Attachment 1

Code of Conduct and Expedited Complaint Procedure

8.1. Rules of Conduct for Electrical Corporations Relative to Community Choice Aggregation Programs

1) The following definitions apply for the purposes of these rules:

   a) "Market" means communicate with customers, whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), regarding the electrical corporation's and community choice aggregators' energy supply services and rates. Marketing under this definition does not include the following:

      i) Communications provided by the electrical corporation throughout all of its service territory to its retail electricity customers that do not reference community choice aggregation programs.

      ii) Communications that are part of a specific program that is authorized or approved by the California Public Utilities Commission (CPUC), including but not limited to customer energy efficiency, demand response, SmartMeter™, and renewable energy rebate, or tariffed programs such as the California Solar Initiative and other similar CPUC-approved or authorized programs. (*See* Decision (D.) 08-06-016, Appendix A.

      iii) Provision of factual answers about utility programs or tariffs, including but not limited to rate analyses, in answer to the questions of individual customers.

b) "Lobby" means to communicate whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), with public officials or the public or any portion of the public for the purpose of convincing a government agency not to participate in, or to withdraw from participation in, a community choice aggregation program. (Cf. D.08-06-016, Appendix A.)[1] Lobbying under this definition does not include

i) Provision of factual answers about utility programs or tariffs, including but not limited to rate analyses, in answer to questions from a government agency or its representative.

ii) Provision of information to potential Community Choice Aggregators related to Community Choice Aggregation program formation rules and processes.

c) "Promotional or political advertising" means promotional or political advertising as defined in 16 U.S.C. Sec. 2625(h).

d) "Competitively sensitive 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. This includes, without limitation, information about which customers have or have not chosen to opt out of community choice aggregation service. (*See* D.97-12-088, App. A, Part I.D.)

2) No electrical corporation shall market or lobby against a community choice aggregation program, except through

[1] The language from D.08-06-016, Appendix A has been modified to cover the conduct of electrical corporations relative to consideration and formation of community choice aggregation programs, as required by Cal. Pub. Util. Code § 707(a). All statutory references are to the California Public Utilities Code unless otherwise stated.

an independent marketing division that is funded exclusively by the electrical corporation's shareholders and that is functionally and physically separate from the electrical corporation's ratepayer-funded divisions.[2] (*See* Pub. Util. Code § 707(a)(1).)

3) Not later than July 1, 2013, and annually thereafter, each electrical corporation and any community choice aggregator (CCA) or CCAs within its service territory shall prepare and distribute jointly to the customers within the CCA boundaries a neutral, complete, and accurate written comparison of their average tariffs for each customer class, sample bills for a mutually agreed amount of usage under residential tariffs, and generation portfolio contents. This comparison shall be distributed to all customers within the CCA boundaries. In addition, the CCA and electrical utility shall prepare a neutral, complete, and accurate comparison of all their tariffs, sample bills under those tariffs, and generation portfolio contents, and post these comparisons on their Web sites. The information posted on these Web sites containing will be updated within 60 days after any tariff changes. The comparison of average tariffs will refer customers to this Web site for more complete information.

   a) The electrical corporation and CCA(s) shall share equally the costs of the design, preparation, and distribution of the notice to customers, as well as the design and preparation of the detailed tariff comparison to be posted on their Web sites. Each entity will be responsible for its own costs for posting the detailed tariff comparison in its Web site.

   b) The Commission's Public Advisor's office must review and approve the wording of the comparison

[2] In the case of a holding company that owns two or more regulated utility entities (e.g., Sempra Energy), one regulated utility cannot market or lobby against a CCA in the service area of the other utility, except as provided for in this paragraph (e.g., through an independent marketing division funded exclusively by shareholders and separate from ratepayer-funded divisions).

before it is distributed to customers, and by this final approval shall resolve any disputes about the contents of the written notice or Web site contents that the CCA and utility cannot resolve informally.

4) The cost of an electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer-funded divisions shall be allocated to the independent marketing division on a fully allocated embedded cost basis, supported by detailed public reports of such use. For this purpose, fully allocated embedded cost basis means a fully loaded cost basis (i.e., the sum of all direct costs and all appropriately allocated indirect costs and overhead costs; transfers from the utility to its independent marketing division of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded costs plus 5% of direct labor cost). These calculations shall be supported by public reports of such use. These reports shall be filed quarterly with the Commission's Energy Division as an information only filing, no later than one month after the end of each quarter, and shall be made available on the utility's website at the same time. (*See* § 707(a)(2), D.97-12-088, App. A, Part V.H.5.)

5) An electrical corporation's independent marketing division shall not have access to competitively sensitive information. (*See* § 707(a)(3).)

6) No electrical corporation shall recover the costs of any direct or indirect expenditure by the electric utility for promotional or political advertising, including advertising distributed in billing envelopes or by other means, from any person other than the shareholders or other owners of the utility. (*See* Pub. Util. Code § 707(a)(5).)

7) An electric corporation shall provide access to utility information, rates and services to community choice aggregators on the same terms as it does for its independent marketing division. (*See* D.97-12-088, App. A, Part III.B.1.)

8) An electrical corporation shall not provide access to 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, to its independent marketing division. (*See* D.97-12-088, App. A, Part III.E.)

9) An electrical corporation shall refrain from: 1) speaking on behalf of CCA a program; 2) giving any appearance of speaking on behalf of any CCA program; or 3) making any statement relating to the community choice aggregator's rates or terms and conditions of service that is untrue or misleading, and that is known, or that, by the exercise of reasonable care, should be known, to be untrue or misleading.

10) An electrical corporation and its independent marketing division shall keep separate books and records. (*See* D.97-12-088, App. A, Part V.B.)

11) An electrical corporation shall not share office space equipment, services, and systems with its independent marketing division, nor shall an electrical corporation access the computer or information systems of its independent marketing division or allow its independent marketing division to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions. Physical separation required by this rule shall be accomplished by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. (*See* D.97-12-088, App. A, Part V.C.)

12) An electrical corporation and its independent marketing division may make joint purchases of goods and services, other than purchases of electricity for resale. The electrical corporation shall ensure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the portions of such purchases made by the utility and its independent marketing division, and in

accordance with these rules. (*See* D.97-12-088, App. A, Part V.D.)

13) As a general principle, an electrical corporation may share with its independent marketing division joint corporate oversight, governance, support systems and support personnel; provided that support personnel shall not include any persons who are themselves involved in marketing or lobbying. Any shared support shall be priced, reported and conducted in accordance with applicable Commission pricing and reporting requirements. As a general principle, such joint utilization shall not allow or provide a means for the transfer of competitively sensitive information from the electrical corporation to the independent marketing division, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the independent marketing division. (*See* D.97-12-088, App. A, Part V.E.)

14) An electrical corporation shall apply tariff provisions in the same manner to the same or similarly situated entities if there is discretion in the application of the provision.

15) Except as permitted in Rule 13 of this Code of Conduct, employees of an electrical corporation's independent marketing division shall not otherwise be employed by the electrical corporation. (*See* D.97-12-088, App. A, Part V.G.1.)

16) All employee movement between the independent marketing division and other divisions of the electrical corporation shall be consistent with the following provisions:

    a) An electrical corporation shall track and report to the Commission all employee movement between the independent marketing division and other divisions of the electrical corporation. The electrical corporation 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 an electrical corporation becomes an employee of the independent marketing division, the employee may not return to another division of the electrical corporation for a period of one year. In the event that such an employee returns to another division of the electrical corporation after the one year period, such employee cannot be retransferred, reassigned, or otherwise employed by the independent marketing division for a period of two years. Employees transferring to the independent marketing division are expressly prohibited from using competitively sensitive information gained from the electrical corporation, to the benefit of the electrical corporation or to the detriment of community choice aggregators. Any electrical corporation employee transferring to the independent marketing division shall not remove or otherwise provide information to the independent marketing division which the independent marketing division would otherwise be precluded from having pursuant to these rules. An electrical corporation shall not make temporary or intermittent assignments, or rotations to its independent marketing division. (*See* D.97-12-088, App. A, Part G.)

c) When an employee of a utility is transferred, assigned, or otherwise employed by the independent marketing division, the independent market division 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. This transfer payment provision will not apply to clerical workers. (D.97-12-088, App. A, Part V.G.2.c.)

17) Neither electrical corporations nor their marketing divisions can offer to provide, or provide, any goods,

services, or programs to a local government or to the customers within a local government's jurisdiction on the condition that the local government not participate in a community choice aggregation program, or for the purpose of inducing the local government not to participate in a community choice aggregation program. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. This restriction also applies to any plan whereby the utility would pay someone else to provide such goods, services, or programs. (*See* Resolution E-4250, Ordering Paragraph 4.) This restriction does not apply to optional rates, programs, and services authorized or approved by the Commission that are only available to bundled service customers.

18) An electrical corporation shall not, through a tariff provision or otherwise, discriminate between its own customers and those of a CCA in matters relating to any product or service that is subject to a tariff on file with the Commission. An electrical corporation shall not condition or tie the provision of any product, service, or rate agreement to a customers' participation or non-participation in a CCA program. This restriction does not apply to optional rates, programs, and services authorized or approved by the Commission that are only available to bundled service customers.

19) Electrical corporations shall not make available to their customers any mechanism for opting out of community choice aggregation programs unless requested to do so by the CCA. (*See* D.10-05-050, Ordering Paragraph 1.)

20) Electrical corporations may not refuse to make economic sales of excess electricity to a community choice aggregation program, nor refuse in advance to deal with any community choice aggregation program in selling electricity because it is a community choice aggregation program. (*See* Resolution E-4250, Ordering Paragraph 5.)

21) The electrical corporation shall maintain a log of all new, resolved, and pending complaints submitted in writing relating to services provided for the CCA and CCA customers. The log shall be subject to review by the CCA and the Commission, and shall include the date each issue was received; the customer's name, address, and Service Account ID number if the issue is in relation to a specific customer; a written description of the complaint; and the resolution of the complaint, or the reason why the complaint is still pending.

22) No later than March 31, 2013, each electrical corporation that intends to market or lobby against a CCA shall submit a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its independent marketing division that is prohibited by these rules, and is in all other ways in compliance with these rules. The electrical corporation shall submit its compliance plan as a Tier 1 advice letter to the Commission's Energy Division and serve it on the parties to this proceeding. The electrical corporation's compliance plan shall be in effect between the submission and Commission disposition of the advice letter.

    a) An electrical corporation shall submit a revised compliance plan thereafter by Tier 2 advice letter served on all parties to this proceeding whenever there is a proposed change in the compliance plan for any reason. Energy Division may reject the Tier 2 advice letter and require resubmission as a Tier 3 advice letter if Energy Division believes the change requires an additional level of review.

    b) An electrical corporation that does not intend to lobby or market against any community choice aggregation program shall file a Tier 1 advice letter no later than March 31, 2013, stating that it does not intend to engage in any such lobbying or marketing.

(i) If such an electrical corporation thereafter decides that it wishes to lobby or market against any community choice aggregation program, it shall not do so until it has filed and received approval of a compliance plan as described above, with its compliance plan filed as a Tier 2 advice letter with Energy Division. (*See* D.97-12-088, App. A, Part VI.A.)

c) Any CCA alleging that an electrical corporation has 1) violated the terms of its filed compliance plan or 2) has engaged in lobbying and/or marketing after filing an advice letter stating that it does not intend to conduct such activities, may file a complaint under the expedited complaint procedure authorized in § 366.2(c)(11).

23) Beginning in 2015 and every other year thereafter, the Commission's Executive Director shall have audits prepared by independent auditors verifying that each electrical corporation was in compliance with the rules set forth herein during the preceding two years. The Commission shall have the auditor serve a copy of the audit report on each party to this proceeding, and publish the audit at the same time on the Commission's website. The Energy Division shall send an invoice to each electrical corporation for payment of auditor expenses. The cost of audits of utilities that form an independent marketing division according to these rules shall be at shareholder expense. Audits of non-marketing electrical corporations shall be at ratepayers' expense, but audit costs will be charged to shareholders if the audit finds a violation of the restrictions on their operations. (*See* D.06-12-029, App. A-1, Part VI.C.)

8.2. Rules Regarding Enforcement Procedures

24) A complaint filed pursuant to § 366.2(c)(11) by an existing or prospective community choice aggregator or community choice aggregation program alleging a violation of an electrical corporation's obligation to cooperate fully with community choice aggregators or community choice aggregation programs, or any other provision of § 366.2 or § 707, shall be resolved in no more than 180 days following the filing of the complaint. This deadline may only be extended under either of the following circumstances:

    a) Upon agreement of all of the parties to the complaint.

    b) The commission makes a written determination that the deadline cannot be met, including findings for the reason for this determination, and issues an order extending the deadline. A single order pursuant to this subparagraph shall not extend the deadline for more than 60 days.

25) The complaint shall be filed pursuant to Commission rules for complaints (Article 4 of the Commission's Rules of Practice and Procedure), except to the extent provided otherwise herein. The complainant shall serve the complaint on the defendant electrical corporation, and the complaint shall be accompanied by documentary evidence, prepared testimony supporting the complaint, and a declaration affirming that the complainant has made a good faith attempt to meet and confer with the defendant electrical corporation in an attempt to resolve the dispute informally.[3] In the caption under the blank docket number, the complaint shall specifically state that the expedited procedures adopted in these rules are applicable

[3] Service by complainant will help expedite the proceeding. The Commission will also perform service, as required by Pub. Util. Code § 1704. (*See* also Rule 4.3 of the Commission's Rules of Practice and Procedure.).

to the case by the following language: (Subject to CAA expedited complaint procedures).

26) Unless otherwise specified by the assigned Commissioner or Administrative Law Judge, answers to complaints filed by a CCA under these procedures shall be filed and served within 15 days of the date the complaint is filed, and shall be accompanied by documentary evidence and prepared testimony supporting the answer. All parties to the complaint shall respond to related discovery requests on an expedited basis.

27) The assigned Commissioner or Administrative Law Judge (ALJ) shall set the matter for evidentiary hearing for 30 to 45 days after the initiation of the proceeding or as soon as practicable after the Commission makes the assignment.

28) Unless otherwise directed by the assigned ALJ, three business days before the scheduled beginning of hearings, parties shall file a joint case management statement. This statement shall include any agreements or stipulations by the parties that narrow the issues since the filing of testimony, an updated discussion of the issues to be resolved, a proposed order of witnesses for hearing, any other information parties believe the Commission would find useful for the efficient disposition of the case, and any other information that may be required by the assigned ALJ.

29) In its expedited adjudication of the complaint, the Commission may impose fines, injunctive relief, or grant any other appropriate remedy without the initiation of a separate Order Instituting Investigation. (§ 366.2(c)(9), § 366.2(c)(10), §§ 366.2(c)(11), 701, 702, 2100-2109.)

(End of Attachment 1)