

CALIFORNIA PUBLIC UTILITIES COMMISSION
Water Division

NON-TARIFFED SERVICE OFFERINGS AND
INFORMATION ON
AFFILIATE TRANSACTIONS
Standard Practice U-21-W

SAN FRANCISCO, CALIFORNIA

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A. —PURPOSE AND SCOPE

1. The purpose of this standard practice is to provide guidance to Water Division staff, to the public and to utilities concerning non-tariffed services and the required filing of information on service offerings provided using utility resources that are also used to provide regulated utility service.
2. Non-tariffed services take on three forms.
 - a. the provision of service by non-utility employees that are employees of an holding company or affiliated entity, that provide non-tariffed service. These entities shall comply with the Affiliate Transaction Rules (Section B) given below.
 - b. the provision of service by utility employees or using utility facilities that are owned or hired by the utility but are not included in Utility Plant in Service or Employee or Management Labor, including employees that spend time working in non-CPUC jurisdictional rate proceedings. These utilities shall comply with the tracking provisions under Non-Utility Provision of Service listed below.
 - c. use of utility facilities or employees that have “excess capacity” to provide service under contract (either Active or Passive). These utilities shall comply with the Excess Capacity provisions listed below.
3. These guidelines were established by Decision (D.) 00-07-018, July 6, 2000 in Order Instituting Rulemaking 97-10-049 as modified by D.03-04-028, April 3, 2003 and D.04-12-023, December 2, 2004.

B. —AFFILIATE TRANSACTION RULES

4. These Affiliate Transaction Rules set forth the practices to be observed by each water utility when the utility has a holding company and non-regulated affiliates.

a. Definitions

For the purposes of these Rules the following definitions shall apply:

1. “Parent Company” refers to holding company or corporation that owns the regulated water utility.
2. “Affiliated companies” refers to all entities that are under direct or indirect common ownership or control with Water Utility, including any holding companies.
3. “Water Utility” is a water or sewer system utility regulated by the California Public Utilities Commission.

4. Cost includes all fully allocated capital and expense amounts including all management, administration, overhead, and indirect allocations.
5. Property includes any right or thing to which an entity has legal or equitable title or leasehold control.
6. Real Property includes any interest in real estate including leases, easements, and water rights.

b. Rules

Rule 1. These rules constitute the minimum requirements that must be met by a utility that is owned wholly or in part by a holding company that acts as or has non-regulated affiliates.

Rule 2. The holding company is responsible to assure that Water Utility is provided with adequate capital to fulfill all of its service obligations prescribed by the Commission and Water utility will comply with all applicable California and federal statutes, laws and administrative regulations.¹ Any retained earnings paid by Water company to Parent will be reported in the Annual Report.

Rule 3. The Commission retains jurisdiction over the rates and services provided by Water Utility. Parent Company will not assert in any Commission proceeding that Commission review of the reasonableness of any cost has been or is preempted by a regulator from another state or country.

Rule 4. Water Utility shall continue to maintain its books and records in accordance with all Commission rules. Water Utility's books and records will be maintained and housed in California.

Rule 5. The actions of the parent company or non-regulated affiliates shall not result in any adverse changes in Water Utility policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations.

¹ The definition of the term "capital" in this provision is the same definition of "capital" used by the Commission in D.02-01-039, *Investigation into Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company and their respective holding companies*, Findings of Fact 5 and 6, 2002 Cal. PUC LEXIS 5 *57. This means that the term "capital" encompasses "money and property with which a company carries on its corporate business; a company's assets, regardless of source, utilized for the conduct of the corporate business and for the purpose of deriving gains and profits; and a company's working capital," and is not limited to mean only "equity capital, infrastructure investment, or any other term that does not include, simply, money or working cash." (*Id.*)

- Rule 6. Water Utility shall continue to maintain its business headquarters in California together with fully operational field offices as appropriate to maintain the quality of its service.
- Rule 7. Water Utility shall not close any of its local offices without Commission approval. However, Water Utility is not precluded from making local operational changes in connection with integrating systems acquired in other transactions.
- Rule 8. If Parent Company is publicly traded, it shall notify the Commission in writing within 30 days of any downgrading to the bonds of Parent Company and shall include with such notice the complete report of the issuing bonding rating agency.
- Rule 9. Water Utility's parent and affiliates shall not acquire water utility assets if such transfer of assets would impair the utility's ability to fulfill its obligation to serve or to operate in a prudent and efficient manner. All transfers must be approved by Commission decision per Public Utilities Code §851.
- Rule 10. *Access to Officers and Employees.* The officers and employees of Water Utility and its affiliated companies shall be available to appear and testify in any proceeding before the Commission involving Water Utility. If in the proper exercise of Commission duties, Water Utility cannot supply appropriate personnel to address staff's reasonable concerns, then the appropriate staff of the relevant Water Utility affiliated companies including, if necessary, its holding companies, shall be made available to staff.
- Rule 11. *Access to Books and Records.* Water Utility and its affiliated companies will provide the Commission, its staff, and its agents with access to the relevant books and records of any and all entities in connection with the exercise by the Commission of its regulatory responsibilities in examining any of the costs sought to be recovered by Water utility in rate proceedings.
- Rule 12. *Annual Report.* Water Utility shall file with the Commission each year a report which includes a summary of all transactions between Water Utility and its affiliated companies for the previous calendar year². Water Utility shall maintain such information on a monthly basis and make such information available to the Commission's staff upon request. To the extent not covered by an existing affiliated transaction agreement, the summary shall include a description of each transaction and an accounting of all costs associated with each transaction although each transaction need not be separately identified where multiple transactions occur in the same account. These transactions shall include (a) services provided by Water Utility to any affiliated company; (b) services provided by any affiliated company to Water Utility; (c) assets transferred from Water Utility to any affiliated company; (d) assets transferred from any affiliated company, to Water Utility; (e) employees transferred from Water Utility to any affiliated

² Decision 04-12-023, December 2, 2004, Ordering Paragraph 3

company; (f) employees transferred from any affiliated company to Water Utility; and (g) financing arrangements and transactions between Water Utility and any affiliated company.

Rule 13. Issuance of Debt for Affiliated Companies. Debt of Water Utility's affiliated companies shall not be issued or guaranteed by Water Utility without prior approval by the Commission. The Commission's approval is not required for issuance of debt by Water Utility's affiliated companies unless guaranteed by Water Utility or secured by Water Utility's assets.

Rule 14. Accounting. Water Utility shall maintain its accounting records in accordance with Generally Accepted Accounting Principles and, where appropriate, the Commission's Uniform System of Accounts.

Rule 15. Allocation of Common Costs. Absent any change in the applicable policy of the Commission or provision of the Public Utilities Code, Water Utility and each of its affiliated companies shall allocate costs between them in such a manner that ratepayers of Water Utility will not subsidize any affiliate of Water Utility.

Rule 16. Unregulated Operations and Transfer of Employees.

- i. Unregulated operations, if any, including pertinent contracts, that are performed by Water Utility shall be transferred to the appropriate affiliated company as soon as all requisite consent is obtained.
- ii. Water Utility shall avoid a diversion of management that would adversely affect Water Utility.
- iii. Water Utility shall not use its employees, including officers, to conduct unregulated operations if such use would adversely affect Water Utility or its ratepayers.
- iv. Water Utility shall endeavor to transfer to its affiliated companies any work performed by an employee whose primary responsibility is to conduct unregulated operations, taking into consideration Water Utility's obligations to its customers, to any such employee, and its obligations under any contract with its unions or others.

Rule 17. Transfer Of Tangible Assets and Goods from Water utility. Any transfer without monetary consideration of a tangible asset or good from Water Utility to any affiliated company shall be priced at cost or fair market value, whichever is higher, if the asset or goods are currently, or were at any time, included in Water Utility's rate base, including (a) any asset or goods booked to plant held for future use that is currently, or was at any time, included in Water Utility's rate base or (b) any asset or goods to which Water Utility's ratepayers have contributed any carrying cost. Any gain resulting from the transfer of any such asset or goods shall be allocated in accordance with applicable provisions of the Public Utilities Code, applicable law and consistent with policies of the Commission.

Rule 18. Water Utility shall develop a verifiable and independent appraisal of fair market value for any tangible asset or good that is transferred to any affiliate under Rule 17. The

Commission's staff shall have access to all supporting documents used in the development of the fair market value.

- Rule 19. *Transfer Of Intangible Assets and Goods from Water Utility.* Any transfer without monetary consideration of any intangible asset or goods from Water Utility to any affiliated company shall be priced at cost or fair market value, whichever is higher, if the asset or goods are currently, or were at any time, included in Water utility's rate base, including (a) any asset or goods booked to plant held for future use that is currently, or was at any time, included in Water utility's rate base or (b) any asset or goods to which Water Utility's ratepayers have contributed any carrying cost. "Intangible assets and goods" shall mean all intellectual property (whether such property constitutes patents, trademarks, service marks, copyrights, or any intellectual property).
- Rule 20. Water utility shall develop a verifiable and independent appraisal of fair market value for any intangible asset or goods that are transferred to any affiliated company under Rule 19 above. The Commission's staff will have access to all supporting documents used in the development of the fair market value. If sufficient support for the appraisal of fair market value does not exist to the reasonable satisfaction of the Commission's staff, Water Utility shall hire an independent consultant acceptable to the Commission staff to reappraise the fair market value for any such intangible asset or goods. The fair market value may be a single price, a royalty on the intangible asset or good, or a combination.
- Rule 21. *Transfers Of Tangible and Intangible Assets and Goods to Water Utility.* Any transfer of any tangible or intangible asset or good to Water Utility from any affiliated company or its holding companies shall be in compliance with the applicable provisions of the statutes, law and consistent Commission policies. Unless in conflict with the statutes, law and consistent Commission policies, such asset or goods transferred from an affiliated sister company or its holding companies to Water Utility shall be at fair market value. Water Utility may seek prior authorization from the Commission, however, by filing an application or advice letter for a determination of the appropriate value of an asset or good.
- Rule 22. *Pricing Of Services From Water Utility To Affiliated Companies.* Any service provided by Water Utility to an affiliated company shall be priced to recover at least Water utility's cost – such as the proportionate cost of (a) salary and benefits of any employee used in providing such services and (b) any equipment, including carrying costs with respect thereto, or supplies used in connection therewith.
- Rule 23. *Pricing Of Service From Affiliated Companies to Water Utility.* Except for common costs allocated in the manner described in Rule 15, the cost of services provided by an affiliated company to Water Utility shall be considered reasonable if it is at or below the lowest of (a) the cost which would have been incurred by Water Utility if it provided such services on comparable terms, (b) the rate which would have been charged to Water Utility by an unaffiliated party for the provision of comparable services on comparable terms, or (c) the rate which would have been charged by the affiliated company to an unaffiliated party for the provision of comparable services on comparable terms.

Rule 24. *Confidentiality*. Any records or other information of a confidential nature furnished to the Commission pursuant to these Rules that are individually marked confidential are not to be treated as public records and shall be treated in accordance with Public Utilities Code section 583 and the Commission's General Order 66-C.

C. Non-Utility Provision of Service

5. No regulated utility shall take any action with respect to regulated provision of service based upon action by the customer with respect to Non-Utility Provision of Service.

a. Billing

Cal. Government Code:

54346.1. The local agency may enter into a written contract with a privately owned public utility rendering other than gas or electric service, that the charges for any sewer enterprise or service shall be collected together with and not separately from the charges of said privately owned public utility for any other utility service rendered by it, and that all charges shall be billed upon the same bill and collected as one item.

54346.2. If all or any part of the bill of any privately owned public utility on which any sewer enterprise or service charge is collected is not paid, the privately owned public utility may discontinue its utility service until said bill is paid.

54346.3. The local agency may enter into a written contract with any person, firm or public or private corporation providing for the billing and collection by such person, firm or corporation of the charges for the facilities, service or water furnished by any enterprise. If all or any part of any bill rendered by any such person, firm or corporation pursuant to any such contract is not paid and if such person, firm or corporation renders any public utility service to the person billed, such person, firm or corporation may discontinue its utility service until such bill is paid, and the contract between the local agency and such person, firm or corporation may so provide.

California Health and Safety Code:

5470. The following words wherever used in this article shall be construed as defined in this section, unless from the context a different meaning is intended, or

unless a different meaning is specifically defined and more particularly directed to the use of such words:

(e) Entity. "Entity" means and includes counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems.

(f) Rates or Charges. "Rates or charges" shall mean fees, tolls, rates, rentals or other charges for services and facilities furnished by an entity in connection with its sanitation or sewerage systems, including garbage and refuse collection.

5472.5. The rates may be collected with the rates for any other utility service furnished by a department or agency of that entity over which the legislative body thereof does not exercise control, or with a publicly or privately owned public utility, with the written consent and agreement of that department or agency or public utility owner, which agreement shall establish the terms and conditions upon which the collections shall be made. The agreement, in the discretion of the department or agency or public utility owner making the collections, also may provide that those rates shall be itemized, billed upon the same bill, and collected as one item, together with, and not separately from, the other utility service charge.

6 Prior to the passage of D.00-07-018 on July 6, 2000, the costs of non-tariffed services provided by the utility were allocated on an embedded cost basis. Under a ‘fully allocated cost’ accounting methodology, there are two steps to allocating both expenses and ratebase. The first step in allocating expenses is for the utility to allocate directly to these contracts the associated O&M and A&G expenses. The second step requires that the contracts share some portion of the indirect O&M and A&G expenses associated with the non-tariffed activities based on some reasonably determined allocation factors. Similarly, for rate base assets, there should be allocations to shareholders both for direct capital costs associated with the contract, as well as for those ratebase assets that are jointly used to provide services to the tariffed and non-tariffed businesses.

7. D.00-07-018 provides that any revenue that results from the provision of non-tariffed services be shared between shareholders and ratepayers 90/10 for active projects and 70/30 for passive (see Appendix A). Any new non-tariffed service not listed in Appendix A is classified as active if it involves an incremental shareholder investment of at least \$125,000, either on a one-time basis or within a twelve month period, otherwise it is classified as passive. No costs properly charged to the utility (i.e., costs that would be recoverable in rates) are counted toward the \$125,000 threshold.

8. The decision also established a threshold level of utility revenues subject to the sharing. For utilities with “other operating revenue” of over \$100,000, this revenue was set at the amount of other operating revenue adopted in the last general rate case before D.00-07-018. For those utilities with other operating revenue below \$100,000 in the last general rate case before this decision, the threshold was set at zero.

9. Periodic reporting and auditing of the costs allocated to and the revenues derived from non-tariffed products and services are also required, at the discretion of the Water Division. At a minimum the utility must list in its annual report each active and passive investment, and revenues from aggregate non-tariffed offerings.

10. Costs for purchased water, purchased power, pump taxes and postage are removed from the revenues to be shared. No other incremental costs are to be removed. These costs must be absorbed by the utility. Shareholders should pay any additional income tax liability created by their increased profits. The decision also requires utilities to file an Advice Letter before providing new non-tariffed products and services but D.04-12-023 clarified this requirement as applying to active non-tariffed investments only³.

³ See Appendix A for a list of Active and Passive Investments.

Appendix A
DESIGNATION OF ACTIVITIES

Category	Activity	Active/Passive Designation
Use of Facilities	<ul style="list-style-type: none"> - Placement of third party communications equipment, attachments, conduit and cable - Parking - Vehicle storage - Office space 	Passive
Use of General Facilities	<ul style="list-style-type: none"> - Parking - Vehicle storage - Meetings/training - Office Space - Placement of third party communications equipment, attachments. 	Passive
Use of Heavy Equipment and Machinery	<ul style="list-style-type: none"> - Use of heavy equipment such as cranes, machinery, 	Passive
Geographic Information Systems Services	<ul style="list-style-type: none"> - Mapping services - Map creation - Specialized geographic data base analysis and development - User training 	Passive
Miscellaneous Services	<ul style="list-style-type: none"> - Training, technical certification, conferences and 	Passive
License of Utility Software	<ul style="list-style-type: none"> - Utility developed software - Software licensed to the utility 	Active

DESIGNATION OF ACTIVITIES
(continued)

Category	Activity	Active/Passive Designation
Customer Account Management Services	<ul style="list-style-type: none"> - Bill calculation, processing and presentation - Meter reading - Payment processing - Credit and collections - Phone center services (responding to customer billing questions, service establishment requests) 	Active
Operation and Maintenance Contracts	<ul style="list-style-type: none"> - Operation and Maintenance of Third Party Utility Systems - Leases of Third Party Utility Systems - Design/Build Contracts 	Active
Meter Services	<ul style="list-style-type: none"> - Replacement of Water Meters for Third Party Utility Systems 	Active
Customer Ancillary Services	<ul style="list-style-type: none"> - Customer Facility Related Services, Including Maintenance Contracts 	Active

(END OF EXHIBIT A)