

(Sheet 1 of 5)

RULE NO. 4.1\*

EXEMPTION FROM PUBLIC INSPECTION REQUIREMENTS FOR  
CERTAIN GAS CORPORATION CONTRACTS

(Final Rules Pursuant to Public Utilities Code Section 489.1)

1. To encourage fair competition for gas corporations, the Commission has adopted these rules pursuant to Public Utilities Code (PU Code) Section 489.1, which provides that the Commission may, by rule or order (partially or completely) exempt from the requirements of PU Code Section 489(a) contracts negotiated by gas corporations for service subject to the Commission's jurisdiction with rates, terms, or conditions differing from the schedules on file with the Commission.
2. Notwithstanding other provisions of law, these rules shall apply to any contract between the Company and its customers who satisfy all of the following criteria:
  - a. The contract is executed on or after the date these rules are adopted,
  - b. The contract is subject to the Commission's jurisdiction,
  - c. The contract contains rates, terms, or conditions differing from the Company's rates, schedules and tariffs on file with Commission, and
  - d. The contract is executed by the Company which is precluded from shifting to any other customers responsibility for any loss of revenue as measured against filed rates, schedules, and tariffs.
3. The Company shall request the exemption pursuant to PU Code Section 489.1 in the following manner:
  - a. In an application proceeding, the Company should make the request as part of the application.
  - b. In a complaint case, investigation or rulemaking, the Company should make the request as a motion.

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\* All references to rules within Rule 4.1, such as references to Rules 2, 4 and 8, refer to the final rules established pursuant to Public Utilities Code Section 489.1, adopted by Commission Decision 97-06-110, and not to the regular gas rules on file with the Commission relating to Description of Service (Rule 2), Contracts (Rule 4), and Notices (Rule 8).

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- c. In an advice letter filing, the Company should make the request in the advice letter. If there is an objection to the exemption request, that issue may be addressed in a separate resolution.
- d. Alternatively, the Company should make the request in a manner otherwise approved by the Commission.

The Company's request should explain how the contract qualifies for the exemption, including how the contract meets the criteria set forth in Rule 2 and Rule 8. The Company has the burden of proof to justify the exemption.

If the Commission determines that the contract satisfies the above criteria and is therefore exempt from the requirements of PU Code Section 489(a), the Company must stamp on each page of the contract: "CONFIDENTIAL PURSUANT TO PUBLIC UTILITIES PU CODE SECTION 489.1."

- 4. Pursuant to a request and the signing of a nondisclosure agreement (Form No. 935.0), the Company may allow representatives of its residential customers who are not competitors of the Company and who have not previously violated a nondisclosure agreement to inspect a confidential contract. Where this provision is not followed, those requesting disclosure shall follow the procedure set forth in Rule 4.a.
  - a. Any person, including a representative of residential customers of the Company, can request disclosure of (1) a contract that has been found to be exempt from the requirements of PU Code Section 489(a) or (2) any specific information in the contract in the following manner:
    - 1. If the contract is relevant to a pending formal proceeding (i.e., application, complaint, investigation, or rulemaking), the person shall make the request by filing a motion in that proceeding. The administrative law judge or Assigned Commissioner shall issue a ruling on the motion.

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2. In the case of an advice letter filing, the person shall make the request to the Director of the Energy Division, who shall make an initial determination based on the requirements set forth in these Rules. The Resolution disposing of the advice letter will address the request for public inspection.
3. If there is no pending formal proceeding affecting the contract, the person shall present the request by letter to the Director of the Energy Division. The Energy Division will prepare a resolution on the request.

The request should state all of the following:

1. The person is not a competitor of the Company.
2. The person is willing to sign a nondisclosure agreement.
3. The person has not previously violated a nondisclosure agreement.
4. The reasons why PU Code Section 489.1 does not foreclose the request.

The Company, its customers or other interested parties may file a response to the request within fifteen (15) days. The person may file a reply to any response within five (5) days of the response.

With respect to a request for additional specific information on a particular contract, disclosure under this rule for such information will be based on a finding that the public benefit from such disclosure would outweigh the interests of the Company and customer in confidentiality.

Advice Letter No. 553-A  
Decision No. 97-06-110

Issued by  
Edward S. Zub  
Senior Vice President

Date Filed August 22, 1997  
Effective September 12, 1997  
Resolution No. \_\_\_\_\_

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5. These rules do not prohibit the disclosure of any information concerning these contracts as may be reasonably necessary to permit auditing and collection of fees and taxes by the Commission or any other governmental entity. Disclosure of such information by the Commission or its staff to another governmental entity for these purposes does not require the governmental entity to execute a nondisclosure agreement as set forth in Rule 4 and Rule 4.a.
  
6. PU Code Section 454.4 provides:  
  
"The Commission shall establish rates for gas which is utilized in cogeneration technology projects not higher than the rates established for gas utilized as a fuel by an electric plant in the generation of electricity, except that this rate shall apply only to that quantity of gas which an electrical corporation serving the area where a cogeneration technology project is located, or an equivalent area, would require in the generation of an equivalent amount of electricity based on the corporation's average annual incremental heat rate and reasonable transmission losses or that quantity of gas actually consumed by the cogeneration technology project in the sequential production of electricity and steam, heat, or useful work, whichever is the lower quantity."  
  
To ensure compliance with this section, these rules shall not apply to contracts between gas corporations and electrical corporations, which continue to be subject to Commission policy and its Rules of Practice and Procedure. No less information shall be made publicly available regarding these contracts as would otherwise be made available pursuant to this section.
  
7. PU Code Section 489.1 shall not affect the Commission's and its staff's rights to inspect the contract and any related additional information. Neither the Commission nor its staff is required to sign a nondisclosure agreement as a condition for any inspection.

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8. PU Code Section 489.1 does not protect from disclosure that type of information that the Company's competitor(s) must disclose pursuant to federal law (see, for example, the Federal Energy Regulatory Commission's Discount Reports requirements, 18 C.F.R. paragraph 284.7(c)(6)). If federal law requires disclosure of a competitor's information, the Company shall then disclose the same information.
9. Nothing precludes the Company or customer from waiving the protections provided in PU Code Section 489.1.
10. Nothing in these rules prohibits any person from requesting full public inspection and disclosure of a particular contract because the exemption no longer applies, e.g., the information is no longer competitively sensitive.
11. These rules shall remain in effect only until January 1, 2001, and as of that date are repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that effective date of PU Code Section 489.1.