

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**

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## TO PARTIES OF RECORD IN RULEMAKING 03-10-003

This is the proposed decision of Commissioner Michael R. Peevey. It will appear on the Commission's May 20, 2010 agenda. The Commission may act then, or it may postpone action until later.

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

Pursuant to Rule 14.6(c)(9), the time for public review and comment is reduced as follows: comments on the proposed decision must be filed by no later than May 17, 2010, and no reply comments will be accepted.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments must be served in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to Commissioner Peevey's Chief of Staff Carol A. Brown at [cab@cpuc.ca.gov](mailto:cab@cpuc.ca.gov) and to ALJ Yacknin at [hsy@cpuc.ca.gov](mailto:hsy@cpuc.ca.gov). The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ MICHELLE COOK for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:jyc

Attachment

Decision **PROPOSED DECISION of COMMISSIONER PEEVEY**  
(Mailed May 4, 2010)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement  
Portions of AB 117 Concerning Community  
Choice Aggregation.

Rulemaking 03-10-003  
(Filed October 2, 2003)

**DECISION MODIFYING DECISION 05-12-041 TO CLARIFY THE  
PERMISSIBLE EXTENT OF UTILITY MARKETING WITH REGARD TO  
COMMUNITY CHOICE AGGREGATION PROGRAMS**

**1. Summary**

Decision (D.) 05-12-041 finalized the procedures for implementing consumer choice aggregation (CCA<sup>1</sup>) programs by which local governments may offer procurement service to electric customers within their political boundaries, including the procedures for informing customers of CCA programs and of their option to take or decline service from the CCA. The City and County of San Francisco petitions to modify Decision (D.) 05-12-041 to restrict utilities from marketing against CCA programs.

We modify D.05-12-041 (1) to make clear that, if utilities engage in misrepresentations regarding CCAs and CCA programs, they may be liable for penalties and subject to a temporary restraining order or preliminary injunction in a complaint before the Commission; and (2) to prohibit the utilities from offering alternative opt-out mechanisms than those identified in the CCA-

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<sup>1</sup> "CCA" also refers to a consumer choice aggregator, i.e., the entity providing the CCA procurement service.

specific information provided by the CCA pursuant to Resolution E-4250. We require certain tariff changes and we confirm that Resolution E-4250 prohibits utilities from soliciting or accepting opt-out requests until the CCA-specific information about the terms and conditions of service becomes available to customers when the CCA provides this information in compliance with the Section 366.2(c)(13)

(A-C) notification requirement. We deny the petition in all other respects.

## **2. Background**

Assembly Bill 117 (2002 Stats., ch. 838) enables local governments to develop consumer choice aggregation (CCA) programs to offer procurement service to electric customers within their political boundaries, and confers general jurisdiction on the Commission to develop the terms and conditions for implementing CCA programs. Decision (D.) 05-12-041, issued in this rulemaking, finalized the procedures for implementing CCA programs including the procedure for informing customers of CCA programs, for informing customers of their option to opt out of service from the CCA, and for effecting the change in service provider from utility to CCA.

In the proceedings leading to the issuance of D.05-12-041, the electric utilities represented that they had no intention to engage in marketing that would disparage CCA programs or to encourage customers to opt out of CCA service. Starting in mid-2007, Pacific Gas and Electric Company (PG&E) reversed its position from supporting the implementation of CCA programs to opposing them, and began to aggressively market against their implementation and to solicit customers to opt out of them, to the effect that such programs have been, or are at risk of being, abandoned. Specifically, PG&E has made presentations to city councils to discourage their membership in a CCA program,

sponsored mailers to customers to encourage them to oppose their local governments' membership in a CCA program and to opt out of any such CCA program (even before the program has been implemented), and is sponsoring a proposed initiative amendment to the California constitution that would require a two-thirds vote before a local government could implement a CCA program or use public funds or financing, including revenues from rates, to start or expand electric delivery service.<sup>2</sup>

The City and County of San Francisco (CCSF) presents several examples of PG&E's representations regarding CCA programs that CCSF claims are deceptive, misleading or untruthful:

- In slide presentations to the City of Mill Valley and the Town of Tiburon in October 2009, PG&E stated that the Marin Energy Authority (MEA) program contained "hidden costs," "hidden greenhouse gas compliance costs," "hidden joint and several liability" and a "hidden tax on Marin taxpayers" - even though the MEA had not yet determined the rates, terms and conditions of service for customers.
- A mailer to San Francisco and Marin customers prepared by, respectively, CommonSenseSF and Common Sense Marin, the only identified member of which is PG&E, warns "don't be left in the dark," describes the CCA program as a "risky scheme" that was "[c]reated by Sacramento legislation" that "automatically enrolls you - whether you like it or not - unless you opt out" at the cost of "unspecified 'exit fees,'" and as a "costly and unnecessary energy scheme" with bills "24% higher under CCA" than from the utility.

CCSF asserts that, in view of PG&E's changed position and associated conduct, restrictions are necessary to enforce the utilities' duty under Pub. Util.

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<sup>2</sup> The proposition, Proposition 16, has qualified for the June 8, 2010, ballot.

Code § 366.2(c)(9) to cooperate fully with CCAs, and to mitigate utility monopoly advantage and customer confusion. Specifically, CCSF petitions to modify

D.05-12-041 to:

- bar utilities from marketing<sup>3</sup> to retail customers related to CCA programs;
- bar utilities from engaging in conduct designed to thwart CCA programs, except when such conduct is expressly protected by the constitution;
- bar utilities from soliciting opt-out requests;
- bar utilities from dictating the opt-out mechanism;
- clarify that utilities are prohibited from making deceptive, misleading or untruthful communications regarding CCA programs; and
- provide that CCA programs may seek and, upon a proper showing, obtain a temporary restraining order or preliminary injunction against utility violations of their obligations to CCA programs.

PG&E, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) filed responses opposing the petition, and MEA, the San Joaquin Valley Power Authority, The Utility Reform Network, and Women's Energy Matters (WEM) filed responses in support of the petition, on February 10, 2010. CCSF filed a reply to the responses on February 22, 2010.

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<sup>3</sup> CCSF defines such marketing as communications to retail customers that discuss the rates or services of a CCA program, have the purpose or effect of discouraging customers from taking service from a CCA program, or have the purpose or effect of encouraging or facilitating the utility's retention of customers.

### **3. Procedural Issues**

#### **3.1. Request for Summary Dismissal**

CCSF petitions to modify D.05-12-041 on the basis that the decision relied on the key assumption that utilities were neutral or even supportive toward CCA programs, and that this assumption is no longer true as evidenced by PG&E's changed position and conduct in opposition to CCAs.

PG&E asserts that D.05-12-041 did not rely on utility neutrality or support toward CCA programs, as evidenced by the fact that D.05-12-041 expressly notes the potential for CCAs and utilities to compete for market share and provides that any such activity should be at shareholder expense. We agree that D.05-12-041 contemplated the potential for utilities to compete for market share by encouraging customers to opt out of service from CCAs and remain or become customers of the utility. However, we cannot conclude that D.05-12-041 contemplated utility activity to prevent the implementation of CCA programs. The undisputed facts that PG&E has engaged in conduct encouraging customers to oppose their local government's participation in a CCA program, encouraging local governments not to participate in a CCA program, and promoting a state proposition to require two-thirds' voter approval as a prerequisite to the implementation of a CCA program are changed circumstances that warrant the Commission's consideration of CCSF's petition to modify D.05-12-041.

SDG&E asserts that the petition fails to comply with Rule 16.4(b) because it is based on the broad and unsubstantiated allegation that *all* utilities are unsupportive of CCAs. SDG&E's assertion is without merit. CCSF's factual allegations are limited to PG&E's conduct and are undisputed.

PG&E also asserts that the petition should be denied for failure to timely file the petition pursuant to Rule 16.4(d), which requires a petition to be filed

within one year after the decision to be modified was issued or to explain why it could not have been filed in that time. PG&E asserts that CCSF could have brought this petition, if not within one year after D.05-12-041 was issued, at least one year after the Commission issued its decision approving the settlement of Case 07-06-025, *San Joaquin Valley Power Authority v. PG&E*, which charged PG&E with similar behavior as identified in this petition. To the contrary, Rule 16.4(d) does not impose a further requirement that a petition to modify a decision in one proceeding be filed within a year of a decision in another proceeding that may arguably raise related issues. CCSF justifies its petition on the basis of facts that did not arise until after one year of the issuance of D.05-12-041.

For these reasons, PG&E's and SDG&E's requests for summary dismissal are denied.

### **3.2. Request for Evidentiary Hearing and Clarification Regarding Linkage of CCAs to Energy Efficiency Funds**

WEM asks the Commission (1) to conduct evidentiary hearings in order to investigate whether PG&E has engaged in improper marketing by promising energy efficiency funds to local governments on the condition that they reject CCA programs, and (2) to define what the Commission meant by prohibiting utilities from "us[ing] energy efficiency funds in any way which could discourage or interfere with a local government's [consideration or implementation of a CCA program]," as ordered in D.09-09-047, the decision in Application (A.) 08-07-021 et al. approving the electric utilities' 2010 to 2012 energy efficiency portfolios and budgets. Specifically, WEM asserts that the record in A.08-07-021 et al. includes substantial evidence that PG&E improperly promised energy efficiency funds to local governments on the condition that

they reject CCA programs, and that D.09-09-047 insufficiently guards against such misuse of energy efficiency funds.

D.09-09-047 determined that the record evidence did not demonstrate improper marketing efforts by PG&E with respect to energy efficiency funds and considered WEM's comments on the proposed decision critiquing D.09-09-047 in this regard. The issues that WEM raises regarding PG&E's alleged linkage of energy efficiency funds to local governments' rejection of CCA programs have been addressed by the Commission in A.08-07-021 et al. and Resolution E-4250 and are beyond the scope of this proceeding.

The pleadings present no disputed material issues of fact. Accordingly, evidentiary hearings are not needed.

#### **4. Prohibition against Misrepresentations**

CCSF seeks modification of D.05-12-041 to clarify that utilities are prohibited from making deceptive, misleading, or untruthful communications regarding CCA programs. It is undisputable, and undisputed by the parties, that barring deceptive, misleading, or untruthful communications is a reasonable fit in furtherance of the substantial governmental interest in giving potential CCA customers an opportunity to make informed decisions.<sup>4</sup> We modify D.05-12-041 to make clear that, if utilities engage in such improper communications, they will be subject to a complaint before the California Public Utilities Commission (CPUC), where they will be subject to penalties.

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<sup>4</sup> CCSF asserts that misleading utility communications regarding a CCA program are in violation of Section 366.2(c)(9)'s requirement that utilities cooperate fully with CCAs. Misleading utility communications are not protected speech and are appropriately prohibited.

**5. Temporary Restraining Order/Preliminary Injunction in Complaint**

CCSF seeks modification of D.05-12-041 to clarify that the presiding officer<sup>5</sup> in a CCA complaint case has the authority to hear and grant a temporary restraining order or preliminary injunction pending confirmation or rejection of such order by the full Commission. This procedure is fully within our authority and consistent with Pub. Util. Code § 310 and our practice under Rule 14.6(c)(1). While we agree with SCE's assertion that D.05-12-041 does not need to be modified to establish that authority, we nevertheless modify D.05-12-041 to alert stakeholders of the availability of such relief in order to provide a measure of certainty to CCA programs that they will have the opportunity to obtain prompt relief to prevent irreparable harm.

**6. Solicitation of Opt-Out Requests**

CCSF seeks modification of D.05-12-041 to bar utilities from soliciting opt-outs. Subsequent to the filing of this petition, the Commission approved Resolution E-4250 which specifically bars utilities from soliciting or accepting opt-out requests until the CCA-specific information about the terms and conditions of service becomes available to customers when the CCA provides this information in compliance with the Section 366.2(c)(13)(A-C) notification requirement. As we state in the resolution, this requirement is necessary and

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<sup>5</sup> CCSF loosely identifies the "presiding officer" as having the authority at issue. While a presiding officer, if designated, does indeed have such authority, a motion for temporary injunctive relief may arise before the issuance of a scoping memo that designates the presiding officer. (Rule 7.3(a).) Thus, the authority to rule on a request for interim relief, subject to confirmation by the full Commission, resides with the assigned administrative law judge and/or the presiding officer, who may be the assigned commissioner or the assigned administrative law judge.

appropriate to serve the purpose of this code section to give potential CCA customers an opportunity to make an *informed* decision. With the issuance of Resolution E-4250, no further modification to D.05-12-041 is necessary to address this issue.

CCSF's petition for modification anticipated the issuance of Resolution E-4250, and nevertheless requests modification of D.05-12-041 to extend the bar on utility solicitations to bar them at any time (unless invited to do so by the CCA provider). This proposed further modification insofar as it addresses utility marketing raises First Amendment issues that we address in conjunction with CCSF's related proposed modifications in part 8, below. However, the concept of "soliciting an opt-out" can also refer to providing a mechanism for opting-out. We have addressed the mechanisms for opting-out in Resolution E-4250 and further address them in the next section of this decision.

## **7. Determination of Opt-Out Mechanisms**

CCSF seeks modification of D.05-12-041 to make clear that the CCA program is solely responsible for determining which single opt-out mechanism should be offered to customers, as required by Section 366.2(c)(13)(C). Specifically, Section 366.2(c)(13)(C) provides that the CCA shall provide customers with four notifications that include a mechanism by which the customer may opt out of CCA service. CCSF asserts that this provision gives the CCA sole discretion over the form of the opt-out mechanism. CCSF specifically objects to PG&E's Tariff Rule 23.I.1 and the language stating: "the utility shall provide an opt-out process to be used by all CCAs." We note that PG&E's Tariff Rule 23.I. similarly states: "[t]he CCA shall use PG&E's opt-out process".

The revised tariff language required by Resolution E-4250 already states that the method of opting out shall be "as prescribed in the CCA Notification."

Therefore, the CCA is free to prescribe methods that do not require the use of the utility's opt-out process.

Resolution E-4250 also provides that utilities may not solicit opt-outs until the CCA provides customers with CCA-specific information about the terms and conditions of service. This information reasonably should include CCA-specific information about the opt-out mechanism. Allowing the utility to offer customers an alternative opt-out mechanism other than the one presented by the CCA would create customer confusion. We modify D.05-12-041 to prohibit such action by the utilities. Accordingly, this decision directs the utilities to revise the introduction and subsection 1 of Section I of their CCA tariffs to read as follows:

#### **I. CCA CUSTOMER OPT-OUT PROCESSES**

Pursuant to Pub. Util. Code § 366.2(c)(13)(A)(i), CCA-issued Customer Notifications required for automatic enrollments into the CCA program shall include the opportunity for customers to opt-out of CCA Service and continue to receive their existing service. Pursuant to Pub. Util. Code § 366.2(c)(13)(C), the opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area. Pursuant to Pub. Util. Code § 366.2 (c)(13)(B), a CCA may request that the Commission approve and order the utility to provide the Customer Notifications required in Subparagraph (A). If the CCA makes this request and the Commission approves it, the CCA shall use [the utility's] opt-out process as set forth below.

1. The utility shall provide an opt-out process to be used upon request by a CCA. The utility shall offer at least two (2) of the following options as a part of its opt-out process:
  - a. Reply letter or postcard (postage paid) enclosed in CCA Customer Notifications.

- b. Automated phone service.
- c. Internet service.
- d. Customer Call Center contact.

## **8. Prohibition against Marketing to Customers Against CCA Programs**

CCSF seeks modification of D.05-12-041 to prohibit utility marketing regarding a CCA program, which it defines as communications that discuss the rates or services of a CCA program or that have the purpose or effect of discouraging retail customers from taking service from a CCA program or encouraging them to remain customers of the utility.<sup>6</sup> CCSF argues that the proposed restrictions are constitutionally permissible restrictions on free speech because the speech at issue is commercial speech which, as expressed in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 577 (1980) and *Board of Trustees of the State University of New York v. Fox*, 492 U.S. 469 (1989), may be subject to restrictions that directly advance, and are a reasonable fit with, a substantial governmental interest. CCSF argues that the proposed restrictions directly advance, and are a reasonable fit with, the substantial governmental interest in ensuring full utility cooperation with CCA programs and avoiding anti-competitive leveraging of utility market power as required by Section 366.2(c)(9), and in avoiding customer confusion.

We disagree with CCSF's interpretation of Section 366.2(c)(9) as stating a governmental interest in prohibiting utilities from marketing against CCAs. There is nothing in the language of Section 366.2(c)(9) and its definition of

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<sup>6</sup> CCSF's proposed bar on utility solicitation of opt-outs, discussed in part 6, would presumably fall within this class of communication.

“cooperation” suggests a duty on the part of utilities to refrain from competing with CCAs or to prohibit their marketing their generation service. D.05-12-041 reflects this understanding in its consideration of whether to, and determination not to, bar utilities from marketing against CCA programs as a term and condition for the implementation of Section 366.2. Specifically, although D.05-12-041 notes our concern that “there is little benefit from permitting a battle for market share between CCAs and utilities” (at p.22), and finds that “[u]tility marketing of procurement services to CCA customers and providing information about a CCA’s services and rates to customer may create conflicts of interest and costs that may not be offset by benefits” (Finding of Fact no. 10), it omits the proposed decision’s conclusion of law that would have barred utilities from marketing their services to CCA customers or characterizing a CCA’s services or rates to customers (Proposed Decision of Administrative Law Judge (ALJ) Malcolm, issued November 2, 2005, Conclusion of Law no. 12), and inserts in its stead the conclusion of law that such activity, if done, should be at shareholder expense (Conclusion of Law no. 14).

Certainly, Section 336.2(c)(9) evidences a substantial governmental interest in encouraging the development of CCA programs and allowing customer choice to participate in them. Prohibiting utilities from making misrepresentations regarding CCAs, prohibiting them from accepting opt-outs before the CCA has informed the customer of the terms and conditions of its services, and clarifying which entity has the sole responsibility for determining the opt-out mechanism, as we provide in this decision and in Resolution E-4250,

directly advance these interests. However, prohibiting utilities from marketing against CCAs would be more excessive than reasonably necessary.<sup>7</sup>

#### **9. Prohibition Against Conduct Designed to Thwart CCA Programs**

CCSF further seeks a modification to prohibit utilities from engaging in actions or conduct that are designed to frustrate or impede the investigation, pursuit, or implementation of a CCA program, except in the limited case in which the utility can conclusively demonstrate that the actions or conduct are constitutionally protected. However, CCSF does not allege any specific behavior(s) that it wishes to prohibit, nor otherwise specify the relief it seeks. Under these circumstances, we decline to grant any relief at this time.

#### **10. Comments on Proposed Decision**

The proposed decision of Commissioner Michael R. Peevey was mailed to the parties on May 4, 2010, in accordance with Section 311 of the Public Utilities Code. The time for public review and comment was reduced to 16 days pursuant to Rule 14.6(c)(9) of the Commission's Rules of Practice and Procedure, and the time for filing comments was set for no later than May 17, 2010. The public interest in the Commission issuing a decision at its regularly-scheduled May 20, 2010, business meeting clearly outweighs the public interest in having the full 30-day period for review and comment because of the need to have clear rules in

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<sup>7</sup> The utilities argue that some, if not all, of the speech is political, not commercial, and thus fully protected by the First Amendment. (See, e.g., *Citizens United v. Federal Election Commission*, U.S. Supreme Court, No. 08-205, January 21, 2010.) Because we find that the proposed prohibitions on (non-misrepresentative) speech are unjustified even with respect to commercial speech, we do not reach this issue.

place before CCSF begins implementation of its CCA program. Comments were filed on May 17, 2010, by \_\_\_\_\_.

### **11. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Amy Yip-Kikugawa and Hallie Yacknin are the assigned ALJs in this proceeding.

### **Findings of Fact**

1. In the proceedings leading to the issuance of D.05-12-041, the electric utilities represented that they had no intention to engage in marketing that would disparage CCA programs or to encourage customers to opt out of CCA service.

2. Starting in mid-2007, PG&E has engaged in conduct encouraging customers to oppose their local government's participation in a CCA program, encouraging local governments not to participate in a CCA program, and promoting a state proposition to require two-thirds' voter approval as a prerequisite to the implementation of a CCA program.

3. PG&E's reversal of position from supporting the implementation of CCA programs to opposing them and associated conduct is a changed circumstance that warrants our consideration of this petition for modification.

4. Allowing the utility to offer customers an alternative opt-out mechanism other than the one presented by the CCA would create customer confusion.

### **Conclusions of Law**

1. The petition for modification of D.05-12-041 complies with Rule 16.4.

2. The requests to dismiss the petition for failure to comply with Rule 16.4 should be denied.

3. The issues that WEM raises regarding PG&E's alleged linkage of energy efficiency funds to local governments' rejection of CCA programs have been

addressed by the Commission in A.08-07-021 et al., and Resolution E-4250 and are beyond the scope of this proceeding.

4. The pleadings present no disputed material issues of fact. Accordingly, evidentiary hearings are not needed.

5. Barring deceptive, misleading, or untruthful communications is a reasonable fit in furtherance of the substantial governmental interest in giving potential CCA customers an opportunity to make informed decisions.

6. D.05-12-041 should be modified to make clear that, if utilities engage in such improper communications, they will be subject to a complaint before the CPUC, where they will be subject to penalties.

7. Administrative law judges and presiding officers have the authority to hear and grant a temporary restraining order or preliminary injunction pending confirmation or rejection of such order by the full Commission, consistent with Pub. Util. Code § 310 and our practice under Rule 14.6(c)(1).

8. D.05-12-041 should be modified to alert stakeholders of the availability of temporary restraining orders or preliminary injunctions in a CCA complaint case.

9. Pursuant to Resolution E-4250, utilities are specifically barred from soliciting or accepting opt-out requests until the CCA-specific information about the terms and conditions of service becomes available to customers when the CCA provides this information in compliance with the Section 366.2(c)(13)(A-C) notification requirement.

10. Information about the CCA-specific opt-out mechanism should be included with the CCA-specific information about the terms and conditions of service that, pursuant to Resolution E-4250, shall be provided by the CCA.

11. D.05-12-041 should be modified to prohibit the utilities from offering alternative opt-out mechanisms than those identified in the CCA-specific information provided by the CCA pursuant to Resolution E-4250.

12. The CCA tariffs should be modified to clarify that a CCA is not required to use a utility-provided opt-out process.

13. There is not a substantial governmental interest in prohibiting utilities from marketing against CCAs.

14. CCSF has not provided sufficient detail to justify at this time an order prohibiting conduct designed to thwart CCA programs.

15. The public interest in the Commission issuing a decision on this petition as soon as possible in order to have clear rules in place before CCSF begins implementation of its CCA program clearly outweighs the public interest in having the full 30-day period for review and comment.

16. This proceeding should remain open.

## **O R D E R**

### **IT IS ORDERED** that:

1. Decision 05-12-041 is modified as follows:
  - a. The following paragraph is inserted as the last paragraph of the discussion in Part IV on page 18:

However, we put all stakeholders on notice that utilities are prohibited from making misrepresentations regarding CCA programs. The Commission will entertain complaints against utilities for engaging in such improper communications where, in addition to penalties, the utility may be subject to interim relief, including a temporary restraining order or preliminary injunction, consistent with Pub. Util. Code § 310 and Rule 14.6(c)(1).

- b. The following paragraph is inserted as the second-to-last paragraph of the discussion in Part VI on page 22:

We also direct that CCAs, and not utilities, shall determine the opt-out mechanism that will be used and include that information in the CCA-specific information provided by the CCA pursuant to Resolution E-4250. In order to avoid customer confusion, utilities are prohibited from providing alternative opt-out mechanisms to customers.

- c. The following ordering paragraphs are added:

2A. PG&E, SDG&E, and SCE shall not make misrepresentations to any retail customer, governmental body or governmental official regarding CCAs or any CCA program.

2B. CCAs shall determine the opt-out mechanism that will be used and include that information in the CCA-specific information provided by the CCA pursuant to Resolution E-4250. In order to avoid customer confusion, utilities are prohibited from providing alternative opt-out mechanisms to customers.

2. The utilities shall revise the introduction and subsection 1 of Section I of their consumer choice aggregation (CCA) tariffs (Rule 23 for Pacific Gas and Electric Company and Southern California Edison Company, and Rule 27 for San Diego Gas & Electric Company) to read as follows:

#### **I. CCA CUSTOMER OPT-OUT PROCESSES**

Pursuant to Pub. Util. Code § 366.2(c)(13)(A)(i), CCA-issued Customer Notifications required for automatic enrollments into the CCA program shall include the opportunity for customers to opt-out of CCA Service and continue to receive their existing service.

Pursuant to Pub. Util. Code § 366.2(c)(13)(C), the opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area. Pursuant to Pub. Util. Code § 366.2 (c)(13)(B), a CCA may request that the Commission approve and order the

utility to provide the Customer Notifications required in Subparagraph (A). If the CCA makes this request and the Commission approves it, the CCA shall use [the utility's] opt-out process as set forth below.

1. The utility shall provide an opt-out process to be used upon request by a CCA. The utility shall offer at least two (2) of the following options as a part of its opt-out process:
  - a. Reply letter or postcard (postage paid) enclosed in CCA Customer Notifications.
  - b. Automated phone service.
  - c. Internet service.
  - d. Customer Call Center contact.
3. The tariff changes ordered by the immediately preceding Ordering Paragraph shall be effective immediately and the utilities shall file advice letters with this language within 10 days of the effective date of this decision.
4. Rulemaking 03-10-003 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

