid. Some companies make open seasons optional for short term transactions (e.g. service for a term of 90 days or less), or have a shorter bidding period for short term deals.

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<sup>4</sup> ANR Pipeline's FTS-3 service is an example of a transportation service where firm hourly delivery flexibility is provided at short notice using a combination of pipeline line pack and storage injections and withdrawals (RP00-30).

<sup>5</sup> 90FERC61,128(2000)

Although the FERC has not made open seasons or auctions mandatory for allocating available pipeline or storage capacity, in Order 637 the Commission set out some of the basic principles that auctions should meet:

- The timing of the auction should be predictable, and shippers potentially offering or bidding on capacity should have notice of when the auction will be held and what capacity will be included.
- The auction should be open to all potential bidders on a non-discriminatory basis.
- The auction should be user-friendly with information on the rules and procedures easily accessible to all.
- The bidding procedures as well as the methods for selecting the best bid should be fully disclosed prior to the auction. For instance, if net present value formulas are used, the discount rate and the method of calculation should be disclosed.
- There should be no favouritism in the determination of the winning bidder and mechanisms should be included to permit monitoring of how the selection criteria were applied. This would include methods of verifying any reserve price applied in the auction.
- Transaction information (such as prices, volumes, and receipt and delivery points) should be disclosed so that shippers can ascertain the value of transportation. The names of shippers may not need to be disclosed or could be disclosed at a later date if the auction results are verifiable and free from potential affiliate favouritism.<sup>6</sup>

### **Standard Terms of Service**

The terms of service for all customers must be set out in the tariff. Companies operating under FERC jurisdiction are generally not allowed to negotiate the terms of service. If exceptions are necessary, variations from the standard terms must be filed with the Commission, and made available to other customers.

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<sup>6</sup> Order 637, pp. 114-115.

## **Imbalance Management Services**

Order 637 added a new Section 284.12(c)(2)(iii) which states that pipelines must offer imbalance management services, and cannot give undue preference to their own storage or balancing services over services that are provided by a third party.

- 284.12(c)(2)(iii) A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances. A pipeline also must provide its shippers the opportunity to obtain similar imbalance management services from other providers and shall provide those shippers using other providers access to transportation and other pipeline services without undue discrimination or preference.

## **Cost Allocation and Disclosure of Market-Based Storage Revenues**

Order 678 added a new Section 284.504(a) requiring storage operators that provide both cost-based and market-based services to maintain separate accounts for all costs and revenues associated with facilities used to provide market-based services. When filing an application to change its cost-based rates, the company must provide a summary of the costs and revenue associated with market-based rates and describe the allocation of common costs between cost-based and market-based services. The purpose of this provision is to “ensure that market-priced services are not subsidized by cost-based services, as well as ensure that pipeline-owned storage is not afforded an unfair advantage over independent storage operators.”<sup>7</sup>

- 284.504(a) Applicants granted the authority to charge market-based rates under §284.503 that provide cost-based service(s) must separately account for all costs and revenues associated with facilities used to provide the market-based services. When it files to change its cost-based rates, applicant must provide a summary of the costs and revenues associated with market-based rates with applicable cross references to §§154.312 and 154.313 of this chapter. The summary statement must provide the formulae and explain the bases used in the allocation of common costs between the applicant’s cost-based services and its market-based services.

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<sup>7</sup> Order 678, p. 56.

## 2.4 REPORTING

The FERC has found that “the free flow of information regarding the natural gas market is critical to the successful creation of a competitive and efficient marketplace”, and that “access to relevant information is necessary for shippers to make informed decisions about capacity purchases, and for the Commission and shippers to monitor transactions to determine if market power is being exercised.”<sup>8</sup> In Order 637 the FERC identified three types of information that are needed by the market:

1. Information about capacity transactions, including rates, contract duration, and contract terms.
2. Information about the structure of the market, to allow customers and the Commission to identify who controls capacity rights on pipeline segments and in storage facilities.
3. Information about capacity availability, to allow customers to structure transactions and identify capacity withholding.

The FERC has emphasized the importance of timeliness, finding that to be meaningful, transactional information must be reported at the time of the actual transaction.<sup>9</sup> The FERC generally requires full public disclosure of transaction information, including the name of the customer and the actual price charged by the pipeline or storage operator. However, the FERC does allow companies to report customer names and/or pricing on a confidential basis in certain cases. Confidential treatment of price and revenue information is commonly approved for independent storage operators with authority to sell service at market-based rates.

FERC reporting requirements applicable to natural gas storage operators are as follows:

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<sup>8</sup> Order 637, p. 173.

<sup>9</sup> Order 637, p. 186.

1. Interstate companies providing open access storage services.

<b>Report</b>	<b>Regulation</b>	<b>Frequency</b>	<b>Description</b>
Index of Customers (F,P)	284.13(c)	Quarterly	<ul style="list-style-type: none"> <li>• Customer name</li> <li>• Contract number</li> <li>• Rate schedule</li> <li>• Maximum storage quantity</li> <li>• Whether contract includes negotiated rates</li> <li>• Name of agent or asset manager</li> <li>• Affiliate relationship</li> </ul>
Semi-Annual Storage Report (F)	284.13(e)	Within 30 days of the end of the injection or withdrawal season	<ul style="list-style-type: none"> <li>• Customer name</li> <li>• Affiliate relationship</li> <li>• Maximum storage quantity</li> <li>• Maximum daily withdrawal quantity</li> <li>• Quantities injected and withdrawn during the period</li> <li>• Unit charges and revenues received, noting any discounts</li> </ul>
Report on Firm Services (P)	284.13(b)	First nomination	<ul style="list-style-type: none"> <li>• Shipper name</li> <li>• Contract number</li> <li>• Rate charged under each contract</li> <li>• Maximum rate</li> <li>• Duration of the contract</li> <li>• Contract quantity</li> <li>• Affiliate relationship</li> </ul>
Report on Interruptible Services (P)	284.13(b)	Daily	<ul style="list-style-type: none"> <li>• Shipper name</li> <li>• Rate charged under each contract</li> <li>• Maximum rate</li> <li>• Quantity allowed under contract</li> <li>• Special details, including conditions applicable to a discounted contract and all aspects in which the agreement deviates from the tariff</li> </ul>
Available Capacity Report (P)	284.13(d)(1)	Whenever capacity is scheduled	<ul style="list-style-type: none"> <li>• Available capacity at receipt and delivery points and in storage fields</li> <li>• Design capacity of each point or segment</li> <li>• Amount scheduled at each point or segment</li> <li>• All planned and actual services outages or reductions in capacity</li> </ul>
Peak Day Capacity Report (F)	284.13(d)(2)	March 1 each year	<ul style="list-style-type: none"> <li>• Estimated storage capacity and maximum daily delivery capacity of storage facilities under reasonably representative operating assumptions.</li> </ul>

F – Filed with the Commission

P – Posted on the storage operator’s internet website

- Intrastate companies providing interstate storage services under Section 311 must file semi-annual reports with the FERC. This is in addition to any information these companies are required to file with their state regulatory commissions.

Report	Regulation	Frequency	Description
Semi-Annual Storage Report	284.126(c)	Within 30 days of the end of the injection or withdrawal season	<ul style="list-style-type: none"> <li>• Customer name</li> <li>• Docket where rates were approved</li> <li>• Maximum storage quantity</li> <li>• Maximum daily withdrawal quantity</li> <li>• Quantities injected and/or withdrawn during the period</li> <li>• Unit charges and total revenues received for each customer</li> <li>• Related docket where storage-related transportation services are reported</li> </ul>

- Negotiated Rate Transactions

Interstate companies providing service under negotiated rates must file a numbered tariff rate sheet for each transaction stating: (1) the exact legal name of the customer, and (2) the negotiated rate for the service. This filing must be made no later than the effective date of the negotiated rate.

- Non-Standard Terms of Service

Contracts which deviate in any material aspect from the standard form of service agreement must be filed with the Commission and referenced in the tariff. [Section 154.112(b)]

- Discounts and Waivers

The FERC Standards of Conduct require Transmission Providers, which includes most interstate storage operators, to post the following information:

Discount Report – Any offer of a discount for any service must be posted at the time the offer is contractually binding. [Section 358.5(d)]

Waiver Log – Companies must maintain a written log of waivers granted with respect to tariff provisions that provide for such discretionary waivers. [358.5(c)(4)(ii)]

## 6. Weekly Posting of Storage Injections and Withdrawals

Certain interstate pipelines post the aggregate net injections and withdrawals for their storage facilities on their websites on a weekly basis. This additional reporting is done voluntarily by some companies (e.g. Dominion Transmission), but in other cases these reports are required under settlements with the FERC Enforcement Division related to the past disclosure of non-public gas storage information to marketing affiliates and/or other favoured customers (e.g. Columbia Gas Transmission).

## 7. Daily Flow Volumes (Proposed)

In a notice of rulemaking notice issued December 21, 2007 (RM08-2), the FERC proposed to require interstate pipelines to add daily reporting of actual flows to the capacity and scheduled volume information currently posted. The proposed rule would also require certain major intrastate pipelines and LDCs to post capacity, scheduled flow volumes, and actual flow volumes for major points and mainline segments on a daily basis. Finally, the Commission requested comments on the implementation of similar posting requirements for gas storage facilities.

## **2.5 STANDARDS OF CONDUCT**

Standards of conduct are intended to prevent companies that control electric or gas transmission facilities from extending their market power to other markets by giving undue preference to an affiliate. Preferential treatment includes (a) the sharing of non-public operational information, such as the location, extent or expected duration of system constraints, (b) the sharing of non-public information concerning plans for future facilities expansions, including the timing of upcoming open seasons, or (c) the sharing of information about the transmission provider's customers.

The FERC Standards of Conduct are based on two general principles:

- 358.2(a) A Transmission Provider's employees engaged in transmission system operations must function independent from employees of its Marketing and Energy Affiliates.

358.2(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit its Marketing or Energy Affiliates.

In Order 2004, the FERC revised the Standards of Conduct originally established by Order 497 in 1988 to create uniform standards to both natural gas and electric Transmission Providers.<sup>10</sup> Noting the convergence of the gas and electric markets, the FERC replaced the definition of Marketing Affiliate with the broader definition of Energy Affiliate to extend the standards to the other affiliate relationships, such as a gas transporter supplying an affiliated gas-fired power generator, or transactions between a natural gas pipeline and an affiliated gas storage operator. Order 2004 also created new reporting requirements to improve market transparency and facilitate enforcement. In Order 2004-A the Commission exempted from the definition of Transmission Provider independent storage companies with market-based rate approval whose facilities do not interconnect with an affiliated pipeline company. This exemption was based on the finding that these companies lacked market power or the opportunity to subsidize at-risk business with payments from customers paying cost of service rates.

On March 21, 2008 the Commission issued a notice of proposed rulemaking (RM07-1) to replace the corporate separation approach of Order 2004 with new rules prohibiting interaction based on employees' job functions. The proposed rules would eliminate the existing marketing affiliate definition, and require "transmission function employees" to operate independently of "marketing function employees", whether they are employed by the transmission provider directly or in separate affiliates. A transparency rule would require any non-public operating information received by a marketing function employee, from whatever source, to be immediately posted on the transmission provider's website. The FERC believes that the new rules would directly address the inherent conflicts of interest between transmission and merchant activities while simplifying enforcement.

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<sup>10</sup> New Part 358 modified and replaced the gas standards of conduct contained in Part 161 and electric standards of conduct contained in Part 37 of the FERC regulations.

## 2.6 COMPLAINT MECHANISM

The FERC offers three alternatives for filing complaints:

### 1. Enforcement Hotline

The FERC website describes the Enforcement Hotline as follows:

“The Enforcement Hotline invites market participants and the general public to call, email or write the Hotline to complain or report market activities or transactions that may be an abuse of market power, an abuse of an affiliate relationship, a tariff violation, or other possible violation or concern. All information and documents obtained through the Hotline are non-public, consistent with section 1b.9 of the Commission's regulations.

Anyone may ask the Hotline for help or information about any matters within the Commission's jurisdiction.

Past Hotline calls have included complaints about:

- Bidding anomalies;
- Price spikes;
- Inappropriate use of financial instruments;
- Fluctuations in available capacity on electric transmission lines and natural gas pipelines;
- Interconnection discrimination; and
- Undue preferences to affiliates.

The Enforcement Hotline is used to informally resolve disputes in matters within the Commission's jurisdiction without litigation or other formal, lengthy proceedings. The Enforcement Hotline has resolved hundreds of disputes informally and answered hundreds of public inquiries.”

### 2. ADR conducted by Dispute Resolution Staff

FERC describes its Dispute Resolution Service as follows:

“The Dispute Resolution Service (DRS) is a small professional service-oriented team that promotes timely and high quality resolutions of disputes through consensual decision-making. The DRS Specialists are highly trained in mediation, negotiation, facilitation and also as trainers.

The DRS has two major functions:

1. To provide services such as mediation and facilitation in disputes involving entities subject to the Commission's jurisdiction. All communications with DRS representatives are privileged and confidential, unless otherwise agreed. DRS staff is not involved in the Commission's decisional processes, does not advocate positions or conduct investigations.

2. To promote the use of ADR both within and outside of the Commission through activities such as consultation, workshops, collaboration, training and coaching.”
3. Formal Complaint

Customers have the option to initiate a complaint proceeding under Section 5 of the Natural Gas Act.

## **2.7 IMPLEMENTATION ISSUES**

### **Incomplete Unbundling of Transmission and Storage**

#### Southern Natural Gas (RS92-10)

In Southern’s Order 636 restructuring proceeding, FERC allowed the pipeline to tie its no-notice transportation service to shippers’ contractual rights in Southern’s own storage facilities. FERC based its decision on operational considerations, but emphasized that “the Commission does not intend that pipelines be insulated from competition from third party providers of no-notice service.” FERC also stated that the provisions of Southern’s firm transportation (FT) service should not “unduly inhibit others from providing a no-notice type of service by combining FT with standby supply or storage from a third party”.

FERC acknowledged shippers’ comments that a lack of intraday nomination flexibility inhibited FT customers from using third party storage to support the equivalent of the firm no-notice transportation service offered by the pipeline. FERC encouraged Southern to “consider the feasibility of intraday nominations on its system and to provide an explanation for not providing for intraday nominations should Southern decline to so modify its tariff.” [62FERC61,136(1993)]

#### CMS Trunkline Gas Company (RP00-475)

In the pipeline’s Order 637 restructuring proceeding, Trunkline proposed a new Delivery Variance Service (DVS) that would allow a shipper to increase the daily imbalance tolerance at a delivery point. This firm no-notice balancing service would be provided using the pipeline’s own storage facilities. FERC approved the service, noting that this is an optional service and shippers have a choice between contracting for DVS or paying scheduling penalties. [100FERC61,048 (2002)]

### **Preferential Treatment of Affiliated Storage**

#### Tennessee Gas Pipeline (RP95-396)

Tennessee proposed to give market area shippers the option to have the pipeline automatically treat daily and monthly imbalances as injections and withdrawals from their

pipeline firm storage service accounts. Several intervenors argued that Tennessee should provide the same “swing on storage” option to shippers with contracts for third party storage. The Commission agreed that “[t]here is nothing in the handling of daily and monthly transportation imbalances that requires the use of storage on Tennessee’s system. Indeed, there are good operational reasons that might require alternative locations for imbalance injections or withdrawals on Tennessee’s system other than from its own storage fields.” FERC required Tennessee to develop the criteria necessary for permitting shippers to use third party storage under the “swing on storage” service, and set a date for implementing the service. [73FERC61,158(1995)]

#### Colorado Interstate Gas Company (CP07-207)

Windy Hill Gas Storage protested a proposal by Colorado Interstate Gas (CIG) to create new storage-based balancing services that can only be used with storage services from Young Gas Storage Company, a CIG affiliate. Windy Hill, which is constructing a new gas storage facility that will connect to CIG, also alleged that CIG would provide preferential interconnection terms to gas storage facilities that are affiliated with the pipeline. Windy Hill requested that the FERC “condition the approval of CIG’s High Plains Expansion Project to require CIG to modify its service offerings and its discriminatory inclusion of interconnection facilities for some storage facilities but not for others to ensure that a level playing field exists for all competing storage facilities connected to the CIG system.” The FERC accepted CIG’s proposal, stating that pipelines are not prohibited from acquiring off-system storage service and using that service to offer a combined transportation and storage service. The FERC also noted that CIG’s tariff allows the pipeline to pay for interconnection costs where there is a commercial or operational reason to do so. FERC confirmed that CIG cannot refuse to interconnect with Windy Hill if the storage operator meets certain conditions, and that CIG must provide shippers access to imbalance management services from other providers. [122FERC61,256]

### **Barriers to Third-Party Storage or Balancing Services**

#### Panhandle Eastern Pipe Line Company (RP00-395)

In Panhandle’s Order 637 restructuring proceeding, FERC approved tariff language that set minimum conditions for providers of third party imbalance management services. These conditions were: (1) that Panhandle and the third-party provider enter into an agreement specifying the amount and manner in which the provider will accommodate a shipper’s imbalances, scheduling variances, and overruns, and (2) that Panhandle and the shipper have an agreement as to the service agreements and points for which imbalance management services will be provided. Panhandle’s tariff language also provided that when a specific third-party management service is proposed, the pipeline may require the third-party provider and the shipper to satisfy additional conditions. Responding to concerns that ambiguity about the conditions the pipeline could require may discourage the development of third party imbalance management services, the Commission stated that it would require that any conditions imposed by the pipeline be reasonable, and that it was prepared to resolve a dispute as to the reasonableness of any additional conditions should such a dispute arise.

### GulfTerra Texas Pipeline (PR00-9)

Falcon Gas Storage Company, an independent storage operator, complained that certain provisions GulfTerra's Statement of Operating Conditions for Section 311 transportation services discriminated against third party storage operators with the ability to offer firm hourly balancing services. Falcon argued that GulfTerra should allow firm shippers to designate a third party storage operator's interconnection point as a split receipt/delivery point for balancing purposes, and allow firm shippers to schedule individual hourly quantities at the standard nomination windows. The FERC disagreed, finding that conditions GulfTerra imposed on third party Imbalance Service Providers were not unreasonable or discriminatory. [110FERC61,130(2005)]

### El Paso Natural Gas (RP05-422)

In its most recent rate case, El Paso proposed substantial changes to its firm transportation services to encourage hourly balancing of deliveries on its system. In particular, El Paso created new premium hourly firm transportation services to supplement its existing daily services. Several parties argued that El Paso's proposals gave undue preference to the pipeline, and created barriers to third-party providers of storage and imbalance management service by bundling transportation and storage features into its new hourly services. These intervenors pointed out that, because the transportation services that would be used to access third party balancing services can only be scheduled as daily quantities, with implicit pro-rata hourly flows, the only way to avoid hourly imbalances is to use the hourly balancing service offered by the pipeline.

The Commission approved the El Paso services based on the finding that there is nothing in El Paso's tariff to prevent a shipper from subscribing to the standard daily firm transportation service from El Paso and contracting with a third-party storage provider for balancing service. With respect to hourly services, FERC stated that shippers requiring hourly flexibility could choose from a variety of firm and interruptible services from the pipeline. FERC also observed that no market area storage facilities currently exist in the East-of-California market area, but said that "[i]f any facilities are added, the Commission would expect El Paso to work on design services for such storage projects." [114FERC61,305(2006)]

## **Allocating Costs between Cost-Based and Market-Based Storage Services**

### Northern Natural Gas Company (RP06-437)

Order 678 opened the door for interstate pipelines with cost-based storage services to charge market-based rates for new storage services created by expanding existing storage facilities. Northern was the first pipeline to receive such authorization. Two gas distributor groups requested rehearing, arguing, in part, that the FERC should have required Northern to provide more details about how costs would be allocated to ensure that existing customers with cost-based services did not subsidize the new market-based services. FERC denied rehearing, arguing that existing customers would be protected from any increase in rates until Northern files its next rate case, and that the requirement for Northern to account separately for all costs related to the facilities used

to provide the new services at market-based rates would allow any the cost allocation issues to be addressed at that time. [119FERC61,072(20070)]

#### Texas Gas Transmission (CP07-405)

Similar to Northern, Texas Gas proposes to expand its existing storage facilities and construct related transmission facilities to provide new storage services at market-based rates. Existing shippers have taken the position that the FERC should not grant market-based rate authority without having a clear definition of how both incremental capital and O&M costs as well as existing storage costs will be allocated to the new services. These intervenors point to Section 284.504(a) of the FERC regulations, which requires that an applicant for market-based rates that cannot demonstrate a lack of power (such as Texas Gas) must provide the basis for allocating common costs between cost-based services and market-based services. FERC accepted Texas Gas' proposal to allocate storage O&M costs based on Gas Plant in Service, but directed the pipeline to clarify its proposed accounting treatment for gas transmission facilities that would be constructed to facilitate the new market-based storage services. [122 FERC61,190(2008)]

#### **Preferential Treatment of a Marketing Affiliate**

##### Jefferson Island Storage (IN02-10-001)

Jefferson Island Storage and Hub, LLC, a Louisiana intrastate storage operator authorized by the FERC to provide interstate storage and transportation services at market-based rates, entered into an Asset Management Agreement with AEP Energy Services, an affiliated gas marketing company. This agreement granted AEP Energy Services interruptible storage injection and withdrawal rights that were not offered to other customers. AEP Energy Services also had access to information on other customers' storage activity that was not publicly available. Under the terms of a Stipulation and Consent Agreement with the FERC, American Electric Power Company agreed to pay a civil penalty and implement a Compliance Plan.

##### Transcontinental Gas Pipe Line (IN04-2)

A pipeline employee provided non-public weekly storage injection and withdrawal information to the pipeline's marketing affiliate. This was a violation of the FERC Standards of Conduct, which prohibit disclosure of information to a marketing affiliate that is not contemporaneously available to the public. The Williams Companies agreed to pay refunds and penalties amounting to \$7,300,000.

## CALIFORNIA

### 3.1 GAS STORAGE AND TRANSPORTATION OVERVIEW

Most of the natural gas transported into California from interstate pipelines is delivered into the PG&E and Southern California Gas (SoCalGas) intrastate gas transmission systems at the Nevada or Oregon border. Natural gas on the utilities' "backbone" high pressure pipeline systems is then delivered into the local transmission and distribution pipeline systems, or to natural gas storage fields. Some large non-core customers take natural gas directly off the high-pressure backbone pipeline systems, but core customers and most non-core customers receive natural gas from the utilities' distribution pipeline systems.<sup>11</sup> In all, the CPUC has regulatory jurisdiction over 100,000 miles of utility-owned natural gas pipelines, which transported 78 percent of the total amount of natural gas delivered to California's gas consumers in 2005.

PG&E and SoCalGas own and operate several natural gas storage fields that are located in northern and southern California, respectively. These storage fields, and two independently owned storage utilities, help meet peak seasonal natural gas demand and increase supply security for California natural gas customers. Following tables show the storage capacity controlled by LDCs and independent storage providers (ISPs).

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<sup>11</sup> Core customers are generally residential and small commercial customers. While these customers may have the option of purchasing gas from a supplier other than the LDC, they continue to receive bundled delivery services from the LDC at regulated rates. Non-core customers are typically large commercial and industrial customers that have the option to contract directly for transportation, storage and balancing services from the LDC or third party suppliers. The CPUC defines the non-core market to include all cogeneration, regardless of size, and commercial customers with annual consumption greater than 25,000 Mcf. In 2005 deliveries to the non-core market accounted for 57% of the gas delivered by California utilities.

**Table 3A: Natural Gas Storage Operators in California – Existing Facilities**

<b>Storage Operator</b>	<b>Parent(s)</b>	<b>Working Capacity (MMcf)</b>	<b>Market Share (%)</b>
<b>Intrastate – LDC</b> Southern California Gas Pacific Gas & Electric	Sempra PGE Corp.	125,000 <u>43,000</u> 168,000	78%
<b>Intrastate – Independent</b> Niska Gas Storage (Wild Goose) Lodi Gas Storage	Carlyle/Riverstone Buckeye Partners	25,000 <u>22,500</u> 47,500	22%
<b>TOTAL</b>		215,500	

**Table 3B: Natural Gas Storage Operators in California – Proposed Facilities**

<b>Storage Operator</b>	<b>Parent(s)</b>	<b>Working Capacity (MMcf)</b>	<b>CPUC Docket</b>
<b>Intrastate – Independent</b> Lodi (Kirby Hills Expansion) Sacramento Natural Gas Storage	Buckeye Partners Calif. Natural Gas Storage	6,500 <u>7,500</u> 14,000	A07-05-009 A07-04-013
<b>Intrastate – LDC Affiliate</b> Gill Ranch Storage	PGE/Northwest Natural	20,000	Not filed

Sources: Table 3A: CPUC/CEC, “Natural Gas Market Study” February 2006.  
Table 3B: CPUC filings and company press releases.

### **3.2 SIGNIFICANT ORDERS AND RULEMAKING PROCEEDINGS**

#### **The “Gas Storage Decision” (D.93-02-013)**

In 1992, the California Legislature formally expressed the objective of creating competition for natural gas storage services, and urged the CPUC to: (1) expeditiously unbundle utility storage service, (2) encourage the development of independent storage by establishing interconnection rules and reasonable allocations of the costs of the

interconnecting facilities, (3) adopt market-based storage rates, (4) give expedited consideration to facilities applications filed by new independent storage providers, and (5) ensure that storage costs borne by core customers are commensurate with benefits.

The CPUC has subsequently issued a series of decisions that increase competition in the gas industry. The CPUC approved permanent storage programs for SoCalGas, San Diego Gas & Electric and PG&E that adopted specific storage reservation levels for core customers and made unbundled storage services available to non-core customers. The CPUC removed cross-subsidies in the pricing of non-core storage services by requiring the utilities to develop individual inventory, injection, and withdrawal charges based on an appropriate assignment of the utility's embedded costs.

In the 1993 Gas Storage Decision the CPUC adopted a "let the market decide" policy for gas storage, stating that it would not test the need for new gas storage facilities developed for non-core markets, as long as all of the risk of the unused new capacity resides with the builders and customers of the new facility. The Gas Storage Decision also adopted market-based rates for non-core storage. The CPUC will continue to test the need, on a resource planning basis, for storage developed or acquired by utilities to serve core customers.

In the Gas Storage Decision, the CPUC did not require utilities to unbundle daily and monthly load balancing services, finding that real time balancing services rely on real time electronic metering which is not currently installed for all transportation customers or at all interconnections of gas transmission systems.

These Decisions set the stage for new entrants to develop storage facilities in competition with PG&E and SoCalGas, leading to the CPUC's approval of Wild Goose Storage Inc. (WGS) in 1997, and Lodi Gas Storage LLC (LGS) in 2000.

#### **Wild Goose Storage Inc. (D.97-06-091 and D.02-07-036)**

In approving the first independent natural gas storage facility, the CPUC found that WGS, as a new facility without any existing customers, would not be able to exert market power. The CPUC therefore permitted WGS to charge market based rates, subject to a rate floor determined by WGS's short run marginal costs. WGS was allowed to file its

tariff without providing any justification. Any concerns of market participants regarding anti-competitive behaviour would be addressed through the CPUC's existing complaint process.

In 2002 the CPUC amended WGS's Certificate of Public Convenience and Necessity (CPCN) to authorize an expansion of the storage facility. In this case the CPUC was unable to determine that WGS would not have market power, but decided that the potential for wielding market power was mitigated by WGS's lack of control of the gas transmission system. The CPUC authorized a continuation of market-based rates, but imposed additional reporting requirements (described below).

#### **PG&E Gas Accord (D.97-08-055)**

The Gas Accord Settlement Agreement adopted in D.97-08-055 was the original settlement of key issues pertaining to the restructuring of PG&E's gas transportation and storage operations. The main feature of the Gas Accord was the creation of unbundled, tradable, rights to backbone transmission capacity and gas storage service on a firm or as-available basis. This market structure provides gas marketers and end use customers and their agents with a variety of tools to manage their gas commodity and transportation costs over the PG&E system. The Gas Accord has subsequently been renewed several times. The Gas Accord IV Settlement Agreement approved by the CPUC in September 2007 (D.07-09-045) continues the existing market structure for PG&E's gas transmission and balancing services through 2010.

#### **Comprehensive Gas Oil Settlement (D.00-05-049)**

In 1999 the CPUC issued an Order Instituting Investigation (OII) which identified "promising" options for changes to the regulatory and market structure of the California natural gas industry. In regards to storage, the CPUC asked parties to consider the costs and benefits related to creating a system of tradable storage rights in Southern California that places the utility at risk for unused resources and preserving such a market in Northern California beyond the period of the PG&E Gas Accord then in effect.

On May 2000, the CPUC approved the Comprehensive Gas Oil Settlement Agreement filed by PG&E and 26 other parties. Among other things, the settlement created a self-

balancing option for transportation customers as an unbundled alternative to the utility's bundled service.

### **3.3 REGULATIONS AND POLICIES**

#### **Access to Transportation**

The following Gas Storage Rules, adopted in the Gas Storage Decision, provide for open and non-discriminatory access to transportation by customers of independent storage providers:

- GSR 3.1** The utility shall provide open and non-discriminatory access by customers of any independent storage provider to utility facilities necessary to transport gas to and from the independent storage facility.
- GSR 3.2** The terms and conditions applicable to customers of an independent storage provider regarding access and transportation service over utility facilities-- including priority, scheduling, balancing, curtailment, designation of receipt and delivery points, billing, and any other term or condition of service -- shall be the same as the terms and conditions applicable to utility transportation customers having similar loads.
- GSR 4.1** The utilities must modify their tariffs as necessary such that customer-owned gas transported to and from a storage facility - whether operated by the utility or an independent provider - is assessed no more than one transportation charge on each utility system performing the transportation service. Transportation charges for gas delivered into storage facilities shall be imposed upon delivery into storage. Transportation charges for gas withdrawn from storage and delivered to customer premises shall be imposed upon delivery to the customer premises. If the second delivery is made by the utility that performed the first delivery into storage, the utility must credit or reverse the transportation charges for the first customer of record, without interest. If the transporting utility and the customer of record do not change for the second delivery, the second billing transaction is not required.
- GSR 4.3** The utility must not assess any additional transportation fee or charge, or impose any restriction or condition, because transportation service is provided for a customer of an independent storage provider.

## **Interconnection with Independent Storage Providers**

The Gas Storage Rules specify the treatment of interconnection requests and the allocation of the costs of the interconnecting facilities. Utilities should interconnect with independent storage providers as if they were consumers of gas. Standard interconnection costs will be recovered on a rolled-in basis, while the costs associated with special facilities will be charged to the storage provider.

**GSR 2.1** A utility must interconnect its transmission facilities with an independent storage facility that requests such interconnection, unless the utility can make a clear showing that such interconnection will impair its ability to serve existing utility customers. Interconnection obligations shall not differ from obligation to serve gas transportation customers having similar loads.

**GSR 2.3** The utility shall be responsible for the cost of standard interconnection facilities required, installed, and paid by the utility for transportation customers having similar loads. Responsibility for special facilities in excess of standard interconnection facilities will be assigned by agreement of the Parties or will be submitted to the Commission for resolution. Utility ratepayers shall not be responsible for costs of special facilities. The utility shall not delay installation of interconnection facilities pending resolution of any dispute regarding cost responsibility.

## **Secondary Market for Intrastate Storage Capacity**

In its Gas Storage Decision, the CPUC endorsed the concept of a secondary storage market and ordered SoCalGas, SDG&E and PG&E to permit trading of firm and as-available storage rights, with the exception of discounted contracts that were justified based on customer-specific bypass threats. The CPUC went on to specify that customers that execute storage trades should notify the affected utilities and that information concerning the trade should be made available to the public, consistent with FERC capacity release rules.

Under the terms of the Gas Accord, shippers and customers can purchase storage or intrastate transmission rights directly from PG&E or can acquire them from other rights-purchasers through a secondary market transaction. PG&E established a secondary market trading system in 2001 which allowed shippers to trade their excess storage and transportation capacity.

SoCalGas currently does not operate under a structure similar to the Gas Accord. It does not define components of its system as comprising intrastate transmission, as distinguished from distribution, and therefore does not sell firm capacity rights to other parties. By extension, there is no trading of capacity on a secondary market. SoCalGas does sell otherwise-available portions of its storage capability to end-use customers and others, but there is no explicit secondary market for those rights. In response to the CPUC's adoption of a gas transmission framework for southern California similar to the Gas Accord in D.06-12-031, SoCalGas and SDG&E will implement a system of tradable "firm access rights" in 2008.

### **Independent Storage Operators Offering Service to the Utilities**

In D.04-09-022, the CPUC directed PG&E to file an application to address how services from third-party storage providers can be used to assist PG&E in providing core storage services. The application was to address how much, and by what process, incremental gas storage needs for the core should be met, including but not limited to putting the needs out to bid, negotiating storage contracts directly with ISPs, participation in open seasons for storage, and through third parties holding firm storage rights. PG&E submitted its Application for Adoption of Policy and Process for Acquisition of Incremental Core Gas Storage (Application 05-03-001) that defined a Request for Offer (RFO) process that would be used to evaluate offers of incremental storage service from PG&E's California Gas Transmission division (CGT) and unaffiliated storage service providers to meet PG&E's core market requirements. Under the partial settlement, proposals would be evaluated jointly by the PG&E procurement department, the Division of Ratepayers Advocates, and The Utilities Reform Network, a utility watchdog group.

In its decision (D.06-07-010) the CPUC approved the RFO process, but directed PG&E to modify the credit policies that would apply to ISPs, who expressed concerns that CGT, as a division of PG&E, would have an unfair advantage because it would be accorded the same credit rating as the utility. The CPUC directed PG&E to select an independent credit analysis agency and a third party insurance review agency, subject to the approval of each of the independent storage providers, to determine the financial strength and insurance coverage of the independent storage providers, consistent with industry standards. The CPUC determined that the independent credit analysis and

insurance review, coupled with a liquidated damages provision and metering oversight, would provide PG&E with sufficient creditworthiness protections.

In Resolution G-3398, issued in 2007, the CPUC Energy Division approved two contracts to meet PG&E's incremental core storage requirements over the next two winter seasons. The agreements with CGT and LGS each satisfied one-half of the total storage capacity and deliverability required in the RFO process.

### **PG&E Exchange Service (D.06-09-039)**

Both the WGS and the LGS facilities have sizable transmission pipelines connecting their storage fields with the PG&E backbone transportation system. The WGS facility includes 4 miles of 18-inch diameter bi-directional pipe. The LGS facility includes 33 miles of field and transmission pipe capable of delivering 500 MMcfd at two interconnections with PG&E. The CPUC recognized that the increased utilization of the ISP's transmission system, whereby PG&E customers would be served through exchange agreements, would be in the best interests of both the customers of PG&E and the ISP, and approved an exchange service as part of the Interconnection Settlement Agreement.

An exchange service customer is a new PG&E customer that uses the pipeline of an ISP to connect the customer's facility to the PG&E transmission system. If the PG&E exchange service customer is connected to an ISP pipeline that in turn is connected directly to PG&E's backbone system, then that customer will have the opportunity to qualify for PG&E Backbone Level End-Use Service. Both PG&E and the ISP must approve a new ISP interconnection to provide the exchange service to a PG&E customer. Such approvals will not be withheld by PG&E, unless providing this service: (a) will impair the integrity of the system or operation of the PG&E pipeline system or ISP storage facilities, (b) will materially reduce the service reliability to other PG&E customers, or (c) will be inconsistent with the otherwise applicable terms of service. Each ISP reserves the right to refuse to establish an interconnection for the purpose of providing an exchange service to a particular end-use customer or producer. The Interconnection Settlement Agreement provides for a dispute resolution process. Any proposed changes to the utility's tariff resulting from a dispute settlement must be approved by the CPUC.

### **3.4 REPORTING**

#### **Market Power Assessment**

The CPUC has varied the reporting requirements of ISP's depending upon the CPUC's evaluation of the degree to which the ISP can wield market power. In the case where the ISP can demonstrate that it lacks market power (i.e. Lodi Gas in D.00-05-048), the CPUC has required the storage provider to file tariffs with a rate window to allow for fluctuations in the market. The tariffs are filed without a cost justification. In the case where the ISP is unable to convince the CPUC that it lacks market power, such as occurred with the WGS expansion, the CPUC has ordered increased reporting requirements to allow the CPUC to identify status changes that reflect a departure from the characteristics that were the basis for the approval of market based rates.

Specifically, the CPUC required WGS to advise it of:

- Its purchase of natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities;
- An increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent;
- A merger or other acquisition involving affiliates of its parent and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation.

The disclosure of changes in status may be filed confidentially with the CPUC.

In addition, the CPUC rescinded WGS's exemption from filing of financial statements, data on officers' compensation and annual reports, and required compliance with affiliate reporting requirements through the filing of a simplified annual report.

#### **Storage Contracts**

PG&E and SoCalGas are required to file all negotiated storage contracts with the CPUC by advice letter, but contracts whose duration are within the CPUC guidelines of 3 to 15

years and that are priced at the utilities' long run marginal cost scaled to meet system revenue requirement (without discounts, load balancing premiums, or other special features) will not be subject to further CPUC approval.<sup>12</sup> These contracts will become effective seven days after filing in order to give CPUC staff time for review for conformance with the duration and price guidelines (D.93-02-013).

ISP's are required to file storage contracts but are exempt from the restrictions of term. Authorized to charge market based rates, ISP's are permitted to file tariffs with a rate window, with a floor price based on the ISP's short-run marginal cost in order to prevent the ISP from engaging in predatory pricing. The CPUC has left the determination of an upper limit to the rate window to the ISP since customers have competitive alternatives from either PG&E or SoCalGas. The ISP is not required to include its rate cost calculations in the filing but must make this information available to the CPUC. The ISP may request confidential treatment of this information (D.97-06-091, p. 9).

Wild Goose was directed to file short term service agreements (less than or equal to one year) within 30 days of the commencement of service and to provide quarterly summaries of transactions of specific sales that include the following information:

- purchaser
- transaction period
- type of service (e.g. firm, interruptible, balancing, etc.)
- rate
- applicable volume
- whether there is an affiliate relationship
- total charge to the customer.

WGS was also directed to file long term service agreements within 30 days of the commencement of service. Both the reports on the change in market power disclosure and on service agreements may be filed confidentially.

### **Affiliate Transaction Reporting**

PG&E and SoCalGas report all transactions with their affiliates on their websites. Information regarding the transaction is posted within several days of its occurrence.

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<sup>12</sup> The advice letters are distributed to interested parties and posted on the utility's website.

## **Affiliate Discount Reports**

Under the Affiliate Transaction Rules adopted by the CPUC, if a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee, the utility must post a notice on its electronic bulletin board within 24 hours of providing the service.<sup>13</sup> The notice must provide the following information:

1. name of the affiliate involved in the transaction;
2. rate charged;
3. maximum rate;
4. time period for which the discount or waiver applies.
5. quantities involved in the transaction;
6. delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount; and
8. procedures by which an unaffiliated entity may request a comparable offer.

In addition the utility must maintain the following records for each billing period:

1. the name of the entity being provided services provided by the utility in the transaction;
2. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
3. the duration of the discount or waiver;
4. the maximum rate;
5. the rate or fee actually charged during the billing period; and
6. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained must also conform to the applicable FERC reporting rules. ISP's are currently exempt from these reporting requirements.

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<sup>13</sup> In its Affiliate Transactions Compliance Plan, SoCalGas commits to post information regarding affiliate transactions within one hour of their occurrence.

## Operational Reports

PG&E posts daily operating statistics on its CGT “Pipe Ranger” website. The information includes:

1. **Supply and Demand Forecast:** Four day forecasts of physical flows onto and off of the CGT system including injections and withdrawals at the PG&E, Wild Goose and Lodi storage facilities.
2. **Recent Supply and Demand Activity:** Three days of historical data on physical flows presented in the same format as the forecast.
3. **Storage Activity Forecast:** Four day forecasts of scheduled injections and withdrawals at the PG&E, Wild Goose and Lodi storage facilities. Scheduled PG&E storage volumes are further identified as serving either the core and market centres, or to pipeline balancing.
4. **Recent Storage Activity:** Three days of historical scheduled activity presented in the same format as the Storage Activity Forecast and including the amount of imbalance gas in storage. (Pipeline balancing injections and withdrawals may be suspended if the quantity of imbalance gas in storage exceeds balancing inventory limits as established by PG&E.)

SoCalGas posts on its website at 7:30 a.m. each day (a) the actual total working gas in its four storage facilities as of 7:00 a.m., and (b) the net aggregate actual injection or withdrawal volume for the previous 24 hours.

WGS posts actual net daily storage injection data for the previous three months on its website, but does not report the storage balance.

### 3.5 STANDARDS OF CONDUCT

The CPUC adopted the Affiliate Transaction Rules in D.97-12-088. These were subsequently modified in D.98-08-035. The CPUC issued an Order Instituting Rulemaking in 2001 to review the affiliate reporting rules, however that proceeding was subsequently suspended and no final Decision was issued.

Each utility is required to file a compliance plan with the CPUC demonstrating that it has adequate procedures in place to preclude the sharing of information with its affiliates prohibited by the Affiliate Rules. SoCalGas, for example, has established an Affiliated Compliance Department, which provides education, direction, and oversight of all matters related to implementation of the Affiliate Transaction Rules. SoCalGas utilizes a hotline, internal publications, and intranet and internet websites to facilitate compliance. In addition, a utility must notify the CPUC of the existence of any new affiliates, have an audit performed every year, and make witnesses available to testify before the CPUC.

ISP's are currently exempt from these Rules; however the CPUC modified this exemption on a case-by-case basis. In its decision modifying WGS's Certificate of Public Convenience and Necessity for its storage expansion project, the CPUC prohibited WGS from engaging in any storage or hub services transactions with its parent company or any of its affiliates, and rescinded the simplified reporting of affiliate transactions that had been previously authorized (D.02-07-036). In its decision granting approval of the transfer of ownership interest in Lodi Holdings, L.L.C, the CPUC imposed similar restrictions and increased reporting requirements on LGS (D.05-12-007).

The Affiliate Transaction Rules, as adopted in decision D.97-12-088 and modified in subsequent proceedings, is attached as Exhibit B. The following subsections summarize the Rules.

### **Non-discrimination Standards**

The current Affiliate Rules provide that no preferential treatment regarding services should be accorded customers of affiliates, or requests for service from affiliates relative to unaffiliated suppliers and their customers. Transactions between a utility and its affiliates are limited to tariff products and services, or products and services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process. The utility will not tie the provision of any services provided by the utility--including any discounts, rebates, or waivers of terms and conditions of any services--to the purchase of any goods or services from its affiliates. There can be no assignment of customers to an affiliate. There must be a separation between the utility and its affiliates on issues of business development and customer relations so that there

is no soliciting of business, acquiring of information, sharing of propriety information, passing of customer information, or giving the appearance that either speaks on behalf of the other. If a utility provides a discount, rebate, or waiver of any charge to its affiliates, it must electronically post a notice.

### **Disclosure and Information Standards**

A utility may not provide customer information to affiliates exclusively, without customer consent. Any non-customer specific non-public information the utility makes available to its affiliates must be contemporaneously available to all other service providers. A utility may only provide information on its affiliates to its customers with a Commission-approved list of service providers. A utility must maintain records of all transactions with its affiliates, maintain a record of all contracts and related bids related to its affiliates, and may not favour its affiliates in providing customers with advice or assistance.

### **Separation**

A utility and its affiliates must be separate corporate entities, keep separate books and records, may not share plants, facilities, equipment or costs, and may not make joint purchases of goods and services associated with traditional utility merchant function. A utility may share with its affiliates certain joint corporate oversight, governance, support systems, and personnel. In addition, a utility and its affiliates may not jointly employ the same employees, including Board of Directors and corporate officers, except in specified circumstances. Any movement of employees between a utility and its affiliates must meet enumerated provisions, including the payment of a transfer fee.

Decision D.98-08-035 explicitly modified the rules concerning movement of employees from a utility to its affiliates by, among other means, permitting utility affiliates to use utility employees for certain out-of-state projects on a temporary basis.

### **Utility Products and Services**

New products and services must be offered through affiliates, unless they satisfy the Affiliate Rules and are approved by the CPUC. The Affiliate Rules specify the requirements to be met for approval of a new category of nontariffed products or services.

### **3.6 COMPLAINT MECHANISM**

PG&E and SoCalGas have procedures for filing complaints and for the utility to respond to these complaints. If the customer and utility cannot resolve the issue, the proponent may file a complaint with the CPUC in accordance with the CPUC's complaint procedures. These procedures are contained in Article 4 of the CPUC's Rules of Practice and Procedure, and are summarized on its website.<sup>14</sup> The CPUC also offers the following alternative dispute resolution (ADR) options:

- **Facilitation**

An Administrative Law Judge (ALJ) conducts workshop and uses good process skills to ensure that all viewpoints are heard and progress is made.

- **Mediation**

With parties' consent, case is referred to trained ALJ mediator who holds joint and separate confidential meetings with parties to identify underlying interests and settlement approaches for resolving a dispute.

- **Early Neutral Evaluation**

With their consent, parties present abbreviated versions of their case to one or more trained ALJ neutrals who provide early, nonbinding opinions on the merits of the controversy.

- **Settlement Conferences**

An ALJ holds intensive conferences with parties to help them negotiate by narrowing issues and exploring settlement options.

### **3.7 IMPLEMENTATION ISSUES**

#### **Allocation of Constrained Transportation Capacity (D.02-07-036)**

Addressing the issue of insufficient capacity to accommodate full as-available withdrawals from both Lodi and Wild Goose during times of peak demand, the CPUC affirmed the Gas Storage Rules and held that they require a pro rata allocation of as-available Redwood transportation capacity among all potential subscribers, whether they seek to transport flowing supplies or gas previously injected into storage at the Wild

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<sup>14</sup> The CPUC complaint procedures are reproduced in Exhibit C.

Goose or Lodi facilities.<sup>15</sup> The CPUC required PG&E to file a tariff proposal that included the following elements:

- Pro-rationing should compare the as-available transportation nominations on the backbone system from independent storage customers to the total non-storage as-available transportation nominations (i.e. deliveries to local transmission should not be factored in as they do not affect constraints on the backbone);
- Pro-rationing should occur at each nomination cycle during the day based on the backbone system capacity available at that time;
- The non-bumping rule (PG&E's Gas Rule 21.B.3) should be honoured;
- Pro-rationing between storage withdrawals and other as available transportation capacity should be based on the volumes nominated, not on the price bid for that capacity (since, for example, storage may have been injected many months beforehand at a different price than the current market price).

### **Expanding Transmission Capacity (D.02-07-036)**

WGS, in its application to amend its CPCN and expand its existing storage facility, addressed the issue of requiring PG&E to expand its transmission capacity to accommodate the increased deliverability of the Wild Goose storage facility and of allocating those costs.

WGS called on the CPUC to adopt an "equivalent service" standard by which PG&E would be obliged to design its backbone system to accommodate maximum withdrawals from all, interconnected storage facilities during times of peak demand (to the extent cost/benefit analysis supports that result) and to operate its system to maximize the efficiency of the natural gas transmission, storage and distribution components. PG&E opposes any solution other than a physical expansion of the transmission path paid for

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<sup>15</sup> The positions of the main parties can be summarized as follows:

- WGS argued that storage customers should have priority for any as-available transportation over "new" as-available customers, with those who injected into storage earliest entitled to withdraw first.
- LGS argued for pro rata allocation of as-available transportation, not just among independent storage customers but also among all customers vying for the same, limited, as-available capacity.
- PG&E argued that independent storage customers should be allocated that amount of as-available capacity that remains after other customers for as-available transportation have been served; in other words, storage withdrawals should be last in the as-available transportation queue. Gas Storage Rules 4.1 and 4.3 should no longer apply to storage withdrawals that must travel on the backbone system. PG&E argued that location matters, so that any independent storage facility that cannot directly serve a load center should not be covered by these Gas Storage Rules.

by WGS or other independent storage providers, arguing that it seeks to protect core ratepayers from non-core cost burdens. The CPUC declined to issue a decision on the matter.

### **ISP Interconnection (D.93-02-013)**

In the original WGS CPCN, the allocation of the cost of the interconnection facilities was based on the parties' identification of the necessary facilities as standard or special in accordance with PG&E's Rule 2. PG&E Gas Rule 2.C.2 defines special facilities as facilities requested by an applicant, which are in addition to, or in substitution for, standard facilities which PG&E would normally provide for delivery of service at one point, through one meter.

### **Operation and Balancing Agreement**

The CPUC required WGS and LGS to have operating and balancing agreements in place with PG&E before commencing operations (D.02-07-036 Wild Goose Expansion and D.00-05-048 Lodi Storage CPCN), and to make these agreements available to the CPUC and other interested parties.

### **Bypass (D.04-07-006)**

In D.04-07-006, the CPUC approved the settlement of a complaint brought by PG&E against LGS and several Calpine entities. PG&E had alleged that LGS was improperly offering Calpine natural gas transportation services. In the settlement, LGS and Calpine agreed to discontinue certain services PG&E alleged were unlawful and to pay a monetary settlement to PG&E's ratepayers and shareholders.<sup>16</sup>

### **ISP Offering Service to a Utility**

Complaint by WGS against PG&E claiming that PG&E did not adhere to the criteria established by the Commission for assessing the creditworthiness of independent storage providers (January 11, 2007). The Commission dismissed the complaint without prejudice.

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<sup>16</sup> PG&E alleged that LGS improperly offered Calpine natural gas transportation services because LGS's CPCN only applied to gas storage services, so that by offering transportation services LGS exceeded the authority granted by the CPUC. PG&E claimed that by establishing direct interconnections between its pipeline and Calpine's proprietary natural gas pipeline, LGS and Calpine were attempting to bypass PG&E's natural gas transportation charges. LGS claimed that it was furnishing Calpine natural gas storage services in compliance with its CPCN. Calpine argued that it was using its own proprietary pipeline to deliver natural gas withdrawn from LGS to its own generating plants.

## MICHIGAN

### 4.1 GAS STORAGE AND TRANSPORTATION OVERVIEW

Michigan has the most natural gas storage of any state in the U.S. The Michigan Public Service Commission (MPSC) regulates nine natural gas storage companies. Five other storage operators are regulated by the FERC.

**Table 4A: Michigan Natural Gas Storage Operators**

Storage Operator	Parent(s)	Working Capacity (MMcf)	Market Share (%)
<b>Intrastate – LDC</b>			
Consumers Energy	Consumers Energy	142,800	
Michigan Consolidated*	DTE Energy	124,400	
Michigan Gas Utilities	Integrys	5,100	
SEMCO Gas	SEMCO	<u>5,170</u>	
		277,470	41%
<b>Intrastate – LDC Affiliate</b>			
Washington 10*	DTE Energy	76,600	
South Romeo Gas Storage	DTE Energy	9,700	
CMS Gas Transmission	Consumers Energy	<u>18,400</u>	
		104,700	15%
<b>Intrastate – Interstate Pipeline Affiliate</b>			
Eaton Rapids*	TransCanada/SEMCO	13,500	
Lee 8 Partnership*	Southern Union/ProLiance	<u>2,400</u>	
		15,900	2%
<b>Interstate – Interstate Pipeline</b>			
ANR Pipeline	TransCanada	134,500	20%
<b>Interstate – Interstate Pipeline Affiliate</b>			
ANR Storage	TransCanada	55,800	
Blue Lake Storage	TransCanada (75%)	47,100	
Southwest Gas Storage	Southern Union	<u>17,300</u>	
		120,200	18%
<b>Interstate – Independent</b>			
Bluewater Gas Storage	Plains All-American Pipeline	29,200	4%
<b>TOTAL</b>		681,970	

\*Intrastate companies authorized to provide interstate storage service.

Source: MPSC website

Four LDCs operate gas storage facilities: Michigan Consolidated (MichCon), Consumers Energy, Michigan Gas Utilities, and SEMCO Gas. Consumers Energy and MichCon are the two large LDCs in the state, accounting for 47 percent and 39 percent of the Michigan gas distribution deliveries in 2006, respectively. MichCon sells firm and interruptible storage services to off-system customers using storage capacity that is excess to the needs of its distribution customers. The remaining LDCs currently use all of their storage capacity to meet on-system requirements.

The other intrastate storage operators are LDC affiliates (Washington 10, South Romeo, and CMS Gas Transmission), affiliates of interstate pipeline companies (Lee 8), or both (Eaton Rapids). MichCon, Eaton Rapids, Lee 8, and Washington 10 have FERC authorization to provide interstate storage services. MPSC-regulated companies operate approximately 60 percent of the total working storage capacity in the state.

The FERC-regulated storage operators are interstate pipelines or affiliates of interstate pipelines. Only one storage operator—Bluewater Gas Storage—is not affiliated with a company that also provides gas transmission or distribution service in Michigan.

### **Gas Transmission**

MichCon and Consumers Energy have extensive pipeline networks, and provide unbundled on-system transportation service for in-franchise customers and off-system transportation service for ex-franchise customers moving gas between interconnections with gathering systems, third party storage facilities, interstate pipelines and other LDCs. Four interstate pipelines also operate in Michigan. All of the non-LDC storage facilities in the state are connected to at least one interstate pipeline, which means they do not depend on transportation service from Michigan LDCs to gain access to markets. Bluewater Gas Storage operates a 35-mile pipeline header that connects with six different pipelines: MichCon, Consumers Energy, Vector, Great Lakes, ANR, and Union Gas.

**Table 4B: Interstate Pipelines Operating in Michigan**

<b>Pipeline</b>	<b>Parent(s)</b>
ANR Pipeline	TransCanada
Great Lakes Gas Transmission	TransCanada
Panhandle Eastern	Southern Union
Vector Pipeline	DTE Energy/Enbridge

### **Proposed Storage Expansions**

ANR Pipeline, ANR Storage and Great Lakes held a non-binding open season in late 2007 for up to 35 Bcf of firm storage service from existing and/or new facilities in Michigan. Service in the STEP 2010 Expansion Project would begin as early as 2010. Bidders were able to request stand-alone storage service, or a combination of storage and transportation on one or more of the affiliated pipelines. TransCanada held a coordinated open season for downstream transportation to Ontario and Northeast U.S. markets.

## **4.2 REGULATIONS AND POLICIES**

### **Conditions of Service**

Intrastate gas storage facilities are subject to the same regulations as gas distribution companies, and must provide service under “reasonable terms, rates, and conditions” as determined by the MPSC. (MCL 486.253) Storage operators must have MPSC-approved tariffs defining their services and rates.

Intrastate pipelines in Michigan are not gas utilities and are subject to a different set of common carrier regulations (the “Act 9” regulations). Non-LDC storage operators must apply for a separate certificate to construct and operate the pipeline facilities connecting the storage facility to an LDC or pipeline.

MPSC-regulated storage operators are not required to hold an open season or offer service to the public. The MPSC has accepted arrangements where all of the storage space was leased to an affiliated marketing company or storage operator.<sup>17</sup>

### **Market-Based Rates**

The MPSC first approved market-based pricing for off-system storage sales in 1993, when it determined that MichCon should be authorized to sell excess storage capacity at market-based rates, subject to a maximum rate of \$1.50 per Mcf, in order to maximize storage revenue credits to MichCon's sales customers (U-10150). The MPSC subsequently gave other non-LDC storage operators the option to charge market-based rates, still subject to a rate cap. In 2007 the MPSC approved an application by CMS Transmission to charge market-based storage rates without a cap (U-15254).

### **End User Transportation Services**

Consumers Energy and MichCon implemented standard tariffs for end user transportation service in the late 1980s. End user transportation services are not fully unbundled, but include an allocation of storage space for no-notice balancing. MichCon allocates transportation customers storage space equal to 10 percent of the customer's annual contract quantity (ACQ). Consumers Energy transportation customers can elect a storage allocation within a range of 6.5 percent to 10.5 percent of their ACQ. Both LDCs place monthly and/or seasonal limitations on storage use, but have no limits on daily injections or withdrawals. Customers can choose to pay the standard tariff rate, or a negotiated rate within a rate band approved by the MPSC. Transportation customers can also purchase additional contract storage service or an optional standby service.

### **Off-System Transportation and Storage Services**

MichCon has MPSC-approved rates to provide firm and interruptible transportation for shippers that use the MichCon system to deliver gas to another LDC or interstate pipeline. MichCon has chosen to use the same rates for interstate transportation services it provide under its FERC Section 311 certificate. Transportation rates for transactions with initial terms shorter than one year are fully negotiable, with no

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<sup>17</sup> See South Romeo Gas Storage (U-9248).

maximum tariff rate. Transactions one year or longer are also negotiable, but subject to a maximum rate stated in the tariff.<sup>18</sup>

MichCon also provides firm and interruptible storage services to both intrastate and interstate customers. The storage service is unbundled, but as a practical matter customers cannot access MichCon storage without MichCon transportation. Storage pricing is negotiable, subject to a rate cap.<sup>19</sup>

Consumers Energy does not offer unbundled intrastate transportation service, but it has a transmission-only rate for interstate transportation services. Consumers Energy offers interruptible contract storage similar to the MichCon service to intrastate customers (both on-system and off-system), but does not offer firm storage or interstate storage service.

### **Special Contracts**

Michigan LDCs have the ability to negotiate contracts with large end users that have pricing or terms of service that are different from the tariff service. Each of these agreements must be approved by the MPSC as a special contract. The contract is filed with the application, which is available to the public.

The MPSC established guidelines for special contracts in 1995 (U-10646). Special contracts are usually justified on the basis of load retention, since many large gas consumers in Michigan have a viable bypass alternative. The MPSC also considers the economic development benefits of attracting or retaining an industrial customer.

Special contracts can be a form of unbundling, since large gas users often agree to a lower allocation of storage service in return for a reduced transportation rate. Most large gas-fired power generators in Michigan are supplied under special contracts.

### **4.3 REPORTING**

The reporting requirements applicable to intrastate companies providing storage and transportation services are summarized below:

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<sup>18</sup>The maximum rate for firm off-system transportation service under Rate Schedule TOS-F is currently \$0.209 per MMBtu.

<sup>19</sup> The maximum rate for firm storage service under Rate Schedule CS-F is currently \$1.47 per MMBtu.

1. LDCs providing storage service to off-system customers
  - No transaction reporting required for intrastate transactions. Aggregate annual quantities and revenue are included in the LDC's Annual Report to the MPSC.
  - LDCs providing interstate service must file semi-annual storage reports with the FERC
2. LDCs providing transportation service to off-system customers
  - Quantities and revenues for major off-system customers are reported in LDC's Annual Report filed with the MPSC
  - LDCs providing interstate service must file an annual transportation report with the FERC
3. LDCs providing transportation and storage service under special contracts
  - LDCs must apply to the MPSC for approval of all special contracts. The application, including the contract, is available to the public.
  - Volumes and revenues for each special contract are identified in the LDC's Annual Report filed with MPSC
4. Non-LDC storage companies
  - No reporting required by the MPSC for intrastate transactions
  - Companies providing interstate service must file semi-annual storage reports with the FERC

### **Operational Reporting**

Consumers Energy reports available capacity and aggregate transportation customer nominations for eight receipt points on its website. The company reports estimated capacity and scheduled quantities for the current month, and actual data for the most recent month.

#### **4.4 STANDARDS OF CONDUCT**

Intrastate transportation and storage service for both on-system and off-system customers is subject to Transportation Standards of Conduct included in the LDCs' tariffs. These standards require that the LDC apply tariff provisions "in the same manner without discrimination to all similarly situated persons," and prohibit LDCs from giving their affiliates preferential access to services or information. The Transportation Standards of Conduct are attached in Exhibit D.

Interstate service must be provided under the terms of the company's Operating Statement approved by FERC. Intrastate companies providing transportation or storage service under Section 311 must comply with the FERC non-discrimination requirements.

#### **Affiliate Transactions**

The MPSC requires Consumers Energy and MichCon to comply with additional rules for affiliate transactions. The Guidelines for Affiliate Transactions are listed in Exhibit E.

#### **4.5 COMPLAINT MECHANISM**

Consumers Energy and MichCon include a complaint procedure for transportation customers in their MPSC-approved tariff. This procedure encourages companies to work with shippers to resolve complaints within a specified timeframe. If the company and shipper cannot resolve the complaint, the issue can be taken to the MPSC. The MPSC also has contact information on its website that consumers can use to register a complaint directly with the regulator.

#### **4.6 IMPLEMENTATION ISSUES**

##### **Unbundling**

In 2000 the MPSC initiated a proceeding to consider whether additional LDC services should be unbundled from utility rates (U-12550). The MPSC subsequently ordered each utility to submit a detailed cost of service allocation study in its next rate case showing the cost of providing each of the following services: (1) metering services, (2) billing information services, (3) transmission services, (4) balancing services, (5) storage services, (6) backup and peaking services, and (7) customer turn-on and turn-off

services. The MPSC expected that this information would be used by parties to advocate or oppose the development of unbundled service offerings by the LDC, or backout credits for customers who chose to acquire these services from third parties.

In the next Consumers Energy rate case (U-13000), the National Energy Marketing Association argued that all of the services identified in the earlier MPSC order should be implemented on a fully-unbundled basis at cost-based rates, in order to establish efficient, competitive markets. In its order dated 11/7/2002, the MPSC determined that it would not require Consumers Energy to implement further unbundling, finding that there was a lack of evidence that third parties were prepared to offer all of the component services, or that further unbundling would create any real benefits to the public.

### **Marketing Affiliate Access to Customer Information**

The MPSC directed MichCon to limit the information that producer-shippers could be required to provide concerning their downstream processing arrangements. Shippers were concerned that MichCon's marketing affiliate could get access to this information, which it could then use to gain an advantage over competitors. (U-10150)

### **Affiliate Preference in Allocating Storage**

Consumers Energy was found to have increased the annual contract quantity (ACQ) under a transportation agreement with its electric generation affiliate from 3 Bcf per year to 7 Bcf per year, even though the annual throughput under the contract had not changed. MPSC staff argued that the increase in the ACQ was not justified under the terms of the LDC's transportation tariff, and resulted in Consumers Energy's affiliate receiving storage capacity worth more than \$500,000 per year at no additional cost. The MPSC agreed with staff, and directed Consumer Energy to reduce the ACQ to 3 Bcf. (U-10755)

## OKLAHOMA

### 5.1 GAS STORAGE AND TRANSPORTATION OVERVIEW

Oklahoma Natural Gas Company (ONG), a division of ONEOK, is the dominant gas distribution company in Oklahoma, supplying approximately 85 percent of the gas distribution market. ONG receives gas from ONEOK Gas Transportation, an affiliated intrastate gas transmission company.

**Table 5: Oklahoma Natural Gas Storage Operators**

Storage Operator	Parent(s)	Working Capacity (MMcf)	Market Share (%)
<b>Intrastate – LDC Affiliate</b>			
ONEOK Gas Storage*	ONEOK	42,600	23%
<b>Intrastate – Electric Utility Affiliate</b>			
Enogex*	OGE	26,000	14%
<b>Intrastate – Independent</b>			
Niska Gas Storage*	Carlyle/Riverstone	15,000	8%
<b>Interstate – Interstate Pipeline</b>			
Natural Gas Pipeline Co.	Kinder Morgan	54,100	
Center Point Gas Transmission	CenterPoint	24,000	
Southern Star Central	GE/CDP Quebec	<u>12,500</u>	
		90,600	50%
<b>Interstate – Interstate Pipeline Affiliate</b>			
Southwest Gas Storage	Southern Union	9,273	5%
<b>TOTAL</b>		183,473	

\*Intrastate companies authorized by FERC to provide interstate storage service.

### 5.2 SIGNIFICANT ORDERS AND RULEMAKING PROCEEDINGS

#### Storage Deregulation

Following the implementation of natural gas service unbundling in 1998, ONEOK proposed that its natural gas storage businesses in Oklahoma be deregulated. In an order issued in July 1999 (Order 433726), the Oklahoma Corporation Commission

(OCC) determined that there was sufficient competition to allow ONG's storage assets and services to be removed from utility regulation, effective November 1, 1999. The OCC transferred the storage certificates previously issued to ONG to a separate ONEOK storage affiliate. Going forward, ONG is required to purchase gas storage services through a competitive bid procedure with oversight by the OCC.

### **5.3 REGULATIONS AND POLICIES**

OCC regulations prohibit utilities from tying services and require that costs be allocated to avoid cross-subsidies.

**165:45-17-24(f) Tying arrangements prohibited.** Unless otherwise allowed by the Commission through a rule, order or tariff, a utility shall not condition the provision of any product, service, pricing benefit, waivers or alternative terms or conditions upon the purchase of any other good or service from the utility's affiliate.

**165:45-17-24(a) Transactions between a utility and its affiliates.** A utility shall not cross-subsidize the business activities of any affiliate with revenues from a regulated service. A utility cannot recover more than its reasonable fair share of the fully allocated costs for any transaction or shared services.

### **5.4 REPORTING**

There are no requirements for gas storage or transmission companies to report intrastate transactions. Interstate transactions must meet the FERC requirements to file a semi-annual storage report or annual transportation report.

### **5.5 STANDARDS OF CONDUCT**

The OCC rules for natural gas utilities (i.e. gas transportation and storage companies) providing services upstream of the LDC citygate are included in Exhibit F.

### **5.6 COMPLAINT MECHANISM**

Natural gas utilities are required to establish a complaint procedure. [165:45-17-23(7)] The OCC has an online form on its website to allow customers to file complaints directly with the Commission.

## **BRITISH COLUMBIA**

### **6.1 GAS STORAGE AND TRANSPORTATION OVERVIEW**

Unocal Canada opened the Aitken Creek Storage Facility in 1987 and has been offering third party storage services at the facility for over a decade. Aitken Creek is located 120 km northeast of Fort St. John in the northeast corner of B.C., and is connected to the Spectra and Alliance pipelines. Aitken Creek has a licensed capacity of approximately 81.2 Bcf, a working gas capacity of 59.2 Bcf, and a deliverability of approximately 550 MMcf per day.

Terasen Gas Inc. (TGI) uses Aitken Creek primarily to fulfill its seasonal supply obligations. Supply from Aitken Creek provides TGI with over 25 percent of its winter gas supply and 10 percent of its peak day gas supply portfolio. In the 2006/07 storage year, TGI held over 30 percent of the working gas capacity and over 20 percent of the deliverability of the Aitken Creek facility.

No other underground gas storage reservoirs exist in B.C. TGI owns and operates an LNG needle peaking facility on Tilbury Island in the metro-Vancouver area and is proposing to construct and operate a second, 1.5 Bcf LNG facility on Vancouver Island.

### **6.2 REGULATIONS AND POLICIES**

Unocal Canada has operated Aitken Creek Storage since 1987. Until 2007, Unocal Canada was regulated as part of the gas producing sector, but not as a public utility. In 2007, the BCUC notified Unocal that Aitken Creek fell within the definition of a public utility as defined by the Utilities Commission Act (UCA). The BCUC subsequently granted Unocal an exemption from some of the provisions of the UCA, most notably those pertaining to the setting of rates (G-135-07). Central to the BCUC's decision was its assessment, based on the evidence in the proceeding, of whether or not Unocal could wield market power. The BCUC was not persuaded that Unocal was unable to exercise market power, particularly in the provision of a seasonal gas supply.

A further consideration was that the parties affected by the storage rates charged by Unocal are not limited to contracting parties, but also include the customers of TGI whose delivery charges to its customers reflect the recovery of the storage charges paid by TGI to Unocal. Therefore, the BCUC ordered that Aitken Creek will continue to be subject to the UCA on a complaint basis, with a complaint taking the form of an application by an interested party to the BCUC.

In its order granting Unocal, in its operation of Aitken Creek, an exemption from some of the provisions of the UCA, the BCUC has left open the possibility of full economic regulation, or rescinding one or more exemptions, following the determination of a complaint received by it from any person whose interests are affected.

### **6.3 REPORTING**

Unocal is required to file an annual report with the BCUC with the following information:

- Facility name, location, function, capacity.
- Any significant changes in capacity during the previous year.
- Throughput for the previous year, in terms of gas quantity delivered from storage.
- Names, addresses and contact name and telephone number for Unocal and each storage customer

### **6.4 COMPLAINT MECHANISM**

Under the complaint-based mechanism established in the Aitken Creek proceeding, TGI files agreements entered into with Unocal for gas storage service with the BCUC under a provision of confidentiality and notifies the BC Old Age Pensioners Organization (BCOAPO) of the existence of the contracts. BCOAPO then has one month in which to review the agreements and file a complaint with the BCUC.

In principle, anyone may file a complaint with the BCUC in regards to the agreements entered into between Unocal and TGI. In practice however, in order to address the possibility that competitors may use the complaint mechanism to access otherwise proprietary information, only those whose interests are demonstrably affected by the agreements may be allowed to view the contracts.

## GREAT BRITAIN

### 7.1 GAS STORAGE AND TRANSPORTATION OVERVIEW

Natural gas transmission and storage in Great Britain has evolved from an integrated system operated by British Gas to a market with multiple participants. The National Transmission System is now owned by National Grid Gas (NGG), which is the System Operator. Natural gas storage facilities previously operated by British Gas have either been divested, as in the case of the Rough and Hornsea underground storage facilities, or ring-fenced from the affiliated transmission business, as in the case of the four LNG storage facilities that are now owned by National Grid.

Three new natural gas storage facilities have entered service since 2000, and two more projects are currently under construction. NGG reports that more than a dozen gas storage projects are in various stages of development.

**Table 7: UK Natural Gas Storage**

Storage Facility	Operator	Working Capacity (Bcf)
<b>Operating</b>		
Rough	Centrica Storage Limited	120.1
Hornsea	Scottish & Southern Energy (SSE)	11.3
Hatfield Moor	Scottish Power	4.2
Hole House Farm	Energy Merchants Gas Storage	1.4
Humbly Grove	Star Energy	<u>10.2</u>
Subtotal		147.2
<b>Under Construction</b>		
Aldbrough	SSE/Statoil	14.8
Holford Gas Storage	E.ON	<u>5.7</u>
Subtotal		20.5
<b>Total</b>		<b>167.7</b>

Source: National Grid, Gas Transportation Ten Year Statement 2007.

## 7.2 REGULATIONS AND POLICIES

### Ofgem

The Gas and Electricity Markets Authority was established by the Utilities Act 2000 as the regulator of the gas and electricity industries in Great Britain. The Office of the Gas and Electricity Markets (Ofgem) supports the Authority. Ofgem is the successor to the Office of Gas Supply (Ofgas).

### Non-Discriminatory Access to Transmission

Under the terms of the Gas Act 1986, a gas transporter has a duty to facilitate competition in the supply of gas [9(1A)], and must avoid any undue preference or undue discrimination in the conveyance of gas [9(2)(b)]. Access to gas transmission capacity is governed by the Uniform Network Code (UNC), which includes detailed auction requirements. The Transportation Principal Document of the UNC requires NGG to conduct four types of auctions:

- The Quarterly System Entry Capacity auction is an annual auction for capacity from two to sixteen years out. Capacity is offered in three-month strips. The QSEC results are used to determine the need for new gas transmission facilities.
- The Annual Monthly System Entry Capacity auction is an annual auction for capacity one to two years out. Capacity is offered by month.
- The Rolling Monthly System Entry Capacity auction is a monthly auction for capacity over the next thirteen months. Capacity is offered by month.
- The Daily System Entry Capacity auction is held daily for capacity available on the next day.

### Storage Deregulation

In February 1999, Ofgas issued a decision document on storage deregulation.<sup>20</sup> The underground storage facilities owned by British Gas were spun off to a new affiliate, BG Storage, and were removed from the British Gas transporter license. During a five-year transition period, BG Storage agreed to conduct auctions for multi-year, annual, and short term storage services, and facilitate secondary trading in firm storage rights.

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<sup>20</sup> Ofgas, "Review of the Supply of Gas Storage and Related Services," February 1999.

In the absence of storage licensing requirements, Ofgas determined that it would adopt a competitive benchmark approach to regulation, based on the general principles of competition law.<sup>21</sup> Ofgas stated that it would carefully monitor the utilization of storage to detect any withholding of capacity to increase the market price, and would monitor storage transactions to identify instances of undue discrimination. Ofgas would also assess whether BG Storage was providing the range and types of storage services that were required by the market. To prevent the storage operator from providing special services to one customer without making similar services available to other potential customers, Ofgas approved a standard form of storage contract.

When Centrica Storage Limited (CSL) acquired the Rough storage facility in 2002, Centrica entered into an agreement with the Office of Fair Trade containing many of the conditions that previously applied to BG Storage (the Undertakings). Among other provisions, CSL is required to offer to the market a specified minimum quantity of Rough storage capacity under auction terms defined in the Undertakings. CSL retained the standard storage contract that had been approved for use by BG Storage, and is required to follow a consultation process and receive Ofgem approval before making any modifications. CSL must facilitate the operation of a secondary market in Rough storage rights by ensuring that injectivity, space, and deliverability rights can be traded separately, and ensuring that assignments and trading are not unreasonably restricted. Finally, CSL must operate separately from other Centrica companies, and Centrica is required to enforce a Code of Conduct to prevent sharing of confidential customer or operating information.

### **Third Party Access to Storage**

Section 19B of the Gas Act 1986 sets out certain requirements for natural gas storage operators:

- The storage operator is required to publish the main commercial terms for providing storage service to third parties. [19B(1)]
- These terms must not discriminate against any applicants or potential applicants for the right to have gas stored in the facility. [19B(3)]

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<sup>21</sup> Ofgem, "A Review of the Development of Competition in the Gas Storage Market," October 2000.

- If an applicant requesting storage service cannot reach agreement with the storage operator on the availability or terms of gas storage capacity, the regulator may direct the storage operator to provide the service, and set the terms for the service. [19B(4 - 12)]
- Storage operators shall maintain separate accounting of transactions involving affiliates. [19E(3)]

Ofgem has the authority to exempt storage operators from the third party access (TPA) requirements of Section 19B where it is satisfied that the “use of the facility by other persons is not necessary for the operation of an economically efficient gas market”. Exemptions are granted on a case-by-case basis, and can be revoked if conditions change. Ofgem has consistently granted exemptions to new entrants, based mainly on the fact that the new operators have a relatively small market share.<sup>22</sup> However, the Rough and Hornsea storage facilities that were previously owned by British Gas are still subject to TPA requirements.

### **Standard Storage Connection Agreement**

As part of the process of unbundling gas transmission and storage, Ofgem directed British Gas, in consultation with independent storage developers and other interested parties, to develop a standard storage connection agreement (SCA) to ensure non-discriminatory access to the transmission grid. The generic SCA, which was approved in February 2000, formalized the physical connection arrangements between storage operators and the gas transmission company, and eliminated any operational differences between affiliated and unaffiliated storage facilities.

## **7.3 REPORTING**

### **Transmission System Operator**

NGG, as the gas transmission System Operator, is required to post on its website demand forecasts and actual nomination and flow information for transmission and

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<sup>22</sup> Ofgem defines the relevant market to be the “flexibility market”, which includes underground and LNG storage, as well as flexible deliveries from production and Imports. See, for example, “Final Decision: SSE Hornsea Ltd’s Application for an Exemption from Section 19B of the Gas Act 1986,” October 25, 2007.

storage points. NGG also posts the quantities of contracted capacity by system entry point for the current month and all future months.

UNC Section Q requires each Storage Operator to provide NGG with all information provided for under the Storage Connection Agreement, which includes:

- The amounts of aggregate storage capacity allocated to storage users for each storage facility;
- Storage users' aggregate storage capacity, injections, withdrawals and gas-in-storage, on a daily basis;
- Details of the storage space, deliverability and maximum injection rate of each storage facility.

NGG posts storage inventory data daily, aggregated by facility type:

- Long Range Storage is defined as seasonal storage that requires more than two months to empty. Rough is the only Long Range Storage facility currently operating.
- Medium Range Storage is storage with the capability to flow gas at short notice for up to two months. The remaining underground storage facilities fall into this class.
- Short Range Storage is peaking storage, which includes the four LNG storage facilities operated by NGG.

During the winter storage withdrawal season, NGG compares daily storage inventories to a Safety Monitor, which is the minimum amount of gas that must be in storage at each point during the withdrawal cycle to ensure a reliable gas supply.

In October 2006 NGG implemented UNC Modification Proposal 006, which requires near real time (i.e. within minutes) posting of gas flows at major points on the National Transmission System. The purpose of this proposal was to increase market transparency and reduce the information disparity between gas producers and upstream shippers on the one hand, and downstream suppliers, traders, and consumers, on the other. In approving this proposal, Ofgem strongly endorsed the use of mandatory reporting requirements as opposed to the voluntary alternatives offered by the offshore gas producers:

Whilst Ofgem welcomed these developments, it has, having regard to the principles of best regulatory practice, maintained a clear preference for a formal

legislative route to secure the consistent and comprehensive release of this information. We think this is crucial to the efficient functioning of the market. We also think that a legislative requirement to provide this information would provide better long-term certainty about the level of information disclosure and avoid the potential for unilateral or collective withdrawal from providing the information that exists under any voluntary scheme.<sup>23</sup>

To reduce the risk of disclosing company-specific information, real time flows are not reported for meters where the maximum capacity is less than 10 million cubic meters per day. This means that near real time storage injection and withdrawal information is posted for the Rough and Hornsea storage facilities, but not for Hatfield Moor, Hole House Farm, or Humbly Grove, since the daily withdrawal deliverability of each of these storage facilities falls below the threshold.

### **Centrica Storage Limited**

The Undertakings require CSL to report certain operating and transaction data related to the Rough storage facility to Ofgem and the public:

- CSL must provide an annual report to Ofgem with detailed operating data. One of the purposes of this report is to identify any changes in the available storage capacity of the Rough facility.
- Each month CSL must provide Ofgem with the details of all individual capacity sales. The form of this report is defined in the Undertakings.
- CLS must post capacity auction results, including:
  - The weighted average price of all units of capacity allocated;
  - The lowest price for an allocated unit of capacity;
  - The number of successful bidders; and
  - Details on any unallocated capacity.
- CSL is required to post the weighted average price of capacity at the beginning of each storage year.
- CSL is required to post daily storage nominations, with intraday updates.

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<sup>23</sup> Ofgem decision letter on Uniform Network Code (UNC) Modification Proposal 006 “3<sup>rd</sup> Party Proposal: Publication of Near Real Time Data at UK sub-terminals”, May 3, 2006, p. 2.

## 7.4 COMPLAINT MECHANISM

Ofgem has enforcement responsibilities under the Gas Act 1986 and concurrent powers with the Office of Fair Trading to address anticompetitive behaviour under the Competition Act 1998. In September 2007 Ofgem issued comprehensive guidelines for the use of its investigation and enforcement authority to monitor markets and deal with complaints.<sup>24</sup> Ofgem considers effective enforcement to be “essential to ensure that gas and electricity markets work well for consumers and that energy companies operate on a level playing field”.

Ofgem’s expectation is that complaints will first be directed either to the company or to energywatch, an independent consumer protection body. However, Ofgem recognizes that “there will be occasions, such as where the complainant fears jeopardizing its relationship with the company by raising the matter, where it may be reasonable for the complainant to raise the matter directly with Ofgem”. The Ofgem guidelines also address the need to protect confidential information.

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<sup>24</sup> Ofgem, “Enforcement Guidelines on Complaints and Investigations” Ref 232/07 September 28, 2007

## CONCLUSION

This review of regulatory policies and practices to support competitive natural gas storage markets identified a number of common themes. These include:

- Reporting requirements and use of internet postings to ensure that market participants have accurate and timely information about terms of service, the availability of transportation and storage services, and the market value of these services.
- Auction/open season procedures to increase transparency and prevent discriminatory access to services.<sup>25</sup>
- Approval and/or public disclosure of contracts with non-standard terms of service.
- Rules to ensure that transportation customers have access to third party storage and balancing services.
- Protections against cross subsidies from regulated to unregulated businesses by structural means (i.e. requiring unregulated businesses to be separate corporate entities), or through the appropriate allocation of costs.
- Standards of conduct to control the transfer of operating and customer information between regulated and non-regulated businesses within the same company, or between affiliates.
- Mandatory complaint procedures for transportation and storage operators, with options for customers to contact regulators directly.

At the same time, there is no single template. Rules and policies vary considerably by jurisdiction, depending on the structure of transportation and storage markets, the potential for new storage entrants, and the needs of gas consumers.

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<sup>25</sup> A further example, TCPL's Transportation Access Procedure, is summarized in Exhibit G.

## EXHIBIT A

### FERC STANDARDS OF CONDUCT

#### PART 358 – Standards of Conduct

##### 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter and is affiliated in any way with a marketing or brokering entity and conducts transportation transactions with its marketing or brokering affiliate.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a public utility Transmission Provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by §358.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

(e) The Standards of Conduct in this part do not govern the relationship between a natural gas Transmission Provider as defined in §358.3(a)(2) and its Energy Affiliates.

##### § 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independent from employees of its Marketing and Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit its Marketing or Energy Affiliates.

##### § 358.3 Definitions.

(a) *Transmission Provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(3) A Transmission Provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated

interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power.

(b) *Affiliate* means:

(1) Another person that controls, is controlled by or is under common control with, such person. An Affiliate includes a division that operates as a functional unit,

(2) For any exempt wholesale generator, as defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in section 214 of the Federal Power Act.

(c) *Control* (including the terms “controlling,” “controlled by,” and “under common control with”) as used in this part and §250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a Transmission Provider that:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) A local distribution company division of an electric public utility Transmission Provider shall be considered the functional equivalent of an Energy Affiliate, unless it qualifies for the exemption in §358.3(d)(6)(v).

(6) An Energy Affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider or an interconnected foreign affiliated natural gas pipeline that is engaged in natural gas transmission activities that are regulated by the state, provincial or national regulatory boards of the foreign country in which such facilities are located.

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;

(iv) An affiliate that purchases natural gas or energy solely for its own consumption. “Solely for its own consumption” does not include the purchase of natural gas or energy for the subsequent generation of electricity.

(v) A State-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system sales, and otherwise does not engage in the activities described in §§358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system sales and to engage in *de minimis* sales necessary to remain in balance under applicable pipeline tariff requirements.

(vi) A processor, gatherer, Hinshaw pipeline or an intrastate pipeline that makes incidental purchases or sales of *de minimis* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise does not engage in the activities described in §§358.3(d)(1), (2), (3) or (4).

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes:

(1) An interstate natural gas pipeline's sales operating unit, to the extent provided in §284.286 of this chapter, and

(2) A public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales.

(3) Marketing or sales does not include incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities.

(f) *Transmission* means natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter; and electric transmission, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission facilities.

(g) *Transmission Customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) *Open Access Same-time Information System or OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(i) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline posts the information, by electronic means, required by §§284.12 and 284.13 of this chapter.

(j) *Transmission Function employee* means an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

(k) *Marketing Affiliate* means an Affiliate as that term is defined in §358.3(b) or a unit that—

(1) With respect to a natural gas pipeline Transmission Provider, engages in “marketing and brokering” activities as those terms are defined at §358.3(l); and

(2) With respect to an electric Transmission Provider, engages in marketing, sales or brokering activities as those terms are defined at §358.3(e).

(l) *Marketing or brokering* under §358.3(e) means a sale of natural gas to any person or entity by a seller that is not an interstate pipeline, except when:

- (1) The seller is selling gas solely from its own production;
- (2) The seller is selling gas solely from its own gathering or processing facilities; or
- (3) The seller is an intrastate natural gas pipeline or a local distribution company making an on-system sale.

**§ 358.4 Independent functioning.**

(a) *Separation of functions.* (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet Web site, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from:

(i) Conducting transmission system operations or reliability functions; and

(ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

(5) Transmission Providers are permitted to share with their Marketing or Energy Affiliates senior officers and directors who are not "Transmission Function Employees" as that term is defined in §358.3(j). A Transmission Provider may share transmission information covered by §385.5(a) and (b) with its shared senior officers and directors provided that they do not participate in directing, organizing or executing transmission system operations or marketing functions; or act as a conduit to share such information with a Marketing or Energy Affiliate.

(6) Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity Functions with their Marketing and Energy Affiliates. This provision does not apply to natural gas transmission providers.

(b) *Identifying affiliates on the public Internet.* (1) A Transmission Provider must post the names and addresses of Marketing and Energy Affiliates on its OASIS or Internet Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, as applicable, a complete list of the facilities shared by the Transmission Provider and its Marketing and Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet Web site, as applicable, required by §§358.4(b)(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the potential merger is announced.

(vi) All OASIS or Internet Web site postings required by part 358 must comply, as applicable, with the requirements of §37.6 or §§284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers* . Employees of the Transmission Provider, Marketing or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the Standards of Conduct. Notices of any employee transfers between the Transmission Provider, on the one hand, and the Marketing or Energy Affiliates on the other, must be posted on the OASIS or Internet Web site, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function ( *i.e.* , on behalf of the Transmission Provider, Marketing or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet Web site, as applicable, for 90 days.

(d) *Books and records*. A Transmission Provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its Energy Affiliates and these must be available for Commission inspections.

(e) *Written procedures*. (1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet Web site a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by September 22, 2004.

(3) The Transmission Provider must post on the OASIS or Internet Web site, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by September 22, 2004 or within 30 days of becoming subject to the requirements of part 358.

interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power.

(b) *Affiliate* means:

(1) Another person that controls, is controlled by or is under common control with, such person. An Affiliate includes a division that operates as a functional unit,

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(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;

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(v) A State-regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system sales, and otherwise does not engage in the activities described in §§358.3(d)(1), (2), (3) or (4), except to the limited extent necessary to support on-system sales and to engage in *de minimis* sales necessary to remain in balance under applicable pipeline tariff requirements.

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- (1) The seller is selling gas solely from its own production;
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(3) The Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from:

(i) Conducting transmission system operations or reliability functions; and

(ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

(5) Transmission Providers are permitted to share with their Marketing or Energy Affiliates senior officers and directors who are not "Transmission Function Employees" as that term is defined in §358.3(j). A Transmission Provider may share transmission information covered by §385.5(a) and (b) with its shared senior officers and directors provided that they do not participate in directing, organizing or executing transmission system operations or marketing functions; or act as a conduit to share such information with a Marketing or Energy Affiliate.

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(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet Web site, as applicable, required by §§358.4(b)(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the potential merger is announced.

(vi) All OASIS or Internet Web site postings required by part 358 must comply, as applicable, with the requirements of §37.6 or §§284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers* . Employees of the Transmission Provider, Marketing or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the Standards of Conduct. Notices of any employee transfers between the Transmission Provider, on the one hand, and the Marketing or Energy Affiliates on the other, must be posted on the OASIS or Internet Web site, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function ( *i.e.* , on behalf of the Transmission Provider, Marketing or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet Web site, as applicable, for 90 days.

(d) *Books and records*. A Transmission Provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its Energy Affiliates and these must be available for Commission inspections.

(e) *Written procedures*. (1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet Web site a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by September 22, 2004.

(3) The Transmission Provider must post on the OASIS or Internet Web site, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by September 22, 2004 or within 30 days of becoming subject to the requirements of part 358.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall train officers and directors as well as employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions. The Transmission Provider shall require each employee to sign a document or certify electronically signifying that s/he has participated in the training.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

**§ 358.5 Non-discrimination requirements.**

(a) *Information access.* (1) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers ( *i.e.* , the information posted on the OASIS or Internet Web site, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet Web site, as applicable.

(2) The Transmission Provider must ensure that any employee of its Marketing or Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet Web site or that is not otherwise also available to the general public without restriction.

(b) *Prohibited disclosure.* (1) An employee of the Transmission Provider may not disclose to its Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet Web site, through access to information not posted on the OASIS or Internet Web site that is not contemporaneously available to the public, or through information on the OASIS or Internet Web site that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from non-affiliated transmission customers or potential non-affiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet Web site, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements of §358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet Web site.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a Marketing or Energy Affiliate. If a non-affiliated customer authorizes the Transmission Provider to share its information with a Marketing or Energy Affiliate, the Transmission Provider must post notice on the OASIS or Internet Web site of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by §358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of §§358.5(b)(1) and (2) with a Marketing or Energy Affiliate. A Transmission Provider may share information covered by §§358.5(b)(1) and (2) with employees permitted to be shared under §§358.4(a)(4), (5) and (6) provided that such employees do not act as a conduit to share such information with any Marketing or Energy Affiliates.

(8) A Transmission Provider is permitted to share information necessary to maintain the operations of the transmission system with its Energy Affiliates.

(c) *Implementing tariffs*. (1) A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A Transmission Provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

(3) A Transmission Provider must process all similar requests for transmission in the same manner and within the same period of time.

(4)(i) Electric Transmission Providers must maintain a written log, available for Commission audit, detailing the circumstances and manner in which they exercised their discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet website within 24 hours of when a Transmission Provider exercises its discretion under any terms of the tariff.

(ii) Natural gas Transmission Providers must maintain a written log of waivers that the natural gas Transmission Provider grants with respect to tariff provisions that provide for such discretionary waivers and provide the log to any person requesting it within 24 hours of the request.

(5) The Transmission Provider may not, through its tariffs or otherwise, give preference to its Marketing or Energy Affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) *Discounts*. Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet Web site contemporaneous with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas upon which the discount is based; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet Web site for 60 days from the date of posting.

## EXHIBIT B

### CALIFORNIA PUBLIC UTILITIES COMMISSION AFFILIATE TRANSACTION RULES

#### I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

- A. "Affiliate" means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company or another utility affiliate not covered by these Rules as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules.

Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

- B. "Commission" means the California Public Utilities Commission or its succeeding state regulatory body.
- C. "Customer" means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.
- D. "Customer Information" means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.
- E. "FERC" means the Federal Energy Regulatory Commission.
- F. "Fully Loaded Cost" means the direct cost of good or service plus all applicable indirect charges and overheads.
- G. "Utility" means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222.

## **II. Applicability**

- A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission.
- B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that

relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas.

- C. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.
- D. These rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline.
- E. **Existing Rules:** Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.
- F. **Civil Relief:** These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.
- G. **Exemption (Advice Letter):** A Commission-jurisdictional utility may be exempted from these Rules if it files an advice letter with the Commission requesting exemption. The utility shall file the advice letter within 30 days after the effective date of this decision adopting these Rules and shall serve it on all parties to this proceeding. In the advice letter filing, the utility shall:
  - 1. Attest that no affiliate of the utility provides services as defined by Rule II B above; and
  - 2. Attest that if an affiliate is subsequently created which provides services as defined by Rule II B above, then the utility shall:
    - a. Notify the Commission, at least 30 days before the affiliate begins to provide services as defined by Rule II B above, that such an affiliate has been created; notification shall be accomplished by means of a

letter to the Executive Director, served on all parties to this proceeding; and

b. Agree in this notice to comply with the Rules in their entirety.

**H. Limited Exemption (Application):** A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdictional areas wholly outside of California, and its affiliates. The applicant has the burden of proof.

I. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

### **III. Nondiscrimination**

**A. No Preferential Treatment Regarding Services Provided by the Utility:**

Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or
2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

**B. Affiliate Transactions:** Transactions between a utility and its affiliates shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, or as provided for in Sections V D and V E (joint purchases and corporate support) and Section VII (new products and services) below, provided the transactions provided for in Section VII comply with all of the other adopted Rules.

1. **Provision of Supply, Capacity, Services or Information:** Except as provided for in Sections V D, V E, and VII, provided the transactions provided for in Section VII comply with all of the other adopted Rules, a utility shall provide access to utility information, services, and unused capacity or supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.
  2. **Offering of Discounts:** Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.
  3. **Tariff Discretion:** If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.
  4. **No Tariff Discretion:** If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.
  5. **Processing Requests for Services Provided by the Utility:** A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.
- C. **Tying of Services Provided by a Utility Prohibited:** A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

D. **No Assignment of Customers:** A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

E. **Business Development and Customer Relations:** Except as otherwise provided by these Rules, a utility shall not:

1. provide leads to its affiliates;
2. solicit business on behalf of its affiliates;
3. acquire information on behalf of or to provide to its affiliates;
4. share market analysis reports or any other types of proprietary or non-publicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;
5. request authorization from its customers to pass on customer information exclusively to its affiliates;
6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or
7. give any appearance that the affiliate speaks on behalf of the utility.

F. **Affiliate Discount Reports:** If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with services provided by the utility, the utility shall, within 24 hours of the time at which the service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;
2. the rate charged;
3. the maximum rate;
4. the time period for which the discount or waiver applies;

5. the quantities involved in the transaction;
6. the delivery points involved in the transaction;
7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and
8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;
10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);
11. the duration of the discount or waiver;
12. the maximum rate;
13. the rate or fee actually charged during the billing period; and
14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

#### **IV. Disclosure and Information**

- A. **Customer Information:** A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.
- B. **Non-Customer Specific Non-Public Information:** A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or

operations or about the utility's gas-related goods or services, electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. Utilities are also permitted to exchange proprietary information on an exclusive basis with their affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031.

**C. Service Provider Information:**

1. Except upon request by a customer or as otherwise authorized by the Commission, or approved by another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities. A utility shall submit lists approved by other governmental bodies in the first semi-annual advice letter filing referenced in Rule IV.C.2 following such approval, but may provide customers with such lists pending action on the advice letter.
2. If a customer requests information about any affiliated service provider, the utility shall provide a list of all providers of gas-related, electricity-related, or other utility-related goods and services operating in its service territory, including its affiliates. The Commission shall authorize, by semi-annual utility advice letter filing, and either the utility, the Commission, or a Commission-authorized third party provider shall maintain on file with the Commission a copy of the most updated lists of service providers which have been created to disseminate to a customer upon a customer's request. Any service provider may request that it be included on such list, and, barring Commission direction, the utility shall honor such request. Where maintenance of such list would be unduly burdensome due to the number of service providers, subject to Commission approval by advice letter filing, the utility shall direct the customer to a generally available listing of service providers (e.g., the Yellow Pages). In such cases, no list shall be provided. If there is no

Commission-authorized list available, utilities may refer customers to a generally available listing of service providers (e.g., the Yellow Pages.) The list of service providers should make clear that the Commission does not guarantee the financial stability or service quality of the service providers listed by the act of approving this list.

- D. **Supplier Information:** A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own affiliate in an effort to keep such information from other unaffiliated entities.
- E. **Affiliate-Related Advice or Assistance:** Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.
- F. **Record-Keeping:** A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions and all discounts. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. The utility shall make such records available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

- G. **Maintenance of Affiliate Contracts and Related Bids:** A utility shall maintain a record of all contracts and related bids for the provision of work, products or services to and from the utility to its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

**H. FERC Reporting Requirements:** To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

## **V. Separation**

**A. Corporate Entities:** A utility and its affiliates shall be separate corporate entities.

**B. Books and Records:** A utility and its affiliates shall keep separate books and records.

1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).
2. The books and records of affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Section 314.

**C. Sharing of Plant, Facilities, Equipment or Costs:** A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Section V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).

**D. Joint Purchases:** To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint

purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

- E. **Corporate Support:** As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.

**F. Corporate Identification and Advertising:**

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:
  - a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";
  - b. the affiliate is not regulated by the California Public Utilities Commission; and
  - c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility."

The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.
3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.
4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:
  - a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;

- b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term “joint activities” includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;
  - c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.
5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

**G. Employees:**

1. Except as permitted in Section V E (corporate support), a utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall verify in the utility’s compliance plan the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan required in Rule VI, the utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission’s Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.
2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:
  - a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report

this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

- b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.
  
- c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. The Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than December 31, 1998, except for the transfer of employees working at divested plants. In that instance, the Board of Directors must vote to classify these employees as "impacted" by electric restructuring and these employees must be transferred no later than within 60 days after the end of the O&M contract with the new plant owners. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Non-core Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer

is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

- d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.
- e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:
  - i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.
  - ii. Utility needs for utility employees always take priority over any affiliate requests;
  - iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;
  - iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and
  - v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

**H. Transfer of Goods and Services:** To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, and except for as provided by Rule V.G.2.e, all such transfers shall be subject

to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.
2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.
3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.
4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.
5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.
6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

## **VI. Regulatory Oversight**

- A. **Compliance Plans:** No later than December 31, 1997, each utility shall file a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its affiliates that is prohibited by these Rules. The utility should file its compliance plan as an advice letter with the Commission's Energy Division and serve it on the parties to this proceeding. The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter served on all parties to this proceeding where there is some change in the compliance plan (i.e., when a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

- B. **New Affiliate Compliance Plans:** Upon the creation of a new affiliate which is addressed by these Rules, the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission, served on the parties to this proceeding. The advice letter shall demonstrate how the utility will implement these Rules with respect to the new affiliate.
- C. **Affiliate Audit:** No later than December 31, 1998, and every year thereafter, the utility shall have audits performed by independent auditors that cover the calendar year which ends on December 31, and that verify that the utility is in compliance with the Rules set forth herein. The utilities shall file the independent auditor's report with the Commission's Energy Division beginning no later than May 1, 1999, and serve it on all parties to this proceeding. The audits shall be at shareholder expense.
- D. **Witness Availability:** Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Section 314.

## VII. Utility Products and Services

- A. **General Rule:** Except as provided for in these Rules, new products and services shall be offered through affiliates.
- B. **Definitions:** The following definitions apply for the purposes of this section (Section VII) of these Rules:
  - 1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.
  - 2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.
  - 3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.
  - 4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory

Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.

- C. Utility Products and Services:** Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:
1. Existing products and services offered by the utility pursuant to tariff;
  2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;
  3. New products and services that are offered on a tariffed basis; and
  4. Products and services which are offered on a nontariffed basis and which meet the following conditions:
    - a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
    - b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
    - c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
    - d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and
    - e. The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.
- D. Conditions Precedent to Offering New Products and Services:** This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;
2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.
3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and
4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

**E. Requirement to File an Advice Letter:** Prior to offering a new category of nontariffed products or services as set forth in Section VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:
  - a. demonstrate compliance with these rules;
  - b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;
  - c. demonstrate that the utility has not received competition transition charge (CTC) recovery in the Transition Cost Proceeding, A.96-08-001, or other related CTC Commission proceeding, for the portion of the utility asset dedicated to the non-utility venture; and
  - d. address the potential impact of the new product or service on competition in the relevant market, including but not limited to the degree in which the relevant market is already competitive in nature

- and the degree to which the new category of products or services is projected to affect that market.
- e. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.
2. For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, in the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.
  3. A protest of an advice letter filed in accordance with this paragraph shall include:
    - a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or
    - b. An explanation of the specific harm the protestant will allegedly suffer.
  4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.
  5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.
- F. **Existing Offerings:** Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements

in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.

- G. **Section 851 Application:** A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.
- H. **Periodic Reporting of Nontariffed Products and Services:** Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:
1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;
  2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);
  3. The costs allocated to and revenues derived from each category; and
  4. Current information on the proportion of relevant utility assets used to offer each category of product and service.
- I. **Offering of Nontariffed Products and Services to Affiliates:** Nontariffed products and services which are allowed by this Rule may be offered to

utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

**EXHIBIT C**

**CPUC RULES OF PRACTICE – COMPLAINT PROCEDURES**

## **Article 4. Complaints**

### **4.1. (Rule 4.1) Who May Complain**

(a) A complaint may be filed by:

(1) any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, setting forth any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission; or

(2) any local government, alleging that a holder of a state franchise to construct and operate video service pursuant to Public Utilities Code Section 5800 et seq. is in violation of Section 5890.

(b) No complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electric, water, or telephone service.

Note: Authority cited: Section 1702, Public Utilities Code. Reference: Section 1702, and Section 5890(g), Public Utilities Code.

### **4.2. (Rule 4.2) Form and Contents of Complaint**

(a) Complaints shall state the full name, address and telephone number of each complainant and his attorney, if any, and of each defendant. The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired. At least one complainant must verify the complaint and any amendments thereto. (See Rule 1.11.) The complaint shall state the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. The proposed schedule shall be consistent with the categorization of the proceeding, including a deadline for resolving the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). (See Article 7.)

(b) An original plus six exact copies of a complaint or amendment thereto, plus one additional copy for each named defendant, shall be tendered to the Commission for filing.

(c) A complaint which does not allege that the matter has first been brought to the staff for informal resolution may be referred to the staff to attempt to resolve the matter informally.

Note: Authority cited: Section 1702, Public Utilities Code. Reference: Sections 1702 and 1707, Public Utilities Code.

### **4.3. (Rule 4.3) Service of Complaints and Instructions to Answer**

When a complaint or amendment is accepted for filing (see Rule 1.13), the Docket Office shall serve on each defendant (a) a copy of the complaint or amendment and (b) instructions to answer, with a copy to the complainant, indicating (1) the date when the defendant's answer shall be filed and served, and (2) the Administrative Law Judge assigned to the proceeding. The instructions to answer shall also indicate the category of the proceeding and the preliminary determination of need for hearing, as determined by the Chief Administrative Law Judge in consultation with the President of the Commission.

Note: Authority Section 1701, Public Utilities Code. Reference: Section 1701.1, Public Utilities Code.

#### 4.4. (Rule 4.4) Answers

The answer must admit or deny each material allegation in the complaint and shall set forth any new matter constituting a defense. Its purpose is to fully advise the complainant and the Commission of the nature of the defense. At least one of the defendants filing an answer must verify it, but if more than one answer is filed in response to a complaint against multiple defendants, each answer must be separately verified. (See Rule 1.11.)

The answer should also set forth any defects in the complaint which require amendment or clarification. Failure to indicate jurisdictional defects does not waive these defects and shall not prevent a motion to dismiss made thereafter.

The answer must state any comments or objections regarding the complainant's statement on the need for hearing, issues to be considered, and proposed schedule. The proposed schedule shall be consistent with the categorization of the proceeding, including a deadline for resolving the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). (See Article 7.)

Answers must include the full name, address, and telephone number of defendant and the defendant's attorney, if any, and indicate service on all complainants.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701.1, Public Utilities Code.

#### 4.5. (Rule 4.5) Expedited Complaint Procedure

(a) This procedure is applicable to complaints against any electric, gas, water, heat, or telephone company where the amount of money claimed does not exceed the jurisdictional limit of the small claims court referenced in Pub. Util. Code § 1702.1.

(b) No attorney at law shall represent any party other than himself or herself under the Expedited Complaint Procedure.

(c) No pleading other than a complaint and answer is necessary.

(d) A hearing without a reporter shall be held within 30 days after the answer is filed.

(e) Separately stated findings of fact and conclusions of law will not be made, but the decision may set forth a brief summary of the facts.

(f) Complaints calendared under the Expedited Complaint Procedure are exempt from the categorizing and scoping requirements of Article 7 and the requirements of Article 8 regarding communications with decisionmakers and Commissioners' advisors.

(g) The Commission or the presiding officer, when the public interest so requires, may at any time prior to the filing of a decision terminate the Expedited Complaint Procedure and recalendar the matter for hearing under the Commission's regular procedure.

(h) The parties shall have the right to file applications for rehearing pursuant to Section 1731 of the Public Utilities Code. If the Commission grants an application for rehearing, the rehearing shall be conducted under the Commission's regular hearing procedure.

(i) Decisions rendered pursuant to the Expedited Complaint Procedure shall not be considered as precedent or binding on the Commission or the courts of this state.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1702.1, Public Utilities Code.

## EXHIBIT D

### MICHIGAN TRANSPORTATION STANDARDS OF CONDUCT

This rule is intended to promote fair competition and a level playing field among all participants involved in transportation within the Company's regulated gas service territory. The Company will conduct its business to conform to the following Transportation Standards of Conduct:

- A. The Company will apply any tariff provisions relating to transportation service in the same manner without discrimination to all similarly situated persons.
- B. The Company will not give its marketing affiliate or customers of its affiliate preference over any other non-affiliated gas marketers or their customers in matters relating to transportation service including, but not limited to, nominating, balancing, metering, billing, storage, standby service, curtailment policy, or price discounts.
- C. The Company will not communicate to any customer, Supplier or third parties that any advantage may accrue to such customer, Supplier or other third party in the use of the Company's services as a result of that customer, Supplier or other third party dealing with its marketing affiliate and shall refrain from giving any appearance that it speaks on behalf of its affiliate.
- D. The Company will process all similar requests for transportation service in the same manner and within the same period of time.
- E. The Company will not provide leads or provide market sensitive information regarding a current or potential customer or marketer to its marketing affiliate. If a customer requests information about marketers, the Company will provide a list of all marketers operating on its system, including its affiliate, but will not promote its affiliate.
- F. If a customer makes a request in writing that its historic volumetric sales and transportation data be provided to a particular marketer or marketers in general, that request will be honored by the Company until revoked by the customer. To the extent the Company provides to its marketing affiliate a discount or information related to the transportation, sales or marketing of natural gas, including but not limited to the Company's customer lists, that is not readily available or generally known to any other marketer or Supplier or has not been authorized by a customer, it will provide details of such discount or provide the information contemporaneously to all potential marketers on its system that have requested such information. A marketer may make a standing request for contemporaneous disclosure of such information.
- G. The Company will not condition or tie its agreement to release interstate pipeline capacity to any agreement by a gas marketer, customer, Supplier or pipeline transporter relating to any service in which its marketing affiliate is involved.
- H. The Company will not condition or tie an agreement to provide a transportation discount to any agreement by a marketer, customer, Supplier or pipeline transporter related to any service in which its marketing affiliate is involved.
- I. The Company's operating employees and the operating employees of its marketing affiliate will function independently of each other, be employed by separate business entities, and reside in separate offices.
- J. The Company will keep separate books of accounts and records from those of its marketing affiliate.

## EXHIBIT E

### MICHIGAN GUIDELINES FOR AFFILIATE TRANSACTIONS

1. That the utility ensure that the Commission has access to books and records of the holding company and each of its affiliates and their joint ventures. Any objections to not providing all books and records must be raised before the Commission and the burden of showing that the request is unreasonable or unrelated to the proceeding is on the respondents.
2. Each utility, holding company, and each of its subsidiaries and the joint ventures of the holding company and/or its subsidiaries shall employ accounting and other procedures and controls related to cost allocations and transfer pricing to ensure and facilitate full review by the Commission and protect against cross-subsidization of non-utility activities by the utility's customers.
3. The holding company and each of its subsidiaries and the joint ventures of the holding company and/or its subsidiaries shall keep their books in a manner consistent with general accounting principles and, where applicable, consistent with the Uniform System of Accounts.
4. The utility shall furnish the Commission with:
  - a. The quarterly and annual financial statements of the consolidated utility and/or its parent holding company;
  - b. Annual statements concerning the nature of intercompany transactions concerning the utility and a description of the basis upon which cost allocations and transfer pricing have been established in these transactions;
  - c. Annual balance sheets and income statements of the non-regulated subsidiaries of the utility and/or the non-consolidated subsidiaries of the holding company;
  - d. As a separate exhibit in its next general rate case, an audit report of its transactions between the utility and its non-utility affiliates;
  - e. Federal income tax on a consolidated or non-consolidated basis depending on the filing.
5. The utility shall avoid diversion of management talent that would adversely affect the utility. An annual report identifying personnel transferred from the utility to non-utility subsidiaries is required.
6. The utility shall notify the Commission in writing within thirty days prior to any transfer to non-utility affiliates of any utility assets or property exceeding a fair market value of \$100,000. Asset transfers from regulated to non-regulated shall be at the higher of cost or fair market value and non-regulated to regulated shall be at the lower of cost or fair market value. All services and supplies provided by non-regulated enterprises shall be at a market price or 10% over fully allocated cost, whichever is less.
7. Market, technological, or similar data transferred, directly or indirectly from the utility to a non-utility affiliate shall be transferred at the higher of cost or fair market value.

## EXHIBIT F

### OKLAHOMA CORPORATION COMMISSION STANDARDS OF CONDUCT

Natural gas utilities upstream of the citygate, including those utilities which have customers subject to pipeline tariff agreements downstream of the citygate or aggregation point, must conduct their business to conform to the following standards:

- (1) Natural gas utilities must apply any tariff provisions in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.
- (2) Natural gas utilities must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
- (3) Except as necessary for physical operational reasons, natural gas utilities may not, through a tariff provision or otherwise, give their affiliates or knowingly give customers of their affiliates preference over shippers or other utility customers in matters related to any service offered to shippers including, but not limited to: scheduling, balancing, metering, storage, standby service or curtailment policy.
- (4) Unless such disclosure is simultaneously made public, natural gas utilities shall not disclose to their affiliates any information which they receive from, a non-affiliated customer, shipper or supplier, a potential customer, shipper or supplier, any agent of such customer, or potential customer, or shipper, or supplier, or a marketer or other entity seeking to supply gas to a customer or potential customer.
- (5) A natural gas utility's operating employees and the operating employees of its marketing affiliate must function independently of each other, and shall be employed by separate corporate entities to the maximum extent practicable.
- (6) Natural gas utilities and their affiliates shall keep separate books of accounts and records.
- (7) Natural gas utilities shall establish a complaint procedure. In the event the natural gas utility and the complainant are unable to resolve a complaint, the complainant may address the complaint to the Commission.
- (8) With respect to any transaction or agreement relating in any way to gas sales, supply, transmission, storage, distribution or marketing, a natural gas utility shall conduct all such transactions with any of its affiliates on an arm's length basis.
- (9) The Commission shall resolve affiliate transaction disputes or abuses on a case-by-case basis. Any aggrieved party may file a complaint with the Commission alleging the particulars giving rise to the alleged dispute or abuse. The Commission shall consider at a minimum the following issues when hearing a complaint:
  - (A) Whether or not the information or data furnished to the affiliated was generally available to other market participants.
  - (B) Whether or not the natural gas utility conducted business in such a manner that actual or expected expenses were shifted from the non-regulated subsidiary to the regulated entity.
  - (C) Whether or not the natural gas utility conducted business in such a manner that actual or expected expenses were shifted from the regulated entity to the non-regulated entity.
  - (D) Whether or not the regulated entity offered terms, condition or rates for the provision of natural gas services to the affiliate that it refused to provide to other customers or whether such provision resulted in the affiliate having an unfair advantage.
- (10) Natural gas utilities must process all similar requests for natural gas services in the same manner and within the same period of time.
- (11) Natural gas utilities shall not provide leads to upstream affiliates and shall refrain from giving any appearance that the natural gas utility speaks on behalf of its affiliate(s). Nor shall the affiliate trade upon, promote or advertise its affiliation or suggest that it receives

preferential treatment as a result of its affiliation. The use of a common corporate or parent holding company name shall not be a violation of this provision so long as the regulated utility and the affiliate entities can be distinguished.

- (12) Natural gas utilities, except for billing and collection services and customer service, or by order of the Commission, shall not share their customer list or related customer information with affiliates unless the information is simultaneously shared with non-affiliate entities.
- (13) The natural gas utility shall not communicate with any third party that any advantage may accrue to such third party in the use of the natural gas utility's upstream services as a result of that third party dealing with the upstream natural gas utility's affiliates unless the information is simultaneously shared with non-affiliated entities.

[OCC Rule 165:45-17-23]

## EXHIBIT G

### TRANSCANADA TRANSPORTATION ACCESS PROCEDURE

The TransCanada PipeLines Transportation Access Procedure (TAP) prescribes the method by which firm transportation services is made available to established and prospective customers from both existing facilities and proposed new construction.<sup>1</sup> The stated purpose of the TAP is to ensure fair and equitable treatment of all applicants.

The TAP is based on binding auctions (open seasons), with predefined rules for allocating service among competing bids. All bidders are required to use a standard bid form. The information on the bid form is confidential, but TCPL will provide the information to the National Energy Board (NEB) if requested.

Open season notices and results are posted on the TCPL website.

#### **Existing Capacity Open Season**

TCPL is required to hold an Existing Capacity Open Season commencing on or about May 5 of each year, unless no existing capacity is available. The minimum open season period is five banking days. The minimum contract term is one year.

TCPL may hold additional Existing Capacity Open Seasons at other times if it determines that capacity is available. Each open season notice will include:

- Service availability by system segment
- The date service will become available
- Begin and end dates for the open season

Bids are ranked, first, based on the product of the demand toll multiplied by the contract term, and second, based on the requested service commencement date, with earlier dates being ranked higher. In the case of a tie, available capacity is allocated to bids with equal rank on a pro rata basis.

Half of any existing capacity not subscribed in an Existing Capacity Open Season is offered on an on-going basis in the Daily Existing Capacity Open Season.

#### **New Capacity Open Season**

If TCPL determines that additional long term capacity is needed and the pipeline intends to file a Facilities Application with the NEB, TCPL may conduct a New Capacity Open Season. The open season notice will include:

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<sup>1</sup> [http://www.transcanada.com/Mainline/info\\_postings/tariff/02\\_TransAccessProc.pdf](http://www.transcanada.com/Mainline/info_postings/tariff/02_TransAccessProc.pdf)

- System segments over which TCPL plans to offer service
- System segments for which the amount of new capacity may be limited
- Minimum contract term needed to support a Facilities Application
- The date service is expected to become available
- Begin and end dates for the open season

If existing capacity is determined to be available, this capacity will be included in the New Capacity Open Season.