As filed with the Securities and Exchange Commission on May 12, 1997

File No. 70-09033

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 1 TO
FORM U-1 APPLICATION OR DECLARATION

UNDER

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Mineral Energy Company
101 Ash Street
San Diego, California 92101

(Name of company or companies filing this statement
and address of principal executive offices)

None

(Name of top registered holding company parent of each applicant or declarant)

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The Commission is requested to send copies of all notices, orders and communications in connection with this Application to:

Ruth S. Epstein, Esq.
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Introduction and Explanation

This Amendment No. 1 to the Application on Form U-1 of Mineral Energy Company filed with the SEC on March 26, 1997, is submitted solely for the purpose of filing the following Exhibits:

Exhibit D-1 Joint Application of Pacific, Enova, the Company, Pacific Sub and Enova Sub to the CPUC, filed October 30, 1996.

Exhibit D-2 Testimony of T. J. Flaherty, F. H. Ault & D.L. Reed before the CPUC, "Identification of Merger Synergies."

Exhibit D-3 Joint Petition for a Declaratory Order of Pacific and Enova before FERC filed December 6, 1996.

Exhibit D-4 Joint Application of Enova and SDG&E before FERC, filed January 27, 1997.

Exhibit D-5 Testimony of William Hieronymous before FERC, filed October 30, 1996.

Exhibit D-7 Letter on behalf of SDG&E to the NRC, submitted December 2, 1996.

SIGNATURE

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the undersigned company has duly caused this Amendment No. 1 to be signed on its behalf by the undersigned thereunto duly authorized.

Mineral Energy Company

/s/ Stephen L. Baum
By_______________________________
Stephen L. Baum, Vice President

Date: May 12, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger Of Pacific Enterprises and Enova Corporation With and Into B Mineral Energy Sub ("Newco Pacific Sub") and G Mineral Energy Sub ("Newco Enova Sub"), the Wholly-Owned Subsidiaries of A Newly Created Holding Company, Mineral Energy Company.	) APPLICATION) NO. ____)) Filed) October 30,) 1996

APPLICATION

Pursuant to Section 854 of the California Public Utilities Code, Pacific Enterprises, Enova Corporation, Mineral Energy Company ("Mineral Energy"), B Mineral Energy Sub ("Newco Pacific Sub") and G Mineral Energy Sub ("Newco Enova Sub") (collectively referred to herein as "Applicants"), hereby request expedited approval from the California Public Utilities Commission ("CPUC" or "Commission") for a plan of merger of their respective companies.

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Applicants do not believe that approval under Public Utilities Code Section 851 is necessary for the plan of merger at issue herein due to the fact that no lines, facilities, franchises, or permits of either SoCalGas or SDG&E will be merged with or transferred to the other utility or any other entity. Both utilities will remain as they are today - - regulated in their tariffed utility services by the Commission, having no change in the status of their outstanding securities or debt, having the same assets and liabilities, and both still under the ownership of their respective parent holding companies. However, in making the showing provided for under Public Utilities Code Section 854 in this Application, Applicants submit that, even if Section 851 is found to apply to this proceeding, its public interest criterion is satisfied under the showing to be made herein.

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I.

EXECUTIVE SUMMARY

As is explained in greater detail below, this merger will serve the public interest by providing the following benefits to California energy consumers:

1. Enhanced competition in both the restructured electric and natural gas industries;

2. The creation of an entity of sufficient scope, scale, financial flexibility and expertise to competitively and expeditiously provide the energy services and related products that are desired by energy consumers, without adversely affecting competition;

3. A combination of California companies that unquestionably preserves CPUC jurisdiction over the utility operations of the resulting organization;

4. The creation of a company that will expedite the introduction of new energy services and related products into the California economy through aggressive pro-consumer strategies, including full compliance with the Commission's unbundling initiatives, to spur the move to an increasingly competitive energy industry; and,

5. Synergies, consisting of cost reductions and cost avoidances, that will result in savings and avoidances, net of costs to achieve the merger, of approximately $65 million in the first year after merger consummation, growing to approximately

$105 million in the third year, and accumulating to approximately $1.2 billion over the first ten years,

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These numbers assume a ten-year amortization of costs to achieve the merger.

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the majority of which will be realized in utility operations, the cost savings of which will be shared directly or indirectly by ratepayers and shareholders, as this Commission may provide.

The plan of merger for which approval is sought herein does not raise market power concerns, but will facilitate the expedited implementation of energy services industry competition in California. As such, it is the next logical step in the restructuring that is taking place in the energy industry and may even be a necessary ingredient to true competition in California.

The narrowing margins that have resulted from increased competition in currently competitive energy markets, together with increased consumer demand for energy products and services in the restructured energy industry, render this transaction necessary to provide Enova Corporation and Pacific Enterprises with a reasonable opportunity to survive and prosper. The creation of an organization that is better able to meet these consumer demands will benefit all California energy consumers in an increasingly competitive energy industry. Entities that seek to delay or impede competition will undoubtedly try to prevent this merger or at least substantially delay the competition it will create. These anti-competitive activities are certainly predictable, but they do not detract from the pro-competitive, pro-consumer nature of this plan of merger. In fact, they confirm the consumer benefits that can be expected to result.

Consistent with the pressures of an increasingly competitive energy industry, time is very much of the essence in processing this Application.

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"Regulatory delays to mergers, acquisitions or sales of companies will delay the benefits of these transactions from reaching consumers, and artificially lower the value of California based firms. It is incumbent upon regulators and legislators to move swiftly, or our actions will hinder the efficient operation of the marketplace..." Concurring Opinion of Commissioner Knight in Re GTE Corporation (1996) __CPUC 2d __ (D. 96-04-053). Timely action by the Commission on this Application will permit Applicants to form an entity that is the best vehicle by which to compete in the restructured electric service marketplace at the onset of competition beginning January 1, 1998.

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As a result, Applicants respectfully request expedited review and approval of this Application, under a schedule that will allow the Commission to issue a decision no later than, and preferably before, December 1997, approximately 14 months from today. The sooner this Application is approved by the Commission, the sooner consumers will begin enjoying the benefits it will provide. In order to facilitate the expedited processing of this proceeding, Applicants are prepared to file testimony and exhibits in support of this Application, supplementing and supporting the information set forth herein, by December 12, 1996.

A. The Merger Is A Natural Outgrowth of Industry Restructuring That Will Further the State's Policy Objective of Increased Competition.

The proposed transaction will occur in the context of fundamental and far-reaching changes in the energy industry, regionally and nation-wide. This Commission has, in many significant respects, led this change through its adoption and implementation of sweeping restructuring of the California energy market.

In the last decade, the Commission introduced vast structural changes into the natural gas industry and market. The competition engendered through that restructuring has brought benefits not only to utility customers, but to the entire California economy. The Commission and the California Legislature are now compelling corresponding changes in the electric industry in order to bring the benefits of competition to California electric consumers. In so doing, the Commission has firmly stated its policy to establish:

> . . . a market structure that embraces competition in the provision of electric services, offers retail customers choice and flexibility in energy services, and reforms the manner in which we regulate utility monopoly services.
>
> (D. 95-12-063, as modified by D. 96-01-009, mimeo, at p. 25.)

Similarly, through its enactment of AB 1890, the California Legislature has found and declared that:

> It is the intent of the Legislature to ensure that California's transition to a more competitive electricity market structure allows its citizens and businesses to achieve the economic benefits of industry restructuring at the earliest possible date, creates a new market structure that provides competitive, low cost and reliable electric service . . . .
>
> (AB 1890, Section 1 (a).)

Applicants share these objectives. The proposed transaction is founded upon Applicants' commitment to the development of a fully competitive energy market.

As a result of the evolving energy industry structural changes, electric distribution companies will effectively lose their exclusive local sales franchises for bundled utility services. Retail competition will emerge through instrumentalities such as the power exchange and independent system operator, direct access, and the unbundling of various energy-related products and services. The removal of barriers to entry into retail energy markets will also continue to enable increasingly aggressive and diverse energy providers to compete for retail load.

Enova Corporation and Pacific Enterprises are undertaking the proposed transaction to enable their active and effective participation in the rapidly evolving energy marketplace. Each has concluded that it can best adapt to the new regime through a combination of its businesses with those of the other party.

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The Commission has repeatedly recognized that the form of organization and ownership of any for-profit venture lies in the sound discretion of management, subject to the rights provided otherwise of the shareholders to consent and to the Commission's oversight to the extent necessary to protect the public interest. Re Roseville Telephone Company (1996) __CPUC 2d __ (D. 96-07-059); Re San Diego Gas & Electric Company (1995) __CPUC 2d __ (D. 95-12-018).

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Each is also determined to pursue the proposed merger to facilitate and expedite the move to a fully competitive energy industry in California by forming a company with the resources and capabilities necessary to compete vigorously. By combining their individual strengths, Enova Corporation and Pacific Enterprises will improve the breadth and quality of energy services and related products available to California customers without jeopardizing safety and reliability of service.

By granting the requested approval on an expedited basis, the Commission will accelerate the development of the market forces that the Commission's pro-competitive regulatory framework has been designed to produce.

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Currently, no barriers exist preventing an unregulated utility affiliate from conducting business in the utility's service territories. The Commission should prevent any such barrier from being constructed in this proceeding. While the Commission has no jurisdiction to impose such a prohibition upon an unregulated utility affiliate, it should not only forcefully reject any arguments which might have, through indirect or subtle means, such a result, but also confirm in this proceeding the right of the new organization to conduct unregulated business activities in the utilities' service territories.

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B. How the Merger Will Be Accomplished.

Pursuant to the Agreement and Plan of Merger and Reorganization dated as of October 12, 1996 ("Merger Agreement", a copy of which is attached hereto as Exhibit "A" and is

incorporated herein by this reference), Mineral Energy (whose name will be changed prior to completion of the merger), a California corporation, has been formed for the purpose of facilitating this merger of equals. The outstanding capital stock of Mineral Energy is owned currently 50% by Enova Corporation and 50% by Pacific Enterprises. Under the plan of merger, two subsidiary companies of Mineral Energy have been created solely for the purpose of facilitating the plan of merger. G Mineral Energy Sub and B Mineral Energy Sub will merge with and into Enova Corporation and Pacific Enterprises respectively, and as a result Enova Corporation and Pacific Enterprises will become subsidiaries of Mineral Energy, owning all of Enova Corporation's and Pacific Enterprises' outstanding common stock. Each share of each other class of capital stock of Enova Corporation and Pacific Enterprises shall be unaffected and shall remain outstanding. Following this transaction, Newco Pacific Sub and Newco Enova Sub will cease to exist. Mineral Energy will become the parent of Pacific Enterprises and Enova Corporation. Therefore, the corporate structures of Pacific Enterprises, Southern California Gas Company ("SoCalGas"), Enova Corporation and San Diego Gas and Electric Company ("SDG&E") will remain unchanged.

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Except, of course, for the conversion of the outstanding common shares of both Enova Corporation and Pacific Enterprises into common shares of Mineral Energy that will occur through this business combination.

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Pacific Enterprises and Enova Corporation will be controlled directly by Mineral Energy, and SoCalGas and SDG&E will become second tier subsidiaries of Mineral Energy. The existing common shareholders of Pacific Enterprises and Enova Corporation will be the common shareholders of Mineral Energy.

No lines, facilities, franchises, or permits of either SoCalGas or SDG&E will be merged with or transferred to the other utility or any other entity. Both utilities will remain as they are today - - regulated in their tariffed utility services by the Commission, having no change in the status of their outstanding securities or debt, having the same assets and liabilities, and both still under the ownership of their respective parent holding companies.

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Further, in compliance with Public Utilities Code Section 362, all facilities of SDG&E needed to maintain the reliability of the electric supply in the San Diego Basin will remain available and operational.

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It is incumbent upon the Commission to recognize that this merger should not be analyzed as if it were taking place as recently as even two years ago. The Commission's and Legislature's restructuring process is designed to increase competition among energy providers for all types of consumers throughout the state; this merger will further these objectives and should be viewed in the light of the additional choices it will make available to energy consumers.

II.

REASONS FOR THE TRANSACTION AND FACTS REQUIRING ITS APPROVAL (RULE 35(c))

Rule 35(c) of the Commission's Rules of Practice and Procedure requires Applicants to describe the reasons for the merger and the facts requiring its approval. These reasons and facts are discussed in general terms below, while the information specifically required under Section 854 is set forth in Section III of this Application. Remaining informational requirements are satisfied in Section IV.

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In addition, other regulatory agencies from which approvals may be required, or at which filings related to the merger may be made, include the Federal Trade Commission, the Antitrust Division of the Department of Justice, the Securities and Exchange Commission, the Nuclear Regulatory Commission, and the Federal Energy Regulatory Commission.

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A. Applicants' Reasons for Entering Into this Transaction.

The proposed merger is in direct response to the Commission's and the California Legislature's adopted market structure, through which electric distribution companies will

effectively lose their exclusive local retail sales franchises to provide bundled energy services. In this new environment, companies like SDG&E, that have historically depended on their local franchises and monopoly rights for their revenues stand potentially to lose customers of their previously-tariffed services to the competitive marketplace and therefore must adapt to survive.

The combination of Pacific Enterprises and Enova Corporation will produce an entity with the financial strength and breadth of capabilities to participate effectively in an energy service and product market in which numerous powerful and aggressive companies are poised to compete. These competitors include the two major investor-owned electric utilities in the State, whose individual retail electric operations exceed those of Enova Corporation by several times and who are affiliated with substantial independent power production and marketing companies. Potential competitors also include other power producers, marketers and brokers, both within and outside the State, including those amassing strength on California's borders in anticipation of the Commission's restructured electric services market.

Many of the potential competitors are highly experienced and are capable of committing vast capital and other resources to compete in California's energy market. The combined resources, skills, and energies of Enova Corporation and Pacific Enterprises will allow the new organization to compete viably with these powerful market participants in the new regional, national and international markets evolving currently, thus strengthening competitive forces to the benefit of all energy consumers.

The reasons, from the perspectives of both Pacific Enterprises and Enova Corporation, for entering into this merger are set forth below.

1. Pacific Enterprises' Reasons for Entering Into the Transaction.

For Pacific Enterprises, the merger is largely an outgrowth of anticipated increased customer demand for new energy services and related products. The restructuring that has taken place, and continues to evolve, has also narrowed operating margins, rendering increases in size and scope necessary to compete in the increasingly competitive energy industry that is developing. This merger presents Pacific Enterprises with a unique opportunity to realize increases in scope and scale while providing it with the ability to compete for electric sales. At the same time, it preserves SoCalGas' status as a southern California company, headquartered among the customers it serves.

Pacific Enterprises and SoCalGas have a long history of rendering safe and reliable service to their customers and have extensive knowledge of the natural gas industry. Without expertise in the electric industry, however, they face the very real risk of being left behind, and of not being able to meet the needs of their customers, in an increasingly competitive energy market.

A business combination with Enova Corporation presents Pacific Enterprises with access to the electric procurement, generation, transmission, distribution, and marketing expertise held by Enova Corporation together with the ability to package an array of natural gas and electric services and related products. This combination of natural gas and electric expertise will strengthen the combined organization's ability to meet the energy demands of customers served by the companies. Moreover, it will position the combined company to market a diversified portfolio of energy services and products inside and outside of its regulated utility subsidiaries' service territories, thereby further enhancing competition throughout California. In addition, the new organization will maintain a strong commitment to workforce and supplier diversity and continued support of public institutions and charities.

As the Commission has acknowledged, its envisioned market structure is, at least in part, the natural outgrowth of the expanding demands of customers for a broader and more cost-effective array of energy services. A principal objective of the merger is to unite the diverse skills and capabilities of Pacific Enterprises and Enova Corporation in order to more effectively address these customer requirements. SoCalGas, the largest natural gas local distribution company in the United States, has a national reputation for service quality in the natural gas distribution industry together with extensive

expertise in natural gas procurement, storage, distribution, transmission and marketing. SDG&E is widely known for its expertise in delivering customer savings through demand-side management services, innovative management delivering low cost energy services, and vast experience in electricity procurement, generation, distribution, and transmission. Both SoCalGas and SDG&E have long-standing concern for, and commitment to, serving California energy consumers and their communities.

By combining this expertise and commitment with substantial operating synergies, Pacific Enterprises and Enova Corporation intend to provide customers of their regulated utility subsidiaries with safe and reliable service at competitive rates. This merger will also create a combined company that can compete aggressively in the expanding unregulated energy services and products marketplace by providing greater service and product choices and flexibility in a manner consistent with the Commission's gas and electric restructuring objectives and policies.

2. Enova Corporation's Reasons for Entering Into the Transaction.

For Enova Corporation, the business combination affords increased financial strength and operational scale from which to engage in the competitive retail energy market. As discussed above, the Commission's and Legislature's restructuring of the electric market will effectively result in SDG&E, along with other electric service monopolies, losing its exclusive local franchise for providing bundled utility services. Accompanying this loss, however, is the corresponding opportunity to offer a variety of energy services to retail customers throughout the state. Enova Corporation strongly believes that, in order to compete effectively in the envisioned market, it must substantially increase its capability to meet customer needs, to develop a market presence, to operate more efficiently, and to increase access to adequate quantities of capital on favorable terms. Enova Corporation has concluded that each of these objectives can best be achieved by joining with Pacific Enterprises, and that present and future customers of the combined entity will be the ultimate beneficiaries.

Numerous strong and enterprising power producers, marketers and brokers are already jostling for position to enter the new energy market. These competitors include Edison International and Pacific Gas & Electric Company, whose utility operations alone provide financial resources and operations far in excess of the resources available to Enova Corporation. Additional competitors include non-California entities such as Enron, Pacificorp, and others. Many of the non-regulated energy-related businesses of these competitors are substantially larger than those of Enova Corporation. The increased financial strength and operational capabilities produced by this strategic combination will enable Enova Corporation to encounter and manage significantly more risk in the diversity and scale of competitive services and products it brings to the energy market. As a result, it will be able to offer a wider array of services and products to a larger population of consumers and thereby compete from a position of strength.

A major benefit of the combination of Enova Corporation and Pacific Enterprises derives from their shared commitment to the development of a robust energy market. Their complementary expertise will enable the combined entity to bring into the market products and services that neither could deliver as effectively or as expeditiously alone.

Finally, the business combination will allow Enova Corporation to combine its cost management and service quality expertise with those of Pacific Enterprises. This combination will enhance the cost-efficiency and effectiveness of SDG&E's local distribution operations. Moreover, the resulting operating synergies and corresponding cost savings will provide significant benefits to utility customers. In this way, the business combination will advance Enova Corporation's objective to further enhance the efficiency and quality of the utility services provided by SDG&E.

It is important to Enova Corporation that all of the foregoing objectives will be achieved while remaining a San Diego, California-headquartered company, committed to enhancing the economy of this state, thereby benefiting employees, consumers and investors. The new organization will maintain a strong commitment to workforce and supplier diversity and continued support of public institutions and charities, while employing California residents and paying California taxes.

These are benefits that a merger with an out-of-state entity might not generate.

B. The Merger Will Benefit All California Energy Consumers.

The business combination at issue under this Application satisfies all applicable requirements for CPUC approval. Increased synergies will result in cost reductions and cost avoidances, net of costs to achieve the merger, of approximately $65 million in the first year after merger consummation, growing to approximately $105 million in the third year, and accumulating to approximately $1.2 billion over the first ten years. The majority of these synergies will be realized in utility operations, to be shared by ratepayers and shareholders pursuant to this Commission's directive. These savings represent a clear, quantifiable benefit to ratepayers and shareholders. While substantial, however, these savings would be greater if not for the extensive savings already achieved by the cost management efforts of Pacific Enterprises, Enova Corporation, and their utility subsidiaries in preparation for, and in response to, growing competition in the energy industry.

In this regard, SoCalGas has already achieved approximately $73.8 million in productivity savings in the 1994-96 time period, some $11.8 million more than required by the combined 1994 General Rate Case and 1995 and 1996 Global Settlement target of $62 million. Similarly, SDG&E reduced its workforce from 5084 in 1982 to 3725 in 1996 (27%), while experiencing an increase during that same time period in electric customers served from 804,546 to 1,160,889 (44%). Without regrading customer service, this merger will achieve even greater efficiencies that can only be achieved through this transaction. The resultant savings will benefit the customers of both utilities and the California economy in general. But this is not the only, or even the greatest, benefit of the merger.

Of vastly greater importance is the enhanced ability of the combined companies to provide new options to all customers through an array of competitively priced energy-related services and products in California markets. The availability of these new products and services to a broad spectrum of consumers will help solidify the Commission's and Legislature's desired market structure and promote the price reductions, customer choice and flexibility that the Commission and Legislature have found will benefit the entire California economy.

C. The Merger Will Enhance Competition While Avoiding Problems Associated With Market Power.

Due to the unique complementary characteristics of Pacific Enterprises and Enova Corporation, the merger will help deliver the benefits of competition to California energy consumers while avoiding the creation of any problems associated with market power.

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Section 854(b)(3) in fact requires the Commission to request an advisory opinion from the Attorney General regarding whether competition will be adversely affected. Applicants request the Commission to make this request as soon as possible.

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1. The Merger Will Help Deliver the Benefits Of Competition to California Energy Consumers.

Through numerous restructuring proceedings, the Commission has repeatedly found that enhanced competition in the energy industry is in the public interest. In fact, restructuring in the natural gas industry over the recent decade has resulted in greater competition, lower prices and lower margins, to the benefit of all California consumers. This merger will aid the restructuring of the electric industry in achieving the same objectives.

As electric rates are reduced in the face of competitive pressures, consumer demand for energy services and related products will increase. The industry's preparation to compete in this new world is becoming increasingly apparent through the numerous mergers of electric and gas companies that are occurring throughout the United States. Through such mergers, companies are empowering themselves, through increased scope, financial strength, and product diversity, to compete in the new energy industry.

To the extent that viable competitors exist to compete with the enormous scope and scale presented by companies such as Edison International, Pacific Gas and Electric Company, Enron

(together with its proposed merger partner Portland General Electric), and Pacificorp, the competitive pressures exerted on them, and on the entire energy industry, will be increased. This competition promises to result in lower prices and increased energy service offerings to all California consumers. The proposed merger will add a viable competitor to the marketplace, thereby contributing to the realization of these economic gains.

2. The Merger Will Not Result in the Creation of Market Power.

As the Commission is well aware, Pacific Enterprises does not own any electric transmission or distribution facilities. Consequently, the merger cannot and will not result in the creation of any market power for electric transmission or distribution.

Nor will the merger give rise to an increase of market power in electric generation. In accordance with the Commission's electricity restructuring orders (D.95-12-063, as modified by D.96-01-009), SDG&E, along with Pacific Gas and Electric Company and Southern California Edison, has sought authorization in FERC Docket No. ER96-1663-000 to make sales into the proposed power exchange at market-based rates. SDG&E has supported that request with a showing that it has no market power in generation outside of the San Diego Basin, and has generation market power within the Basin only during a limited number of hours of the year. SDG&E has proposed specific mitigation and monitoring measures to assure that it cannot exercise market power in generation.

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In particular, SDG&E has proposed that, for a three-year period, it will bid its fossil-based units into the power exchange at their respective hourly running costs, and will credit back to its customers any amounts it receives from the power exchange in excess of those running costs. After two years' experience with the power exchange, it will propose such mitigation measures, if any, as are needed after the three year period.

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Unless and until the FERC approves those measures, SDG&E's generation will remain subject to the existing regulatory regime.

Pacific Enterprises, the core business of which is natural gas transmission, storage and distribution, does have a subsidiary that owns some alternative energy electric generation facilities. However, those facilities are of very limited size and scope and are all under long-term contracts to existing buyers.

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Pacific Energy, a subsidiary of Pacific Enterprises, owns four wastewood projects producing 67 total megawatts, three geothermal projects producing 48 megawatts, three hydroelectric projects producing 30 megawatts, and eight landfill gas projects producing 37 megawatts. These power generation projects are all qualifying facilities ("QFs") that sell their energy and capacity (with the exception of limited self-use) to seven public utilities pursuant to long-term power purchase agreements.

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As the Applicants will demonstrate through the testimony to be filed herein, the production from these QF facilities is both so limited and so committed under long-term contracts as to present absolutely no market power issues in electric generation as a result of the merger of Pacific Enterprises and Enova Corporation.

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Pursuant to the requirements of the Public Utilities Regulatory Policy Act of 1978 that limit ownership rights in Qfs, Pacific Enterprises will make an appropriate disposition of the QFs in accordance with the terms of the Merger Agreement prior to approval of the merger.

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While both SoCalGas and SDG&E do own natural gas distribution facilities, as the Commission is aware, these facilities are operated pursuant to CPUC approved open access tariffs and are closely regulated as to rates by this Commission.

This regulatory regime assures that there will not be any exercise of market power in the operation of the gas distribution facilities after the proposed merger.

In light of the foregoing, it is apparent that, while this merger will serve to benefit California energy consumers

through revenue requirement reductions resulting from cost reduction operational synergies, increased competition in the energy product and services market generated by a company of sufficient scope and scale to compete viably, the unbundling of numerous energy products and services, and the introduction of additional energy products and services to California consumers, it will not raise any market power issues.

III.

THE PROPOSED MERGER FULFILLS ALL OF THE REQUIREMENTS OF PUBLIC UTILITIES CODE SECTION 854

Based upon the facts set forth above, and discussed below, Applicants respectfully submit that this merger fulfills all of the requirements of California Public Utilities Code Section 854.

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A discussion of the fact that this combination will not adversely affect competition, as required by Public Utilities Code Section 854(b)(3), is set forth in Section II, subsection C.

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A. Short-Term and Long-Term Benefits to California Energy Consumers (Section 854(b)(1) and (2).

1. The Proposed Transaction Will Provide Short- and Long-Term Benefits to California Energy Customers.

Public Utilities Code Section 854(b) requires Applicants to demonstrate that the proposed transaction will provide short- and long-term economic benefits to utility customers. For purposes of this Application, Applicants believe that one year is reflective of the short-term and no longer than ten years is reflective of the long-term. In a past Commission decision related to a merger among energy utilities, the Commission determined the short-term to be three years (coincident with the general rate case cycle) and the long-term 15 years. (Re SCEcorp (1991) 40 CPUC 2d 159); however, in that case the Commission specifically stated that the definition of "long-term" will vary with the circumstances of each individual case. At the time of that decision, the restructuring of the electric services industry had not commenced. Shortly after a decision is rendered on this Application, the independent system operator and power exchange will begin operation and the ability of consumers to choose their energy supplier will be, or will soon become, a reality. Many bundled utility services will be unbundled. The momentum of competition will be strong. Consequently, long-term forecasted benefits must be calculated over a shorter period than previously used due to the rapid changes competition will bring to the electric energy and services businesses. Both one year, for the short-term, and no greater than ten years for the long-term, reflect the quickening pace of competition driven by developments in the energy services business compared to past energy company merger applications.

As discussed in earlier sections of this Application, utility consumers will experience economic benefits in the short- and long-term through the increased competition in energy services and products that the combined entity will generate and facilitate. Increased competition leads directly to lower prices, new technology, and better, more diverse, services. As traditional utility services are unbundled on a state-wide basis (which the combined entity will pursue in its utility operations, particularly in its electric operations), more choices will be afforded to consumers, whether commercial, industrial, or residential.

As noted above, the merger will produce significant synergies which will result in lower utility operating costs and other savings. Applicants' testimony in support of this Application will include a quantification of these savings. That testimony will demonstrate synergy cost reductions and cost avoidances, net of costs to achieve the merger, of approximately $65 million in the first year, increasing to approximately $105 million in the third year, and accumulating to approximately $1.2 billion over the first ten years, the majority of which will be realized in the public utility operations of SoCalGas and SDG&E.

While customers of SDG&E and SoCalGas will benefit directly from savings produced by the proposed transaction as discussed above, they will benefit, with all energy customers in California, to a far greater degree from the acceleration in retail competition which the proposed merger will produce.

Together, Enova Corporation and Pacific Enterprises will bring to the marketplace a larger and more attractive portfolio of energy-related products and services because they will possess the financial base necessary to manage the risks inherent in doing so. The availability of this new source of products and services to a broad spectrum of consumers will strengthen the market and promote lower prices and greater choice.

2. The Benefits of the Proposed Merger Will Be Allocated Equitably.

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Legal issues exist as to whether Section 854 (b)(2) is applicable to the merger of two unregulated holding companies, or as to whether it unlawfully provides for an unconstitutional taking of property. Applicants reserve the right to present at the appropriate time all legal arguments on these issues. The proposals set forth herein and in testimony on the allocation of forecasted economic benefits should not be construed as a waiver of this right.

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Assuming that Public Utilities Code Section 854 (b)(2) applies to this transaction, it is fair that the forecasted economic benefits resulting from the synergies between SoCalGas and SDG&E be shared 50% to the utility customers and 50% to Mineral Energy shareholders. Public Utilities Code Section 854(b)(2) requires that utility customers receive not less than 50% of the long-term and short-term forecasted economic benefits. Applicants believe the 50/50 sharing is fair to both the customers and shareholders for the following reasons:

1. A fundamental motivating factor behind this transaction is the declared intent of the merged entities to aggressively market energy products and services, including the expansion of the competitive energy service marketplace, to provide on a state-wide basis in an unbundled fashion historically bundled utility services. Substantial investment by Applicants' shareholders will be required to fulfill this goal. It may take several or more years for shareholders of the merged companies to realize fully the financial benefits of these marketing efforts; by comparison, energy customers, not only in SoCalGas and SDG&E service territories but throughout California, should reap benefits through expanded choices of energy products and services, and lower prices, very quickly. Consequently, providing shareholders with a fair portion of the economic benefits encourages and supports the shareholders' investments and is balanced against the immediate benefits to be realized by utility customers.

2. As a general concept, equitable allocation of merger savings encourages utilities and their parents to seek cost-saving mergers. Shareholders must be rewarded not only for the risks they assume in pursuing this merger transaction but also for creating the structure that will provide a more efficient operation for SoCalGas and SDG&E. This sharing of immediate economic benefits provides shareholders with an incentive to pursue mergers that will result in cost-savings, to the mutual benefit of ratepayers and shareholders.

3. For some shareholders (those of Enova Corporation) there may be some initial post-merger dilution of earnings. Eventually, any such dilution will be overcome, but it poses additional risk to those affected shareholders.

In both the short-term and the long-term, customers can be assured of receiving their 50% allocation of the net forecasted financial economic benefits of this transaction through appropriate revenue reductions in each of SoCalGas' and

SDG&E's base rate revenue requirements. These revenue requirement impacts should be reflected in rates pursuant to currently authorized cost allocation rules.

B. The Merger Is In the Public Interest (Section 854(c)).

Section 854 specifies numerous factors for the Commission to weigh in determining whether or not a proposed change of control is in the public interest. While Applicants are not required to satisfy each of these factors in connection with the authorization sought here, this Application is organized to correspond to each factor. As asserted above, Applicants will demonstrate that each such factor is satisfied, whether or not required.

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1. The Merger Will Maintain or Improve the Financial Condition of the Public Utilities Involved.

By providing both companies with the complementary abilities and expertise possessed by the other, they will become increasingly able to compete in the restructured energy industry.

This combined expertise, in electric and gas marketing, electric generation and procurement, natural gas storage and procurement, and natural gas and electric transmission and distribution, will enhance the ability of the combined company to bring new value-added products and services to the market faster, obtain lower cost energy for customers, and maximize the combined company's ability to leverage its resources to compete effectively in a highly competitive energy industry. This combined expertise, coupled with the increased financial strength of a merged company with $5 billion of equity capitalization and $8 billion of assets, means Enova Corporation and Pacific Enterprises will be better able to compete for market share and revenues, all to the financial benefit of the combined company.

The merger will also provide the combined company with increases in scale and scope that will improve access to capital and lead to greater resource availability. This, in turn, will provide the combined company with an increased ability to develop new products and services and compete in new markets.

The merger will have no effect on the financial condition of either SDG&E or SoCalGas because their fundamental financial profiles will not change. Existing regulatory conditions imposed upon Pacific Enterprises and Enova Corporation to ensure that the financial health of their utility subsidiaries are not compromised by activities of the parents or unregulated affiliates will remain fully intact unless or until modified by the Commission, unimpaired by this merger.

For example, the conditions imposed upon Enova Corporation and SDG&E in D.95-12-018 related to SDG&E's dividend policies, capital requirements, capital structure, and equity ratio will be unaffected by the merger.

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2. The Merger Will Maintain or Improve the Quality of Service to Public Utility Ratepayers in the State.

SDG&E and SoCalGas both possess solid records of providing reliable and efficient service to their respective customers. They also share a common belief that sustained high levels of service will be critical in a competitive energy market. Enova Corporation and Pacific Enterprises do not contemplate any material downsizing in the levels of the field operations personnel that maintain utility facilities.

Both SDG&E and SoCalGas have developed methods of measuring customer satisfaction. In the case of SDG&E, these customer satisfaction and electric service reliability measures present risk/reward opportunities under SDG&E's existing Performance Based Regulation ("PBR") mechanism. In the case of SoCalGas, these customer satisfaction measures have been proposed to form the basis for risk under its pending PBR proposal when ratings are not satisfactory. This emphasis on customer service and satisfaction will be maintained following the merger. SoCalGas and SDG&E are committed to maintaining their strong records of accomplishment in this area.

3. The Merger Will Maintain or Improve the Quality of

the Utilities' Managements.

The merger will allow Applicants to streamline corporate and administrative functions and eliminate duplications in gas operations and some field services support from overlapping service territories. It will also result in improvements through the combination of the complementary management skills of the merging companies.

Pacific Enterprises and SoCalGas will provide Enova Corporation with the gas procurement, distribution, transmission and marketing skills of the largest natural gas local distribution company in the United States, as well as vast experience in the restructured natural gas industry. At the same time, Enova Corporation and SDG&E will provide Pacific Enterprises with skills and expertise in marketing of electric products and services, as well as in electric procurement, generation, transmission and distribution. Both companies share a vision of, and desire for, increased competition in the energy industry. The complementary skills of the respective companies' managements will improve their ability to realize this vision and succeed in a restructured energy industry.

By providing for continuity in the senior management of the combined companies, utility management will retain the expertise and vision that have guided Pacific Enterprises, Enova Corporation, and the utilities they own and control. The management of the new organization will be led by Richard D. Farman, as Chairman and Chief Executive Officer of Mineral Energy, Stephen L. Baum, as Vice Chairman, President, and Chief Operating Officer of Mineral Energy, Warren I. Mitchell as President and the principal executive officer of the new company's regulated businesses, and Donald E. Felsinger as President and the principal executive officer of the new company's unregulated businesses.

Mr. Farman is currently President and Chief Operating Officer of Pacific Enterprises. He has held various executive positions at SoCalGas, Pacific Enterprises and their affiliates for over 18 years, including serving as Chairman and CEO of SoCalGas for five years. Mr. Baum is currently President and Chief Executive Officer of Enova Corporation and Vice-Chairman of SDG&E. He has held various executive level positions at SDG&E and its affiliates for over ten years. Mr. Mitchell is currently President of SoCalGas. He has held various executive level positions at SoCalGas and its affiliates for over 38 years. Mr. Felsinger is currently President and Chief Executive Officer of SDG&E and Executive Vice President of Enova Corporation. He has held various executive level positions at SDG&E and its affiliates for over 13 years. Pursuant to the Merger Agreement, continuity of experienced management is assured because in 2000, when Mr. Farman retires, he will be succeeded by Mr. Baum as Chairman and Chief Executive Officer of Mineral Energy.

4. The Merger Will Be Fair and Reasonable to Affected Public Utility Employees, Including Both Union and Non-Union Employees.

Where duplication in administrative, managerial, and miscellaneous support services positions would result from this merger, the combined workforce of the two companies will be reduced. However, the plan of merger does not provide for any material corporate structural change at SDG&E and SoCalGas. In addition, no material reduction in either utility's field operations personnel is contemplated as a consequence of this transaction. In particular, as previously noted, the Applicants expect impacts on union employees in field operations will be relatively small in the proposed merger. Of course, the companies will fulfill their duties to bargain in good faith over the effects of the merger on union employees. Synergies will primarily focus on, and result from, the streamlining and elimination of duplication in management, administrative, and various support functions.

To the extent that benefit plans and salary structures require adjustment, in order to be administered on a unified basis, they will be adjusted so as to maintain overall parity with the appropriate labor markets. Downsizing will be accomplished principally through a combination of attrition, targeted voluntary retirement and/or severance plans, and reductions in contract and agency employees. The goal is to accomplish all downsizing through voluntary means; however, to the extent that lay-offs are necessary to accomplish workforce reductions, employees will be provided with a fair and equitable severance package.

5. The Merger Will Be Fair and Reasonable to the Majority of All Affected Public Utility Shareholders.

SoCalGas and SDG&E are wholly-owned subsidiaries of public utility holding companies, Pacific Enterprises and Enova Corporation, respectively. The merger at issue herein is not only fair and reasonable, but clearly in the best interests of both Enova Corporation and Pacific Enterprises, and their respective shareholders.

The merger of these holding companies will be accomplished through a merger of Newco Enova Sub and Newco Pacific Sub with and into Enova Corporation and Pacific Enterprises, as a result of which, the common shareholders of Enova Corporation and Pacific Enterprises will together own all outstanding common stock of Mineral Energy. Each share of each other class of capital stock of Enova Corporation and Pacific Enterprises shall be unaffected and shall remain outstanding. Through this transaction, SDG&E and SoCalGas will become second tier subsidiaries of Mineral Energy. The corporate structures, however, of Pacific Enterprises, SoCalGas, Enova Corporation, and SDG&E, will be otherwise unaffected.

The Boards of Directors of both Pacific Enterprises and Enova Corporation have unanimously concluded that the proposed transaction is fair and promotes the interests of their respective shareholders. Morgan Stanley & Company delivered its written opinion to the Board of Directors of Enova Corporation, dated as of October 12, 1996, subject to the assumptions made, matters considered, and the limits of the review undertaken, as stated in the opinion, that the exchange ratio is fair to the Enova Corporation common shareholders from a financial point of view. Merrill Lynch, Pierce, Fenner & Smith and Barr Devlin & Company each delivered written opinions to the Board of Directors of Pacific Enterprises, dated as of October 11, 1996, that, subject to the assumptions made, matters considered, and the limits of the review undertaken, as stated in the opinion, the exchange ratio is fair to the holders of Pacific Enterprises common stock from a financial point of view. The proposed transaction will also be put to a vote by shareholders, and they will, through their vote, judge the fairness of the terms of the merger.

6. The Merger Will Be Beneficial to State and Local Economies and to the Communities in the Areas Served by the Public Utilities.

Because the proposed merger will permit the new organization to participate viably in the expanding California marketplace for energy products and services, it can be expected to produce lower retail energy prices sooner than if the merger didn't occur. These lower prices will benefit energy consumers at all retail levels, lowering operating costs for businesses and creating additional discretionary income for individual customers. Likewise, the expansion of customer choice and flexibility, also an important objective of the Commission's electric restructuring decision and recent state legislation, will be available sooner. Additionally, the entities producing this competition will be California corporations employing California workers and paying California taxes.

The Applicants' Merger Agreement includes additional commitments that ensure the merger will benefit state and local economies and community interests. For example, the combined companies plan to maintain their strong historical commitment to the support of public institutions and charitable endeavors. In addition, it is the intent of Applicants not only to invest in new business enterprises in California, but also to maintain their strong historical commitment to workforce and supplier diversity. In short, the proposed merger will strongly benefit California in general and the individual communities served by SDG&E and SoCalGas in particular.

7. The Merger Will Preserve the Jurisdiction of the Commission and the Capacity of the Commission to Effectively Regulate and Audit Public Utility Operations In The State.

The utility subsidiaries of Pacific Enterprises and Enova Corporation are regulated and subject to audit by this Commission. The combination of Pacific Enterprises and Enova Corporation will in no way diminish the Commission's regulatory

jurisdiction or audit authority.

In addition, the combined company will follow affiliate transaction rules conforming to Commission standards. The combined company will also abide by a standard of conduct applicable to affiliated gas and power marketing efforts. A description of these rules will be submitted to the Commission by Applicants as part of the testimony to be filed in support of this Application.

Both SoCalGas and SDG&E have various proceedings pending at the Commission. It is the intent of the Applicants that such proceedings remain unaffected by this transaction. However, in conjunction with future proceedings following completion of the merger, there will be a desire to reconcile and consolidate some of the diverse regulatory mechanisms and regulatory proceedings applicable to SoCalGas and SDG&E. As these various proceedings and associated mechanisms come before the Commission, SoCalGas and SDG&E will seek modifications as appropriate.

8. The Transaction Will Not Result in Adverse Consequences in Need of Mitigation.

In contrast to the substantial benefits outlined above, there are no features of the proposed merger that will produce adverse consequences for SoCalGas, SDG&E, their customers, or the public. Each utility will remain a separate corporate entity, operating as a stand-alone utility, subject to appropriate regulatory oversight. No aspect of the merger will alter these utilities' commitments and responsibilities as public utilities. Moreover, aside from the revenue requirement reductions that will result from cost reductions flowing from operational synergies, the merger will not alter the rates, terms, or conditions for the provision of gas and electric services by either SDG&E or SoCalGas.

The synergies savings will not adversely impact service. There will not be any material downsizing in field operations as a consequence of this transaction. The substantial majority of the synergies will be achieved through streamlining corporate, administrative, and field support functions, as well as the elimination of some duplicative functions in overlapping gas operations.

The long-standing commitment of SoCalGas and SDG&E to providing high quality service will not be altered by this merger. That commitment is based on the firm belief that service quality is a critical element of utility service. Moreover, as discussed in Section II.C., no diminution of competition will result from the proposed merger. On the contrary, competition will be enabled and advanced.

C. Reasonable Options Proposed By Other Parties (Section 854(d)).

As indicated above, Applicants anticipate opposition and delay tactics from parties that wish to prevent or delay competition as well as other parties supported or encouraged by such parties. While it is difficult to foresee what options may be proposed by parties that might oppose this transaction and the increased competition it will present, Applicants will certainly respond to any such proposals. However, it is clear that, in order to accomplish the shared vision of Pacific Enterprises and Enova Corporation to compete successfully in a restructured energy industry, unity of management and direction between these companies is key. No other alternatives provide the respective companies with the combination of cost savings, stability in direction, and soundness in financial footing that will be made available as a result of the proposed merger.

In the next several months, Applicants intend to form a joint venture to pursue the marketing of gas and power as well as a broad range of value-added energy management products and services. However, while this joint venture will be a reasonable means of achieving some of the benefits that can be derived from a combination of the Applicants' complementary abilities and expertise, it is not a reasonable alternative to the merger for which approval is sought herein. A joint venture or other less integrated business form would not produce the unity of direction and commitment necessary to pursue effectively the long range strategic goals Applicants share, including developing and offering a wide variety of energy products and services throughout the marketplace. Nor would such a business enterprise produce the synergy savings this merger will produce.

D. Environmental Review.

In this Application, the Applicants are requesting the Commission to approve a plan for a merger. The merger involves several steps. A new prospective parent corporation, Mineral Energy, has been incorporated. Two wholly-owned subsidiaries of Mineral Energy, Newco Enova Sub and Newco Pacific Sub, have also been incorporated. This Application pertains to the mergers of Enova Corporation with Newco Enova Sub and Pacific Enterprises with Newco Pacific Sub. The surviving corporations will be Enova Corporation and Pacific Enterprises as wholly-owned subsidiaries of Mineral Energy. The next steps will consist of filing documents with the Securities and Exchange Commission and the California Department of Corporations, and of setting up Mineral Energy's corporate offices. These are the activities which comprise the plan for a merger and are the only activities which the Applicants are requesting the Commission to approve.

These activities will not cause any direct or indirect physical change in the environment and therefore do not constitute a "project" requiring environmental review under the California Environmental Quality Act ("CEQA"). This conclusion comports with the intent of CEQA to require agencies to review activities which may cause direct or indirect physical changes in the environment. CEQA does not apply to activities which do not cause direct or indirect physical changes in the environment. CEQA's provisions and mechanisms do not work when an agency attempts to apply them to activities that do not physically change the environment. When an agency tries to apply CEQA to activities that do not physically change the environment, it invites speculation about remote and unforseeable environmental effects, it studies non-environmental effects (like rates and prices), and it encounters frustration and delay. The Applicants request the Commission to find that CEQA does not apply to the plan of merger and to avoid this type of review in conjunction with the processing of this Application.

Rule 17.1 of the Commission's Rules of Practice and Procedure follows CEQA in this regard and provides for a Commission determination that CEQA does not apply. CEQA, sound legislative policy, and the Commission's rules and practices, provide for the Commission to prevent the delays and uncertainties that would be created by reviewing the plan of merger under CEQA. CEQA does not apply and would not contribute to informed Commission decisionmaking in this proceeding. Accordingly, Applicants have attached to this Application as Exhibit "B" a Proponent's Environmental Assessment, supporting the conclusion that CEQA does not apply to this plan for merger.

IV.

INFORMATION REGARDING THE APPLICANTS

A. Incorporation and Place of Business (Rules 15(a) and 16).

1. Pacific Enterprises.

The exact legal name of Applicant is "Pacific Enterprises." Applicant is a corporation duly organized and validly existing under the laws of the State of California. A certified copy of its Restated Articles of Incorporation as currently in effect are attached hereto as Appendix "1" and is incorporated herein by reference and made a part of this Application. The principal place of business of Pacific Enterprises is 555 West Fifth Street, Los Angeles, California 90013-1011.

2. Enova Corporation.

The exact legal name of Applicant is "Enova Corporation." Applicant is a corporation duly organized and validly existing under the laws of the State of California. A certified copy of its restated Articles of Incorporation as amended to date is attached hereto as Appendix "2". The principal place of business of Enova Corporation is 101 Ash Street, San Diego, California 92112-9400. Its mailing address is Post Office Box 129400, San Diego, California 92112-9400.

3. Mineral Energy, G Mineral Energy Sub, and B Mineral Energy Sub.

The exact legal names of Applicants are Mineral Energy

Company, G Mineral Energy Sub, and B Mineral Energy Sub. These Applicants are corporations duly organized and validly existing under the laws of the State of California. Certified copies of their Articles of Incorporation are collectively attached hereto as Appendix "3". These Applicants are newly formed corporations which, at present, have no place of business and no telephone number. The provisions of Mineral Energy's Articles of Incorporation will be revised at the appropriate time to effectuate the merger.

B. Character of the Business Performed and the Territory Served (Rule 35(a)).

1. Pacific Enterprises.

Applicant Pacific Enterprises is a public utility holding company. Its principal subsidiary is SoCalGas. SoCalGas is a public utility engaged primarily in the purchase, storage, distribution, transportation and sale of natural gas throughout most of southern California and portions of central California. Its service area contains approximately 17 million persons including those within the City of Los Angeles. Retail service is provided through approximately 4.7 million independent active meters serving residential, commercial, industrial and utility electric generating customers. Through other subsidiaries, Pacific Enterprises is also engaged in interstate and offshore natural gas transmission, alternate energy development, and centralized heating and cooling for large building complexes.

2. Enova Corporation.

Enova Corporation is an energy management company providing electricity, natural gas and value-added products and services to customers throughout California and certain other states. Enova Corporation is the parent company of SDG&E and six other subsidiaries - - Enova Energy, Enova Financial, Enova International, Enova Technologies, Califia Company and Pacific Diversified Capital Company. SDG&E is Enova Corporation's principal subsidiary and is a public utility that provides regulated electric service to 1.2 million customers in San Diego and southern Orange counties, and regulated natural gas service to 700,000 customers in San Diego county. SDG&E's service area encompasses 4,100 square miles, covering two counties and 25 cities.

3. Mineral Energy, G Mineral Energy Sub, and B Mineral Energy Sub.

Mineral Energy, which will be renamed prior to consummation of the merger, is a California corporation, 50% of whose outstanding capital stock is owned by Enova Corporation and 50% of whose outstanding capital stock is owned by Pacific Enterprises. Mineral Energy was formed to effect the merger and will be the holding company for Pacific Enterprises and Enova Corporation upon completion of this merger.

G Mineral Energy Sub and B Mineral Energy Sub are California corporations that have been formed as subsidiaries of Mineral Energy for the sole purpose of effectuating the merger. Upon completion of the merger, these corporate entities will cease to exist. They have no present business operations.

C. Description of the Utility Property Involved in the Transaction (Rule 35(b)) and Statement of Book Cost/Original Cost.

SDG&E and SoCalGas are not parties to the merger transaction. Each will continue to exist in its present corporate form and under the direct ownership of Enova Corporation and Pacific Enterprises, respectively. The plan of merger does not require that any utility property be sold, assigned or otherwise transferred. Consequently, the transaction does not provide for a purchase or transfer of utility assets. Under the plan of merger, all utility property currently owned by SDG&E remains with SDG&E following the merger, and all utility property currently owned by SoCalGas remains with SoCalGas following the merger. A detailed description of the merger transaction is set forth in Exhibit "A", attached hereto and incorporated herein by reference.

D. Proxy Statement.

1. Pacific Enterprises.

Applicant Pacific Enterprises' Proxy Statement provided to shareholders pursuant to the Securities Exchange Act of 1934 in connection with its Annual Meeting of Shareholders held 1996, is attached hereto as Appendix "4" and made a part of this Application.

2. Enova Corporation.

Applicant Enova Corporation's Proxy Statement provided to shareholders pursuant to the Securities Exchange Act of 1934 in connection with its Annual Meeting of Shareholders of April 23, 1996, is attached hereto as Appendix "5" and made a part of this Application.

3. Mineral Energy, G Mineral Energy Sub, and B Mineral Energy Sub.

Information Statements for Applicant Mineral Energy will not exist until after completion of the merger. Information Statements for G Mineral Energy Sub and B Mineral Energy Sub do not, and will not, exist because these companies will not be publicly held.

E. Balance Sheets and Financial Information (Rules 17(a)-(h) and 36(a)(c)).

1. Pacific Enterprises.

Applicant Pacific Enterprises' most recent financial statement as of September 30, 1996 as filed with the United States Securities and Exchange Commission, containing the information required by Rule 17, is attached to this Application as Appendix "6" and made a part of this Application.

2. Enova Corporation.

Applicant Enova Corporation's most recent financial statement as of September 30, 1996 as filed with the United States Securities and Exchange Commission, containing the information required by Rule 17, is attached to this Application as Appendix "7".

3. Mineral Energy Pro Forma Balance Sheet.

Mineral Energy's unaudited pro forma financial information, attached hereto as Appendix "8", combines the historical consolidated balance sheets and statements of income of Pacific Enterprises and Enova Corporation, including their respective subsidiaries, after giving effect to the mergers. The unaudited pro forma combined condensed balance sheet at September 30, 1996, gives effect to the mergers as if they had occurred at September 30, 1996. The unaudited pro forma combined condensed statements of income for each of the three years in the period ended December 31, 1995, the nine-month periods ended September 30, 1996 and 1995, give effect to the mergers as if they had occurred at January 1, 1993. This information is not necessarily indicative of the financial position or the operating results that would have occurred had the mergers been consummated on the date, or at the beginning of the periods, for which the mergers are being given effect nor is it necessarily indicative of future operating results or financial position.

4. Mineral Energy, G Mineral Energy Sub, and B Mineral Energy Sub Financial Statements.

Neither Mineral Energy, G Mineral Energy Sub, nor B Mineral Energy Sub has prepared any financial statements as of the date of filing this Application. Each corporation has authorized 1,000 shares of common stock. None of the corporations have ever paid dividends, nor do any of them have any preference or preferred stock issued, bonds authorized or issued, or any other notes or indebtedness. None of these corporations are subject to any security agreement, mortgage, or deed of trust.

F. Description and Terms of the Transaction (Rules 35(b)(d) and 36(b)).

The merger transaction will confer upon Mineral Energy

direct control of Pacific Enterprises and Enova Corporation and indirect control of SoCalGas and SDG&E. These changes in control will result from a series of transactions that will occur pursuant to the Merger Agreement by and among Pacific Enterprises, Enova Corporation, Mineral Energy, G Mineral Energy Sub and B Mineral Energy Sub.

- ---

In the merger agreement, G Mineral Energy Sub is referred as NewCo Enova Sub and B Mineral Energy Sub is referred to as NewCo Pacific Sub.

- ---

The Merger Agreement provides for a tax-free stock-for-stock merger, and pooling of interests accounting for the merged entities. Pacific Enterprises shareholders will receive 1.5038 shares of the new parent company's common stock for each share of Pacific Enterprises common stock they own and Enova Corporation shareholders will receive one share of the new parent company's stock for each share of Enova common stock.

Under the merger, G Mineral Energy Sub and B Mineral Energy Sub will merge with and into Enova Corporation and Pacific Enterprises, as a result of which, the common shareholders of Enova Corporation and Pacific Enterprises will together own all outstanding shares of common stock of Mineral Energy. Each share of each other class of capital stock of Enova Corporation and Pacific Enterprises shall be unaffected and shall remain outstanding. Following this transaction, B Mineral Energy Sub and G Mineral Energy Sub will cease to exist, Mineral Energy will become the parent of Pacific Enterprises and Enova Corporation, and the corporate structures of Pacific Enterprises, SoCalGas, Enova Corporation and SDG&E will otherwise remain unchanged. Through this transaction, Pacific Enterprises and Enova Corporation will become controlled directly, and SoCalGas and SDG&E will become controlled indirectly, by Mineral Energy. Other pertinent terms and conditions of the merger can be determined by reference to the Merger Agreement, Exhibit "A" hereto, which is incorporated herein by this reference.

V.

OTHER ALLEGATIONS REQUIRED BY COMMISSION'S RULES OF PRACTICE AND PROCEDURE

A. Statutory Authority (Rule 15). This Application is filed pursuant to Section 854 of the Public Utilities Code of the State of California.

B. Correspondence and Communications (Rule 15(b)). All correspondence and communications in regard to this Application should be addressed as follows:

Brian Cherry	Lee Schavrien
Pacific Enterprises	Enova Corporation
555 West 5th Street, M. L. 25A1	Post Office Box 129400
Los Angeles, California 90013-1011	San Diego, California 92112-9400
Telephone (213) 244-3895	Telephone (619) 696-4050

With a copy to:

Thomas R. Brill	Jeffrey M. Parrott
Director, Regulatory Law	Law Department
Pacific Enterprises	Enova Corporation
633 West Fifth Street, Suite 5200	Post Office Box 129400
Los Angeles, California 90071-2071	San Diego, California 92112-9400
Telephone (213) 895-5171	Telephone (619) 699-5015
Facsimile (213) 629-9621	Facsimile (619) 696-4838

C. Service of this Application.

Copies of this Application, together with the Notice of Availability set forth in Exhibit "A" hereto, are being served on all known parties of record in SoCalGas' and SDG&E's consolidated 1996 Biennial Cost Allocation Proceeding, A.96-03-031/A.96-04-030; SoCalGas' Performance-Based Regulation Proceeding, A.95-06-002; SoCalGas' and SDG&E's General Order 96-A service lists; and SDG&E's Performance-Based Regulation Proceeding, A.92-10-017, as well as all of the cities and counties in the respective service territories of SoCalGas and SDG&E.

VI.

CONCLUSION

WHEREFORE, Applicants respectfully request that the Commission issue an Order approving the proposed merger as in the public interest pursuant to Public Utilities Code Section 854 on an expeditious basis.

Executed at Los Angeles, California this 30th day of October, 1996.

PACIFIC ENTERPRISES

By______________________________
Richard D. Farman
President and Chief Operating Officer

Leslie E. LoBaugh
Thomas R. Brill
David J. Gilmore

By______________________________
Thomas R. Brill

Attorneys for Applicant Pacific Enterprises

Executed at San Diego, California this 30th day of October, 1996.

ENOVA CORPORATION

By______________________
Stephen L Baum
President and
Chief Executive Officer

David R. Clark
Jeffrey M. Parrott
Michael Thorpe

By___________________________
Jeffrey M. Parrott

Attorneys for Applicants Enova Corporation

Executed at San Diego, California this 29th day of October, 1996.

MINERAL ENERGY COMPANY

By________________________________
Kevin C. Sagara
President

G MINERAL ENERGY SUB

By____________________________
Kevin C. Sagara
President

David R. Clark
Jeffrey M. Parrott
Michael Thorpe

By______________________________
Jeffrey M. Parrott

Attorneys for Applicants
Mineral Energy Company
and G Mineral Energy Sub

Executed at Los Angeles, California this 29th day of October, 1996.

B MINERAL ENERGY SUB

By______________________________
Gary W. Kyle
President

Leslie E. LoBaugh
Thomas R. Brill
David J. Gilmore

By______________________________
Thomas R. Brill

Attorneys for Applicants
Mineral Energy Company and
B Mineral Energy Sub

VERIFICATION

I am the President and Chief Operating Officer of Pacific Enterprises, one of the Applicants herein, and am authorized to make this verification on its behalf, and am informed and believe and thereupon allege that the statements contained in the foregoing Application are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 1996, at Los Angeles, California.

By______________________________
Richard D. Farman
President and Chief Operating Officer
Pacific Enterprises

VERIFICATION

I am the President and Chief Executive Officer of Enova Corporation, one of the Applicants herein, and am authorized to make this verification on its behalf, and am informed and believe and thereupon allege that the statements contained in the foregoing Application are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 1996, at San Diego, California.

By______________________________
Stephen L. Baum
President and
Chief Executive Officer
Enova Corporation

VERIFICATION

I am the President of B Mineral Energy Sub, one of the Applicants herein, and am authorized to make this verification on its behalf, and am informed and believe and thereupon allege that the statements contained in the foregoing Application are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 1996, at San Diego, California.

By______________________________
Gary W. Kyle
President
B Mineral Energy Sub

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger Of Pacific Enterprises and Enova Corporation With and Into B Mineral Energy Sub ("Newco Pacific Sub") and G Mineral Energy Sub ("Newco Enova Sub"), the Wholly-Owned Subsidiaries of A Newly Created Holding Company, Mineral Energy Company.	APPLICATION NO. _____ Filed October 30, 1996

JOINT APPLICATION OF PACIFIC ENTERPRISES, ENOVA CORPORATION, MINERAL ENERGY COMPANY, B MINERAL ENERGY SUB AND G MINERAL ENERGY SUB FOR APPROVAL OF A PLAN OF MERGER OF PACIFIC ENTERPRISES AND ENOVA CORPORATION WITH AND INTO B MINERAL ENERGY SUB ("NEWCO PACIFIC SUB") AND G MINERAL ENERGY SUB ("NEWCO ENOVA SUB"), THE WHOLLY-OWNED SUBSIDIARIES OF A NEWLY CREATED HOLDING COMPANY, MINERAL ENERGY COMPANY

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October 30, 1996

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DIRECT TESTIMONY OF T. J. FLAHERTY
IDENTIFICATION OF MERGER SYNERGIES

I.

INTRODUCTION

My name is Thomas J. Flaherty and I am employed by Deloitte & Touche Consulting Group ("D&T") as the National Partner-Utilities Consulting. I have over 23 years of experience working on all aspects of regulated utilities, and in particular, mergers and acquisitions of operating utilities and their holding companies. A detailed statement of my qualifications is included in Exhibit M-7. I am personally familiar with the proposed combination of Pacific Enterprises ("PE") and Enova Corporation ("Enova").

My testimony relates to the cost savings and cost avoidances estimated by the management of PE and Enova that are anticipated to result from this proposed combination. In my testimony: I set forth a definition of "synergies" that distinguishes cost savings and cost avoidances resulting from the merger from cost savings and cost avoidances resulting from other sources; I discuss the process PE and Enova used to calculate these merger-related synergies and how this process not only conforms to, but is more rigorous than, the process typically followed in similar utility mergers; I explain how the synergies attributable to the merger of PE and Enova compare to the synergies resulting from other recent utility and utility holding company mergers; and I discuss the ongoing process that PE and Enova have established to help them actually realize their estimated merger-related synergies.

II.

THE COST SAVINGS AND COST AVOIDANCES THAT HAVE BEEN IDENTIFIED AS "SYNERGIES" ARE DIRECTLY ATTRIBUTABLE TO THE MERGER

The merger of companies in any industry typically creates a variety of benefits -- strategic, operational, or economic. These benefits of working together, often referred to as "synergies," are the principal reason for most mergers and acquisitions. Some merger benefits are more difficult to quantify, such as the possibility that two complementary companies will be able to achieve greater revenue growth working together as one company than each would on its own. Other merger benefits, such as merger-related cost savings and cost avoidances, are more readily calculated.

My testimony is concerned with cost savings and cost avoidances. However, PE and Enova have not ignored other

potential benefits of their merger. In fact, the "Policy" testimonies of Stephen Baum and Richard Farman (Exhibit M-1) directly address the numerous strategic benefits of bringing the two companies together. My testimony focuses upon merger-related synergies and for the purposes of my testimony, synergies are a cost savings or cost avoidance that is directly attributable to the merger.

Normally, cost savings are considered to be reductions in the total cost of service resulting from the elimination of duplicative activities or redundancies. Cost avoidances are the ability to forego certain types of expenditures (normally capital expenditures) due to the reduced need for parallel capabilities.

A cost savings or cost avoidance is directly attributable to the merger if it is not reasonably attainable in the absence of the merger. For example, both companies conduct certain activities which are similar in nature, such as investor relations. The merger will allow the companies to save costs by eliminating redundancies in these related activities. Without the merger, this activity elimination could not take place -- each company would need to perform its own separate investor relations activities. Other examples of merger-related synergies would include the reduced costs which would result from coordinated technology planning or work volume distribution that can only take place once PE and Enova combine.

Additionally, cost savings or cost avoidances which result from the new size and economic scope of the combined entity are merger-related. For example, routine activities which could not be economically outsourced by PE, Enova or their utility affiliates individually may now be candidates for outsourcing given the new combined entity's greater volume. Similarly, activities that PE, Enova and their utility affiliates now outsource might be performed more cost-effectively internally by the combined entity where volumes justify specialized resources. The greater size of the combined entity may enable it to be a more cost-effective purchaser of various products and services. Further, to the extent that the combination of PE and Enova enables these companies and their utility affiliates to reduce costs by transferring technology or competencies to each other, these benefits are also merger-related if such actions could not have been effectively implemented by PE, Enova, or their utility affiliates independently, or if such transfers enable operating costs to be reduced more rapidly or more cheaply than otherwise would have been the case.

Each of the categories described above, as well as other additional cost savings or cost avoidances which are directly attributable to the merger, are synergies. Conversely, cost savings or avoidances which would have occurred in the absence of the merger are not synergies and are not included in PE's and Enova's calculation of synergies attributable to the merger. Accordingly, those initiatives already planned by PE, Enova, or their utility affiliates that would affect future cost levels have been reduced from the starting point the companies used to calculate merger synergies.

In addition, certain costs will be incurred to effectuate the merger or to enable merger synergies to be achieved. These "costs to achieve" are out-of-pocket, cash costs and a necessary element of consideration in quantifying merger synergies. Lack of recognition of these costs to achieve would overstate the amount of merger savings available to customers and shareholders.

III.

THE MERGER WILL CREATE DIFFERENT TYPES OF SYNERGIES

The synergies which typically result from the merger of two utilities can be broken into two generic categories: (1) a reduction in operations and maintenance ("O&M") expenses; and (2) a reduction or elimination in the need for future capital expenditures. This distinction is usually important for determining the amount of synergies that will be shared between utility customers and shareholders. O&M expenses are usually included in rates, and therefore merger-related reductions of such expenses (cost savings) would typically be available for sharing with utility customers. On the other hand, future capital expenditures are usually not included in rates, and therefore merger-related reductions or eliminations of future capital expenditures (cost avoidances) are typically not available for distribution to utility customers, except to the extent that such capital expenditures are already being recovered in utility rates. In this circumstance, however, SDG&E currently is operating under performance-based regulation for its gas

operations and a rate cap for its electric operations and SoCalGas is pursuing performance-based regulation. Under the mechanics of these regulatory approaches, future capital expenditures can generally be considered to be reflected in the ongoing cost to serve the customer. To the extent that these future expenditures are considered in the existing (or filed) regulatory model, synergies related to cost avoidance are subject to distribution similar to cost savings. To facilitate understanding and categorization of identified synergies, PE and Enova clearly distinguish between merger-related cost savings which result from a reduction in utility O&M expenses and merger-related cost avoidances which result from a reduction or elimination in the need for future utility capital expenditures. Although PE and Enova are proposing to share net synergies (after costs to achieve) between customers and shareholders, the companies are doing so under the assumption that no adjustments are made to their existing or proposed regulatory models that have the effect of reducing revenue requirements for synergies-related costs over the estimation period (1998-2007). Should the Commission adjust the baselines assumed in the PE and Enova regulatory models, the synergies available for distribution between customer and shareholders -- both cost savings and cost avoidances -- could be affected.

Several different types of merger synergies are typically available in utility mergers. These types of synergies captured by PE, Enova, and their affiliates are identified and defined below:

- Avoidance of Duplication and Overlap - Where similar activities are performed within the stand-alone companies, a merger can result in reduced costs from the elimination of replication in positions or expenditures.
- Economies of Scale - The affiliation of two companies and their respective purchase volumes creates economies in procurement through the potential lower unit costs associated with volume discounts.

- Avoidance of Parallel Capital Expenditures - Merging companies pursuing similar project-related expenditures, such as for new information systems, can avoid duplicate capital outlays through adoption of one party's system upon completion.

PE and Enova have identified several principal areas where they anticipate cost savings and cost avoidances, including corporate labor, field support labor, corporate programs, facilities, nonfuel purchasing, and gas supply. Each of these categories is described below to provide an overview of the nature of the synergies typically captured in a utility merger.

- Corporate Labor - This category reflects the position reductions related to performance of administrative and management activities on a combined basis rather than as stand-alone entities. These positions can be reduced because these required functions can be centralized and performed once on behalf of the combined entity rather than by the two entities separately.

- Field Support Labor - Similar to corporate labor above, position reductions in the field support area are created by the ability to centralize certain functions, such as engineering, purchasing, marketing administration and gas supply planning. These positions can be reduced because the required functions can be integrated to provide a common base of activity, thus requiring fewer resources to perform related functions.

- Corporate Programs - This area relates to the nonlabor expenditures associated with corporate headquarters functions, such as benefits, insurance, advertising and information systems. This also includes expenditures for third-party payments for professional services for legal, consulting, etc., that can be reduced. These reductions are possible by eliminating duplication in performance and achieving economies of scale for the procurement of certain services.

- Facilities - This category reflects the ability to consolidate personnel in reduced total square footage than presently exists since the number of personnel will be reduced, freeing up floor space. Thus, remaining

personnel will be housed in smaller or fewer corporate locations than currently exist. In addition, certain operating facilities may be consolidated, such as meter shops, to reflect the ability to centralize these activities in one location.

- Nonfuel Purchasing - This category reflects certain economies of scale related to the procurement of materials and supplies or contract services. These economies will result from higher combined purchasing volumes than either company presently procures, thus reducing the unit cost through greater discount potential.

- Gas Supply - Two gas utilities separately purchasing and arranging transportation for gas may be able to realize certain benefits from combining their supply purchases or otherwise utilizing available assets more effectively.

These cost savings and cost avoidance categories are further discussed in the accompanying testimony of Debra Reed and Frank Ault entitled "Identification of Merger Synergies." I have reviewed this testimony and believe that the synergies described by Ms. Reed and Mr. Ault appear reasonably attainable if the merger is allowed to take place. Moreover, I also believe that these synergies are directly related to the merger, and would not take place in the absence of the merger.

IV.

PE AND ENOVA CONDUCTED A DETAILED AND COMPREHENSIVE REVIEW PROCESS TO IDENTIFY SYNERGIES

Time constraints and confidentiality restrictions often limit the amount of resources that merging companies can devote to synergies quantification prior to the initial public announcement of a merger. Although PE and Enova were also initially subject to significant time and confidentiality constraints, the companies made concerted efforts to develop realistic merger-related cost savings and cost avoidance estimates prior to announcement. And, after the initial public announcement, these efforts were even more extensive and rigorous than many other merger-related synergy quantification efforts that I have been involved with. I believe that PE's and Enova's detailed and comprehensive review process provides a sound basis for the synergies estimate developed by PE and Enova, and should demonstrate to the Commission that the identified cost savings and cost avoidances have been thoroughly evaluated and are reasonably attainable.

Prior to public announcement of their merger, PE and Enova assembled a senior management working group to estimate the potential cost savings and cost avoidances that would arise from the merger. D&T assisted the working group in this effort, and D&T has continued to assist the companies in their post-announcement synergies review process. The working group assembled, reviewed, and evaluated relevant information, and then presented the results of its analysis to the executive managements of both companies. Because of confidentiality concerns, middle management was not directly involved in this pre-announcement analysis. However, after the merger was publicly announced, the working group, which had taken on broader responsibilities as the Transition Management Team (the "TMT"), assembled middle managers from both companies into the following ten "synergies teams" to further calculate the synergies that could be anticipated from the merger:

- Accounting and Finance
- Human Resources
- Legal and External Relations
- Information Technology Services
- Corporate Services
- Support Services
- Customer Services
- Marketing
- Transmission and Distribution
- Gas Operations

Each synergies team was made up of six to eight middle managers, many of whom dedicated themselves for approximately five weeks to the calculation of potential cost savings, cost avoidances and costs to achieve. In addition, these managers were assisted by other PE and Enova personnel as the need arose

during the evaluation process, especially in areas that required significant technical expertise. The TMT provided the synergies teams with guidance throughout the process, and assisted the teams with certain overall assumptions (such as the anticipated rate of inflation). The synergies teams met in working sessions over the entire five-week period, and conducted a detailed analysis of information relevant to their deliberations. Each team was directed by a team leader who was responsible for the team's work. The synergies teams quantified the potential synergies in their respective areas, and then presented the results of their work to the TMT.

Those areas where potential merger-related impacts were expected to occur were identified by review of the current organizational alignment and operational focus of PE and Enova. This review provided an initial perspective on the individual functions and field office locations and established where similar functions resided or were performed, as well as future plans and emphasis of each of the companies.

The identified areas were reviewed in greater detail based on the available information obtained from each of the companies.

This review focused on further understanding the function, scope, staffing levels, expenditure patterns, account content, expected changes, and other relevant factors. For example, a detailed staffing alignment was prepared to compare functions within PE and Enova.

This detailed staffing alignment was developed based on comprehensive human resources files made available to the synergies teams. This information was used to align the various functions and subfunctions of the companies and determine the number of resources devoted to related activities. The synergies teams spent considerable time assuring that all appropriate resources were accounted for in the functions affected by the merger and that all functions or subfunction resources -- whether permanent employees, part-time employees or contractors -- were identified. Specific questions about operating assumptions (e.g., bargaining unit differences or implementation timing), were addressed to members of other synergies teams both during, and in follow-up to, these discussion meetings to assure appropriate coordination.

As a result of this review, several operational areas were identified where the opportunity existed for cost savings and cost avoidances directly attributable to the merger. These areas were discussed within the synergies teams and additional refinements were made. These discussions focused on assumption development, data analysis, and operational implementation. For example, implementation constraints due to systems conversion were identified to assist the teams with respect to the timing of potential position reductions from integration of the specific functions. These areas were challenged as to whether the opportunity for potential synergies existed due specifically to the merger, whether these cost savings or cost avoidances were attainable in the near term, and the value of these potential benefits. Upon internal review of the quantification of potential cost savings or cost avoidances, the synergies teams agreed to a level of quantification that was attainable based on the analysis of synergies potential given the level of currently available information.

The TMT thoroughly challenged the synergies quantification presented by the various synergies teams, as well as the various assumptions that formed the basis for the teams' estimates. In addition, the TMT also directed an independent review team, assisted by D&T, to review the completeness and accuracy of the information presented by the synergies teams. Throughout the process, the TMT focused on identifying merger-related synergies and on excluding any cost savings or avoidances which could or would have been achieved in the absence of the merger.

The results of the extensive synergies identification and quantification work developed by the synergies teams and the TMT are set forth in the accompanying "Identification of Merger Synergies" testimony of Debra Reed and Frank Ault and the "Allocation of Merger Synergies" testimony of Ralph Todaro (Exhibit M-4). Thousands of hours of work by more than one hundred PE and Enova personnel provide a sound basis for Ms. Reed's and Mr. Ault's estimates. As set forth above, I believe that PE's and Enova's detailed and comprehensive review process should demonstrate to the Commission that the synergy cost savings and cost avoidances identified by PE and Enova have been thoroughly evaluated and are reasonably attainable.

V.

THE SYNERGIES RESULTING FROM THE MERGER OF PE AND ENOVA
COMPARE FAVORABLY WITH THE RESULTS OF OTHER RECENT MERGERS

As set forth in the testimony of Debra Reed and Frank Ault, the merger of PE and Enova should create synergies of approximately $1.2 billion net of costs to achieve. These anticipated cost savings and cost avoidances are summarized below for a ten-year period (1998-2007). This period is consistent with that utilized in quantification of synergies in other similar utility merger transactions before various regulatory agencies. This ten-year period provides both a short and long-term perspective on potential synergies.

SYNERGIES SUMMARY

Area	1998-2007 Amount ($ Millions)	Percent of Total
Corporate Labor	$538	38%
Field Support Labor	332	24
Corporate Programs	462	33
Facilities	40	3
Nonfuel Purchasing	23	2
Gas Supply	8	-
Total Gross Synergies	1,403	100%
Less: Costs to Achieve	(205)	
Net Synergies	$1,198	

As the above table indicates, corporate labor, field support labor, and corporate programs account for approximately 95% of the anticipated synergies. This heavy emphasis on corporate or administrative cost savings and cost avoidances is to be expected in a merger such as this. PE's primary emphasis is the gas utility operations of its subsidiary, SoCalGas. Although Enova's main subsidiary, SDG&E, is, in part, also a gas utility, it serves an entirely different geographic gas service territory. Moreover, SDG&E's extensive electric operations will be largely unaffected by the merger from a cost savings or cost avoidance perspective. Accordingly, the vast majority of the cost savings and cost avoidances will need to take place in the common administrative functions where PE and Enova engage in duplicative activities.

The anticipated synergies from the merger of PE and Enova compare favorably with those synergies identified in other recent utility mergers. In particular, I looked at position reductions and nonfuel O&M expense reductions -- two categories that provide a useful basis for comparative assessment of relative merger-related synergies. As indicated in the table immediately below, the position reductions that will result from the merger of PE and Enova are slightly below the average from 12 of the most recent utility transactions proposed prior to the public announcement of the PE and Enova combination (and for which relevant data was available).

POSITION REDUCTIONS

Low	=	3.3%
Average	=	8.5%
High	=	11.0
PE/ENOVA	=	7.4%

The 7.4% position reduction amount for the merger of PE and Enova reflects the estimated total number of position reductions at both PE and Enova (862) compared to the total number of positions at both PE and Enova (11,700) prior to the initiation of evaluation of the merger. Given the lack of significant overlap between the utility operations of PE's and Enova's

main subsidiaries discussed above, the fact that the 7.4% reduction amount is slightly below the average reduction figure of 8.4% is understandable and expected.

Similarly, the nonfuel O&M reductions that will result from the merger of PE and Enova are also below the average reductions from the same 12 transactions:

NONFUEL O&M (YEAR 5)

Low	=	5.4%
Average	=	9.9%
High	=	16.0
PE/ENOVA	=	6.2%

Again, given the lack of substantial overlap between the utility operations of PE's and Enova's main subsidiaries, the disparity between the PE and Enova merger O&M synergies and the average synergies from other recent proposed utility or utility holding company mergers is explainable. In fact, in light of all of the various operational factors affecting the merger of PE and Enova, I believe that the cost savings and cost avoidances from the merger compare favorably with the cost savings and cost avoidances anticipated from the other recent transactions, and are well in line with industry experience.

VI.

PE AND ENOVA HAVE INITIATED AN ONGOING PROCESS TO HELP REALIZE THEIR ESTIMATED SYNERGIES

Merger partners invariably identify potential merger-related synergies at the outset of any merger. However, there is no guarantee that estimated merger-related synergies will actually be realized. Certain categories of synergies are within the sole control of corporate management; other categories are not. In any event, it is my experience that it takes a strong commitment from the management of merging companies to achieve all of the synergies estimated at the outset of a merger. I believe that PE and Enova have made such a commitment.

The determination of how to position PE and Enova to realize the identified merger synergies and how best to structure and operate the new organization is of critical importance to the successful implementation of the merger. To identify the most effective structure and basis of operation for the new entity, as well as to support the attainment of identified synergies, PE and Enova have initiated planning for combined operations in an even more thorough, detailed, and comprehensive manner. Both companies have created a transition planning process to define integration activities and guide the analysis of individual operating processes and functions. The overall transition planning process will also include cross-functional teams that will be responsible for corporate-wide activities such as information technology.

To guide this effort, the TMT has been chartered to oversee and lead transition planning. The TMT is comprised of senior management of both PE and Enova and is charged with developing the transition process and managing the effort through its conclusion. The TMT was responsible for direction of the synergies teams' effort and has a scope of responsibility that also encompasses various transaction related issues. This type of transition process is a recommended element of a successful integration program. By conducting this effort, PE and Enova will better position the combined entity to realize anticipated cost savings and cost avoidances.

VII.

SUMMARY

PE and Enova have presented the Commission with an estimate of merger-related synergies benefits that is well researched and documented, and consistent with synergy estimates from other recent utility and utility holding company mergers. The process that PE and Enova used to determine these cost savings and cost avoidances, i.e., multiple management teams directed by a senior

management group, was detailed, comprehensive, and exceeded the typical process utilized by other companies in similar analyses. Moreover, both companies have rigorously sought to exclude from their estimates cost savings and cost avoidances which are not merger-related. In addition, the ongoing process that PE and Enova have initiated to help them actually realize their estimated merger-related synergies is further evidence of a strong management commitment at both companies to achieving these benefits. In light of all of these factors, I believe that the synergies estimated by PE and Enova have been thoroughly evaluated and are reasonably attainable.

This concludes my prepared direct testimony.

UNITED STATES OF AMERICA 79 ferc Sec. 61, 107
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

Enova Corporation and) Docket No. EL97-15-000
Pacific Enterprises)

ORDER ASSERTING JURISDICTION,
DENYING MOTION TO REOPEN DOCKET, AND
DENYING MOTIONS FOR CONSOLIDATION

(Dated April 30, 1997)

On December 6, 1996, Enova Corporation (Enova) and Pacific Enterprises (Pacific) (collectively, Petitioners) filed a petition requesting an order disclaiming jurisdiction over the reorganization of their businesses under a newly-formed holding company. Petitioners maintain that Commission approval under section 203 of the Federal Power Act (FPA)

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16 U.S.C. Section 824b (1994).

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is not required for the proposed reorganization. However, as discussed more fully below, the Commission has determined that approval under section 203 is required for the disposition of the jurisdictional facilities of Enova s public utility subsidiaries, San Diego Gas & Electric Company (SDG&E), a traditional electric utility, and Enova Energy, a power marketer, encompassed in Petitioners reorganization.

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The Commission will issue subsequent orders to address related filings in Docket No. EL97-21-000 [wherein Southern California Edison Company (SoCal Edison) filed a complaint against SDG&E and Ensource, a Pacific subsidiary, regarding the proposed merger of Enova and Pacific] and in Docket No. EC97-12-000 [wherein SDG&E and Enova Energy filed an application for authorization pursuant to section 203].

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I. Background

A. Description of Petitioners

Enova and Pacific are each exempt public utility holding companies under section 3(a)(1) of the Public Utility Holding Company Act (PUHCA) of 1935.

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15 U.S.C. Sec. 79c(a)(1) (1994).

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1. Enova

As indicated above, Enova is the parent of SDG&E, a traditional electric utility, and Enova Energy, a power marketer authorized to sell power at market-based rates.

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Enova Energy, Inc., 76 FERC Section 61,242 (1996).

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SDG&E owns and operates electric generation, transmission, and distribution facilities, and serves electric customers at retail in San Diego and Orange Counties, California, and natural gas customers at retail in San Diego County, California. The creation of Enova was approved by the Commission two years ago, whereupon Enova became the holder of all of SDG&E's common stock and SDG&E's common stockholders became the stockholders of Enova.

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San Diego Gas & Electric Company, Docket No. EC95-6-000, 70 FERC Section 62,118 (1995).

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In the order approving the stock transfer, the Commission indicated that if Enova sought to merge with another holding company, the public utilities of those companies would be required to file evidence to rebut the presumption that such a merger would result in an indirect merger of the public utilities, or alternatively for approval. The Commission also specifically noted its authority to issue subsequent orders under section 203(b) of the FPA as needed in the event Enova sought to merge with another holding company.

2. Pacific

Pacific is the parent of, among others, Southern California Gas Company (SoCalGas), a natural gas distribution company. SoCalGas provides gas service to customers in central and southern California, and owns certain qualifying facilities with a total of 1.6 megawatts (MW) of capacity. Pacific's subsidiaries also include various natural gas pipelines, specifically: Pacific Interstate Transmission Company, Pacific Interstate Offshore Pipeline Company, and Pacific Offshore Pipeline Company. Pacific s subsidiary, Pacific Energy, has direct and indirect ownership interests in certain qualifying facilities. Pacific has another subsidiary, Ensource, that was a power marketer authorized to sell power at market-based rates.

However, on December 6, 1996, Ensource filed a notice of cancellation of its market-based rate schedule, which was accepted for filing by order issued January 29, 1997.

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Ensource, 78 FERC Section 61,064 (1997).

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B. Planned Merger

The petition states that the two holding companies, Enova and Pacific, would be combined under a newly created holding company, NewCo, that would own all of the stock of the Petitioners and would be owned by the Petitioners stockholders.

NewCo Enova Sub, a subsidiary of NewCo, would merge into Enova, with Enova as the surviving corporation. NewCo Pacific Sub, also a subsidiary of NewCo, would merge into Pacific, with Pacific surviving. All Enova and Pacific common stock would be converted into the right to receive NewCo common stock. Upon consummation of this transaction, the Petitioners would be wholly-owned subsidiaries of NewCo.

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The Agreement and Plan of Merger and Reorganization submitted with the petition does not refer to NewCo, but instead refers to the new holding company as Mineral Energy Company. NewCo Enova Sub and NewCo Pacific Sub are referred to as G Mineral Energy Sub and B Mineral Energy Sub, respectively.

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The Board of Directors and the highest level officer positions of NewCo initially would be evenly divided between designees of Pacific and Enova, respectively. The petition states that, based on the most recent share holding information available at that time, 52% percent of NewCo's shares would be converted Pacific shares, and 48% would be converted Enova shares. Including those shareholders who own both Pacific and Enova stock, however, 53% of NewCo Stock would be owned by former Enova shareholders. The Petitioners, SDG&E, and SoCalGas would continue to operate under their existing names.

The petition further explains that the Petitioners have formed a joint venture that would engage in marketing natural gas and electricity. The petition states that the joint venture would not make jurisdictional power sales until after consummation of the merger and after filing a separate application for, and receiving, sales authorization from the Commission.

C. Petitioners Position on Commission Jurisdiction

The Petitioners maintain that Commission approval is not required for mergers occurring at the holding company level. First, the Petitioners state that Commission approval under

section 203 of the FPA is needed only for certain actions taken by public utilities, not holding companies. Second, noting the Commission s previous determination that there is a rebuttable presumption that the public utility subsidiaries of merging holding companies also merge (albeit indirectly), the Petitioners assert that the rebuttable presumption has no application here because the planned business reorganization does not involve an indirect merger of public utility subsidiaries. Petitioners state that, with the cancellation of Ensource s rate schedule, Pacific has no public utility subsidiary that could indirectly merge with Enova s public utility subsidiaries, SDG&E and Enova Energy.

The Petitioners also assert that the planned merger does not constitute a disposition of facilities requiring Commission approval under section 203. According to the Petitioner, there will be no transfer of the stock of SDG&E or Enova Energy, nor will the transaction involve any other transfer or reorganization of the jurisdictional facilities of the public utility subsidiaries. Lastly, the Petitioners note that the planned merger will be subject to the review of the California Commission, as well as other federal agencies, and that the Commission s jurisdiction over SDG&E and Enova Energy would be unaffected by the merger. The Petitioners also state that the joint marketing venture developed by the Petitioners would engage in wholesale sales of electricity only to the extent authorized by the Commission after consummation of the merger.

II. Notice of the Petition and Responding Filings

A. Notice, Interventions, Protests, Answer, and Responses

Notice of the petition for declaratory order was published in the Federal Register, with comments, protests, and interventions due on or before January 10, 1997.

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61 Fed. Reg. 67,041 (1996).

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Timely, unopposed motions to intervene in this docket were filed by the City of Burbank (Burbank), the City of San Diego (San Diego),

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San Diego filed a late motion to intervene in Docket No. EC95-6-000 as part of its timely motion to intervene in Docket No. EL97-15-000.

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the City of Vernon (Vernon), Imperial Irrigation District (Imperial Irrigation), Kern River, K N Marketing Inc. (KN Marketing), the National Rural Electric Cooperative Association and the American Public Power Association, jointly (the Associations), Pacific Gas and Electric Company (PG&E), SoCal Edison, the Southern California Public Power Authority

(Public Power Authority),

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The Public Power Authority explains that it is a joint powers agency whose members are each engaged in the generation, transmission, and distribution of electric energy, and are customers and competitors of SoCalGas. The members of the Public Power Authority are: the Cities of Anaheim, Azusa, Banning, Burbank, Colton, Glendale, Pasadena, Riverside, and Vernon; the Department of Water and Power of the City of Los Angeles; and the Imperial Irrigation.

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and the Southern California Utility Power Pool (SoCal Power Pool).

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The Power Pool states that its members operate municipally-owned electric generation, transmission, and distribution systems that provide electric service in southern California. The members of the Power Pool are the Los Angeles Department of Water and Power, and the cities of Burbank, Glendale, and Pasadena, California.

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A notice of intervention was filed by the Public Utilities Commission of the State of California (California Commission). On February 26, 1997, the NutraSweet Kelco Company (Kelco) filed a late motion to intervene.

The motions filed by Burbank, K N Marketing, PG&E, SoCal

Power Pool, and Kelco, as well as the notice filed by the California Commission, raised no substantive issues. The motions to intervene filed by the following included protests: Vernon, SoCal Edison, Public Power Authority, Imperial Irrigation, Kern River, and the Associations.

On January 27, 1997, Petitioners filed an answer to the procedural motion filed by San Diego, as well as a procedural motion filed by Imperial Irrigation which is unrelated to the jurisdictional determination addressed in this order and that will be addressed in a subsequent order. On February 28, 1997, SoCal Edison filed a response to an answer the Petitioners filed on February 7, 1997, in the related proceeding in Docket No. EL97-21-000. On April 18, 1997, SoCal Edison filed a motion to admit into this docket a supplemental response to a filing made by Petitioners in Docket No. EL97-21-000. SoCal Edison states that it filed the same responses in Docket No. EL97-21-000.

B. Motions to Consolidate

San Diego moved to reopen Docket No. EC95-6-000 and consolidate Docket No. EC95-6-000 with the instant proceeding. As noted, supra n.5, the Commission there approved the disposition of SDG&E s jurisdictional facilities as part of a corporate reorganization involving the creation of Enova.

Kern River moved to consolidate the instant proceeding with Ensource s rate schedule cancellation proceeding in Docket No.

ER97-703-000, based on its assertion that the proceedings involve similar facts and issues.

C. Positions of the Intervenors

The following descriptions of the positions of the parties do not include arguments raised as to the propriety of approving the proposed transaction or requests for an evidentiary hearing in the event the Commission finds that it has jurisdiction over the transaction. Those positions will be discussed in a later order addressing whether the proposed disposition of jurisdictional facilities is consistent with the public interest.

San Diego asks that the Commission assert jurisdiction over the transaction or "at the least, provisional jurisdiction." San Diego also asks the Commission to exercise its authority to issue supplemental orders in Docket No. EC95-6-000 in order to assure jurisdiction over the planned merger. San Diego argues that the Commission should deny the instant petition and apply section 203 in the same manner as it would if NewCo were acquiring SDG&E directly, without Enova as an intervening, middle-tier holding company. San Diego further asks that the Commission require the Petitioners to file, as part of their section 203 application, the competitive screen analysis set forth in the Merger Policy Statement.

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See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), III FERC Stats. & Regs. Para. 31,044 (1996) (Merger Policy Statement).

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Vernon argues that the Commission has jurisdiction over the transaction. Vernon maintains that the Petitioners argument that the merging holding companies do not have public utility subsidiaries that would indirectly merge as part of the corporate restructuring as a result of Ensource's cancellation of its market-based rate schedule, amounts to jurisdictional gamesmanship. Vernon argues that this is particularly true here where the Petitioners admittedly are developing a new subsidiary that may well engage in wholesale power sales, requiring the same type of authorization as Ensource filed to cancel. Vernon asserts that Commission review of any future market-based rate authorization request would not be an adequate substitute for review of the public interest implications of this merger.

Vernon also asserts that the Commission made clear its intent to review any future merger of Enova with another holding company in the order approving the creation of Enova. In that order, the Commission advised SDG&E that it must "file under section 203 evidence to rebut the presumption that such a merger would not also result in an indirect merger of the public utility

subsidiaries, or alternatively, for approval of an indirect merger of the public utilities."

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70 FERC at 64,294.

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Vernon argues that, as subsidiaries to the same holding company, the merging entities will not exercise independent decision-making authority. Further, Vernon asserts that the Petitioners have not rebutted the presumption that the merger would not preserve competition between the to-be-merged entities. Vernon also states that the ongoing restructuring of the electric industry and the related competitive market power issues cannot be assessed in isolation from the natural gas industry in the same market region.

Imperial Irrigation asserts that the Commission has jurisdiction over the proposed merger. Imperial Irrigation states that the proposed merger involves the disposition of the jurisdictional facilities of SDG&E and Enova Energy, as well as the disposition of Ensource s jurisdictional facilities through the cancellation of its rate schedule. Imperial Irrigation argues that the Commission should exercise its section 203(b) authority to impose supplemental orders. Imperial Irrigation also states that the cancellation of Ensource s rate schedule along with the Petitioners plan to market electric energy through its new joint venture after consummation of the merger demonstrate that Ensource s rate schedule cancellation was merely an attempt to manipulate Petitioners jurisdictional status.

SoCal Edison argues that the proposed merger would result in the indirect merger of SDG&E and Enova Energy with Ensource, as well as the disposition of the jurisdictional facilities of SDG&E and Enova Energy. SoCal Edison states that the cancellation of Ensource s rate schedule was merely an attempt to avoid Commission jurisdiction over the proposed merger. SoCal further states that, nevertheless, the merger entails a de facto indirect merger requiring petitioners to rebut the presumption established in Illinois Power, infra. SoCal Edison further argues that Petitioners reliance on Missouri Basin, infra, is misplaced in that Missouri Basin stands for the sole proposition that the merger of public utility holdings companies that are not themselves public utilities does not fall within the Commission s jurisdiction.

SoCal Edison argues that the proposed merger entails the disposition of SDG&E s and Enova Energy's jurisdictional facilities. SoCal Edison maintains that the Commission s decision in Central Vermont, infra, holds that the substance, not the form, of a transaction governs the Commission's jurisdiction. SoCal Edison also cites Illinois Power, infra, as standing for the proposition that the Commission must review mergers before the real corporate independence of public utility subsidiaries and the economic control over jurisdictional facilities is lost.

SoCal Edison asserts that the control of SDG&E and Enova Energy would shift to a new decision maker whose financial and competitive interests would be distinctly different.

The Public Power Authority adopts and incorporates by reference SoCal Edison s protest in this proceeding.
Kern River also argues that the proposed merger requires Commission approval. Kern River asserts that the Petitioners have not rebutted the presumption of indirect merger set forth in Illinois Power, infra. Kern River objects to the cancellation of Ensource s rate schedule and asserts that the cancellation appears to be an actual consolidation of power marketing within the ultimate merged entity. Kern River argues that the Petitioners statement that Pacific s qualifying facilities (QFs) may lose their exempt status as a result of the merger indicates that Pacific s QFs may indirectly merge with Enova s public utilities upon consummation of the merger.

The Associations argue that the Commission has jurisdiction in this case because the proposed merger includes the disposition of jurisdictional facilities, and because section 203 is written

broadly enough to encompass any disposition of jurisdictional facilities and any merger or consolidation of such facilities. The Associations also assert that the Commission cannot rely on other agencies or entities to address the effect of the proposed merger on public interest concerns, particularly in light of the Commission s expertise in energy markets. The Associations state that, while other agencies may review the proposed transaction, they will do so under different statutory authority and, therefore, with different purposes.

III. Procedural Matters

A. Interventions, Answer, and Response

Pursuant to Rule 214 of the Commission s Rules of Practice and Procedure,

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18 C.F.R. Section 385.214 (1996).

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the timely, unopposed motions to intervene and notice of intervention serve to make the following parties in this docket: Burbank, San Diego, Vernon, Imperial Irrigation, Kern River, K N Marketing, the Associations, PG&E, SoCal Edison, the Public Power Authority, the SoCal Power Pool, and the California Commission. Due to the absence of any undue prejudice or delay, the Commission will grant the late, unopposed motion to intervene filed in this docket by Kelco. Pursuant to Rule 213(a)(2),

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18 C.F.R. Section 385.213(a)(2) (1996).

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the Commission will not consider the answer and

the response filed by the Petitioners and SoCal Edison, respectively.

B. Motions to Consolidate

San Diego requests that the Commission reopen Docket No. EC95-6-000, in order to exercise its authority to issue supplemental orders under section 203(b), and to consolidate that docket with the instant proceeding. The order in Docket No. EC95-6-000 approved the proposed disposition of SDG&E's jurisdictional facilities to Enova as consistent with the public interest. The order also specifically referenced our authority under section 203(b) to issue supplemental orders, as appropriate. Granting San Diego s request is unnecessary in light of the action taken in this order. Therefore, we will deny the request to reopen Docket No. EC95-6-000 and to consolidate that docket with the instant proceeding. Accordingly, we also will deny San Diego s late motion to intervene in Docket No. EC95-6-000.

Kern River requests that the Commission consolidate the instant proceeding with Ensource s rate schedule cancellation proceeding in Docket No. ER97-703-000. Kern River states that these dockets should be consolidated because they are integrally related and involve the same set of facts and issues. However, the rate schedule termination has been accepted, and we note that no requests for rehearing of that acceptance were filed. In any event, the Commission s decision in this proceeding does not hinge on Ensource s status as a power marketer. Therefore, we will deny Kern River's request for consolidation.

IV. Discussion

Based on our analysis of the purposes of section 203 of the FPA, relevant legislative history and case law, and Commission precedent, we conclude that the merger of the Enova and Pacific holding companies will result in a disposition (a transfer of control) of the jurisdictional facilities of SDG&E and Enova Energy, and that, for purposes of section 203, the public utilities SDG&E and Enova Energy will have effectively disposed of jurisdictional facilities. Accordingly, Commission approval of the proposed disposition is required under section 203. In reaching this conclusion, we do not assert jurisdiction over the proposed merger of the holding companies themselves. Rather, we assert jurisdiction over the proposed transfer of control of public utility jurisdictional facilities to ensure that this

transfer of control is consistent with the public interest.

A. Statutory Framework and Related Definitions

Section 203 of the FPA, which establishes the Commission's jurisdiction over corporate transactions involving public utility

jurisdictional facilities and public utility securities, is broadly worded and, on its face, covers a wide range of corporate activities involving jurisdictional facilities. It also reflects Congress' intent that the Commission be able to ensure that corporate realignments do not adversely affect the maintenance of adequate service or coordination in the public interest of jurisdictional facilities. It reads in pertinent part:

> (a) No public utility shall sell, lease, or otherwise dispose of . . . its facilities subject to the jurisdiction of the Commission . . . or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. . . . After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.
>
> (b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate. (Emphasis added.)

Thus, section 203 requires Commission authorization before a public utility may

(1) sell, lease, or otherwise dispose of its jurisdictional facilities,

(2) directly or indirectly, merge or consolidate any part of its jurisdictional facilities with the jurisdictional facilities of any other person, or

(3) purchase, acquire, or take any security of any other public utility.

The purpose of section 203 of the FPA was to provide a mechanism for maintaining oversight of the facilities of public utilities, and preventing transfers of control over those facilities that would be detrimental to consumers and/or investors or that would inhibit the Commission s ability to

secure the maintenance of adequate service and the coordination in the public interest of [jurisdictional] facilities.

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Section 203(b), quoted supra.

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Neither section 203 nor any other provision of the FPA defines the terms dispose, facilities subject to the jurisdiction of the Commission, merge, consolidate, and control. However, we do not believe these terms should be read narrowly. To do so would result in a jurisdictional void in which certain types of power sales facilities and corporate transactions could escape Commission oversight.

The text of section 203 focuses on jurisdictional "facilities." Over the course of the development of the electric industry, the traditional focus of facilities has been on physical facilities, such as transmission lines and related equipment, for example. However, facilities also has been defined to include contracts, accounts, memoranda, papers, and other records (often referred to as paper facilities).

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Hartford Electric Light Co. (Hartford), 131 F.2d 953, 961 (2d Cir. 1942), cert. denied, 319 U.S. 741 (1943). See also Connecticut Light & Power Co. v. FPC, 324 U.S. 515, 528 n.6 (1945) (discussing Hartford).
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Without such an interpretation, a large class of entities (power marketers) could engage in sales for resale in interstate commerce with no regulation, even if they were affiliated with, or wholly owned by, traditional public utilities owning physical facilities, since such interstate wholesale sales may not be regulated by the states. As the Commission stated in Citizens Energy Corporation,

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35 FERC Section 61,198 (1986).
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in which it determined that a power marketer is a "public utility" under section 201(e) of the FPA by virtue of its wholesale sales transactions and the underlying paper facilities:

> Section 201(b) confers jurisdiction over not only facilities (1) for interstate transmission but also - and disjunctively - over facilities (2) for interstate wholesale sales. . . . We find [jurisdiction over facilities for interstate wholesale sales] in petitioner's corporate organization, contracts, accounts, memoranda, papers, and other records, in so far as they are utilized in connection with such sales.

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Id. at 61,452 (quoting Hartford).

Thus, we conclude that "facilities" under section 203 -- as under other sections of the FPA -- includes the facilities of power marketers (such as Enova Energy) such as wholesale power sales contracts and related accounts and records.

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The Commission also has found that rate schedules are jurisdictional facilities. Ocean State Power, 38 FERC Section 61,140 at 61,378 (1987).
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Section 203 also references merge and consolidate.

These terms also are not defined in the FPA but are often considered corporate terms of art. When describing corporate amalgamations, "merger" is used to denote the vesting of the control of different corporations in a single one by the issue of stock of the others; in other words, one corporation absorbs the other and remains in existence while the other is dissolved. On the other hand, a "consolidation" occurs when the consolidating companies dissolve their property and business being transferred to a single company; in other words, a new corporation is created and the consolidating corporations are extinguished.

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See Webster s New International Dictionary of the English Language, 1539 (2d Ed. 1948).
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However, we do not believe Congress intended a narrow interpretation of "merge" or "consolidate." Section 203(a) "clearly was not written to describe the strict legal concepts of corporate mergers and consolidations. This language speaks of merger or consolidation of facilities, not of corporate entities.

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Pennsylvania Electric Co. (Pennsylvania Electric), 9 FPC 91, 95 (1950)(emphasis in original; footnote omitted). See also Duke Power Company v. FPC, 401 F.2d 930 at 933 (D.C. Cir. 1968) (Duke).
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Additionally, section 203 applies to mergers or consolidations that occur directly or indirectly. Thus, even where the public utility corporations or partnerships that own jurisdictional facilities are not themselves dissolved or extinguished, there may be a dissolution of one or more of the entities that own or control those public utilities, resulting in an indirect merger of the public utilities jurisdictional facilities.

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Also,

[t]ransactions of an acquisitional nature fall easily within the language of the "merge or consolidate" clause which, if limited to dispositive exploits, would largely be a nullity since the first clause of Section 203(a)

(continued...)

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decrees Commission approval wherever a public utility proposed to "sell, lease, or otherwise dispose of" . . . jurisdictional facilities.

Duke at 933.

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Similarly, we do not believe Congress intended a narrow interpretation of the term "dispose." In common usage, the phrase dispose of means [t]o transfer to the control of someone else, as by selling; to alienate; part with; relinquish; bargain away.

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See Webster s New International Dictionary of the English Language, 752 (2d Ed. 1948).

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However, section 203 on its face refers not only to traditional means of disposing of facilities (sale, lease) but uses the broad phrase "or otherwise dispose of" (emphasis added). Section 203 also specifically references "control":

> After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same. (emphasis added.)

Thus, the text of the statute itself supports an interpretation that section 203 was intended to encompass a variety of actions involving jurisdictional facilities, as opposed to an attempt to enumerate every mechanism conceivable in 1935 for transferring control ("disposing") of jurisdictional facilities. Additionally, the Commission will interpret undefined terms in the statute to preserve its ability to protect consumers from corporate realignments that adversely affect jurisdictional facilities.

B. Legislative History of Section 203

The legislative history of section 203 also supports a broad interpretation of the Commission's jurisdiction over corporate realignments that involve jurisdictional facilities. It indicates that the focus of section 203 is on the disposition of control of jurisdictional facilities, however such disposition might be effected (i.e., through sale, lease, merger, consolidation, or acquisition of securities, or otherwise).

Both of the original Senate and House bills (S. 1725 and H.R. 5423) included the forerunner of section 203, which was similarly worded to the provision ultimately enacted:

> (a) No public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its facilities subject to the jurisdiction of the Commission, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person without first having secured an order of the Commission authorizing it to do so.
>
> (b) No public utility shall hereafter purchase, acquire, take, or hold any security of any other public utility without first having been authorized to do so by the Commission. This subsection shall not prevent the holding of any security lawfully acquired before the enactment of this title.

No changes relevant to the issue here were made to this section during the legislative process.

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The original versions of the bill included a section 216 which addressed holding company acquisitions. However, FPC Commissioner Seavey in his analysis of this version of the bill stated, in pertinent part: "[Section 216] govern[s] . . . the acquisition of utility securities by holding companies. [This subject is] fully covered by title I of the bill, and [this] section[] can be eliminated." Hearings before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. 386 (1935) (House Hearings). See also S. Rep. No. 621, 74th Cong., 1st Sess. 20 (1935). Section 216 subsequently was removed from the bills.

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The Senate and House Reports confirm Congress' intent that section 203 give the Commission sufficient authority over corporate transactions affecting jurisdictional facilities to carry out its jurisdictional responsibilities. In its analysis of section 203(a), the Senate Report states in pertinent part:

> This section furnishes an essential check upon the development of the industry along uneconomic lines. It complements [PUHCA] by directing the Commission to prevent transfers or consolidations of property which would impair the ability of public utilities to render adequate service or impede, or tend to impede, the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

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S. Rep. No. 621, 74th Cong., 1st Sess. 50 (1935).

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The House Report on S. 2796 states in pertinent part:

> [A]pproval must be secured for the sale, lease, or other disposition [of jurisdictional facilities] . . . and for mergers or consolidations of such facilities . . . . Commission approval of an acquisition, consolidation, or control would remove such transaction from the prohibitory provisions of any other law.

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H.R. Rep. No. 1318, 74th Cong., 1st Sess. 28 (1935).

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Thus, Congress clearly was concerned about corporate changes that "impede or tend to impede" the coordination of jurisdictional facilities in the public interest. This concern could not reasonably be limited merely to nominal ownership of jurisdictional facilities or corporate form; rather, Congress was concerned with the substantive decision making authority and control over jurisdictional facilities.

C. Case Law

There is no case law that squarely addresses the specific jurisdictional issues before us. However, the Court of Appeals for the District of Columbia Circuit addressed the extent of the Commission s jurisdiction under section 203 in Duke, supra, and provides useful guidance on the broad focus of section 203. Most pertinent to the case before us, the Duke decision supports the conclusion that one of the fundamental prerequisites of section 203 jurisdiction is the presence of jurisdictional facilities. In other words, the Commission s corporate jurisdiction follows facilities subject to the jurisdiction of the Commission.

The Duke case involved the acquisition by a public utility facilities used solely in local distribution of electric energy for retail sale. Specifically, Duke Power Company (Duke), a public utility, purchased facilities from Clemson University, [exempt from the FPA under section 201(f)] that had been used for intrastate distribution of electric energy. The Commission determined that the acquisition by Duke was a merger or consolidation of facilities with those of another person requiring Commission approval under section 203. The court reversed the Commission s decision.

The issue before the court was whether the [FPA] requires an interstate electric utility to obtain approval by the [FERC] of its acquisition of facilities utilized in the local

distribution of electric energy.
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  Duke at 931.
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In analyzing this issue in light of Congress delineation between federal and state jurisdiction, the court first concluded that the prohibitions forged by this section are imposed only upon a 'public

utility.
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  Id.
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Second, the court accept[ed] the Commission's conclusion that the 'merge or consolidate clause encompasses acquisitions of facilities.
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  Id.
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Third, the court determined that even where the other person is not a public utility by virtue of section 201(f), but nevertheless owns or controls what normally would be a jurisdictional facility, section 203 will attach. The court concluded that the phrase those of any other person in section 203(a) must be facilities subject to the jurisdiction of the Commission and that local distribution facilities expressly are not jurisdictional. Because the facilities to be acquired consisted of only non-jurisdictional, local distribution facilities, the court found that the Commission had no section 203 jurisdiction over the acquisition.
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  Id.
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While, as noted, the court's analysis does not address the specific jurisdictional issues presented in this proceeding, we believe our analysis is entirely consistent with the Duke court's fundamental holding that section 203 jurisdiction is triggered only where jurisdictional facilities are involved.

D.   Commission Precedent

1.   Disposition of Facilities

The Commission has interpreted its section 203 jurisdiction in a number of cases as the industry has evolved over the last decade, and our analysis of the issues presented by the Enova/Pacific merger is consistent with, and builds upon, the precedent established.

The seminal Commission decision interpreting the disposition clause of section 203(a) is Central Vermont.
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  Central Vermont Public Service Corporation (Central Vermont), 39 FERC Section 61,295 (1987).
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In Central Vermont, the Commission determined that the transfer of all of a public utility's stock is a transfer of ownership and control of the utility's jurisdictional facilities and that such transfer constitutes a disposition of jurisdictional facilities requiring Commission approval under section 203. The Commission stated:

> [T]he transfer of ownership and control of Central Vermont s jurisdictional facilities, from Central

> Vermont's existing shareholders to the newly created holding company, constitutes a disposition of jurisdictional facilities requiring prior Commission approval under section 203. After the reorganization the jurisdictional facilities of the public utility will be controlled through the parent s ownership of the utility s common stock by virtue of the parent's ability to name Central Vermont's board of directors.

Although the current stockholders of the public utility will own stock in the holding company after the reorganization is completed, they will no longer have a proprietary interest in, or direct control over, the jurisdictional facilities. The

substance of the transaction, therefore, is a "disposition" of facilities via the transfer of all direct control. . . .

To the extent that utility revenues are used to finance non-utility operations, the cost of utility service may be increased. If the parent makes unwise investment decisions the reliability of service of jurisdictional facilities could be impaired. This aspect of the holding company/operation utility relationship was a concern to those who enacted Title II of the Public Utility Act.

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Central Vermont at 61,960.

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In Central Illinois,

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Central Illinois Public Service Company (Central Illinois), 42 FERC Section 61,073 (1988).

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the Commission explained that its assertion of jurisdiction in Central Vermont was not based solely on the transfer of stock, but rather that the Commission's concern lies in the transfer of control of public utilities and, thereby, control over the jurisdictional facilities of those public utilities. After considering the legislative history of section 203, the Commission found that "Congress' intent was to ensure that the Commission maintain oversight over any transfer of jurisdictional utility property . . . ."

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Central Illinois at 61,328 (emphasis in original). See also, Savannah Electric & Power Co., 42 FERC Section 61,240 (1988), which involved the transfer of all of a public utility's stock to a registered public utility holding company. The Commission asserted jurisdiction, relying on the rationales set forth in Central Vermont and Central Illinois. The Commission also analyzed the application of section 318 of the FPA to the transaction and concluded that section 318 did not apply. Section 318 provides that the SEC s jurisdiction preempts the Commission's jurisdiction under certain circumstances. The

(continued...)

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(...continued) Commission found that under section 203, the Commission had jurisdiction over the disposition of facilities (via a transfer of stock) of the public utility, while the SEC had jurisdiction to approve or disapprove the holding company s acquisition of the public utility s stock. The Commission further explained:

> In finding that section 318 does not preclude our assertion of jurisdiction, we wish to again emphasize that it is not our intent to undertake regulation of every stock transfer made by public utility shareholders. Our concern is solely with transfers of control of public utilities and, thereby, the jurisdictional facilities of those public utilities. Further, our assertion of jurisdiction is solely to fulfill our obligations under section 203 of the FPA in a manner that is complementary to the SEC s jurisdiction over reorganization transactions.

Savannah at 61,779 (emphasis in original.) See also, Central Illinois, 42 FERC at 61,328-329.

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The Commission also has discussed certain elements of control in cases outside the context of section 203. The Commission has linked "decision-making" and dominion and control to its determination of "control" over facilities in determining whether an entity is a "public utility." The Commission also has said that the reference to "operates [jurisdictional] facilities" in the definition of public utility in section 201(e) of the FPA refers "to the person who has control and decision-making authority concerning the operation of facilities."

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See, e.g., Bechtel Power Corp., 60 FERC Section 61,156 (1992).

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In sale/lease-back cases, the Commission has disclaimed jurisdiction over entities with a mere fiduciary interest in facilities where the entity holding the fiduciary interest could not exert control over the entity responsible for operating the facilities.
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See, e.g., Allegheny Electric Cooperative, Inc., 47 FERC Section 61,015 (1989); Baltimore Refuse Energy Systems Co., 40 FERC Section 61,366 (1987); Pacific Power & Light Co., 3 FERC Section 61,119 (1978).
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Also, we note that the definition of control that has been in the Commission's accounting regulations since 1937 is:

> Control (including the terms controlling, controlled by and under common control with) means the possession,

> directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract or any other direct or indirect means.

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This definition was adopted in Order No. 42, 1 Fed. Reg. 691 (1936), codified and reissued in Order No. 141, 12 Fed. Reg. 8461 (1948), and may be found at 18 C.F.R. Part 101, Definitions 5.B. (1996).
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2. Mergers and Consolidations

In Illinois Power,
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Illinois Power Company (Illinois Power), 67 FERC Section 61,136 (1994).
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the Commission reviewed and clarified its jurisdiction under section 203 in instances where holding companies merge, and determined that "most mergers of public utility holding companies will simultaneously involve an indirect merger of the public utility subsidiaries of such holding companies."
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ID. at 61,352-53.
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The Commission described the three-step process some utilities were following to reorganize, and explained how section 203 jurisdiction applied at each step.

> In step one, a public utility transfers ownership of all of its stock to a newly-formed holding company.

Following Central Vermont, the Commission reiterated that such a transfer constitutes a transfer of the ownership and control of the utility's jurisdictional facilities and, therefore, is a disposition of facilities subject to section 203 approval.

> In step two, the public utility holding company merges with another public utility holding company.

The Commission stated that it does not have jurisdiction over the merger of holding companies unless the holding companies own or operate jurisdictional facilities. However, the Commission adopted a rebuttable presumption that when public utility holding companies merge, their public utility subsidiaries likely retain no real corporate independence, that decision-making for the public utilities would typically rest with the new holding

company, and that, therefore, an indirect merger of the public utilities occurs requiring section 203 authorization.
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Illinois Power at 61,354. In reaching this conclusion,

the Commission departed from its decision in a prior case, Missouri Basin Municipal Power Agency, 53 FERC Section 61,368 (1990), reh'g denied, 55 FERC Section 61,464 (1991), in which it had not asserted jurisdiction based on similar facts. It affirmed only that part of Missouri Basin that held that the Commission does not have jurisdiction over the merger of holding companies.

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In step three, the public utility subsidiaries of the merged holding companies formally merge and section 203 approval is required.

In discussing the adoption of a rebuttable presumption of indirect mergers, the Commission stated that its decision was informed by Copperweld,

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Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). See also Century Oil Tool, Inc. v. Production Specialties, Inc., 737 F.2d 1316, 1317 (5th Cir. 1984), where the Court stated:

> Given Copperweld, we see no relevant difference between a corporation wholly owned by another corporation, two corporations wholly owned by a third corporation or two corporations wholly owned by three persons who together manage all affairs of the two corporations. A contract between them does not join formally distinct economic units. In reality, they have always had a unity of purpose or a common design.

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where the Court held that section 1 of the Sherman Act, which outlaws conspiracies or combinations in restraint of trade, regards as one company a parent and subsidiary that maintain separate operations. The Commission offered the court s explanation, which strongly supports a conclusion that this Commission must be able to look beyond corporate form in determining whether a public utility is effectively disposing of, merging, or consolidating its jurisdictional facilities:

> A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousness, but one. . . . [in reality a parent and a wholly owned subsidiary always have a "unity of purpose or a common design" . . . . whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the

> subsidiary fails to act in the parent's best interest. 467 U.S. at 771-72 (emphasis in original; footnote deleted).

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Illinois Power at 61,354.

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Similarly, while section 203 is applicable only to actions taken by public utilities, we will look beyond the corporate form of a transaction, and regard a parent and subsidiary as one company,

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See San Diego Gas & Electric Co., 38 FERC Section 61,241 at 61,778 (1987) (agency may disregard corporate form; corporations may be regarded as one entity for one purpose even though they are legitimately distinct for others; inquiry is whether statutory purposes would be frustrated by corporate form).

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in instances where the control over a public utility and its jurisdictional facilities is transferred from one corporate entity to another. Further, the fact that the Commission does not have jurisdiction over every aspect of a proposed corporate transaction does not mean that the Commission has to ignore those aspects of the transaction that effect a change in control over a public utility's jurisdictional facilities.

E. Conclusion

In this proceeding, two public utility holding companies (Enova and Pacific) propose to merge; one of the holding companies is the parent of two public utilities (SDG&E and Enova Energy).
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The jurisdictional determinations made in this order preclude the need to address arguments raised regarding Ensource's rate schedule cancellation as an element of the proposed corporate realignment, or related issues, in connection with this proceeding.
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There is no dispute that Commission jurisdictional facilities are involved in the proposed transaction. SDG&E owns both physical and "paper" facilities used for the transmission and sale for resale of electric energy in interstate commerce, and Enova Energy owns "paper" facilities that permit it to market power at wholesale in interstate commerce. Therefore, the remaining question is whether SDG&E and/or Enova Energy will have effectively disposed of and/or merged or consolidated jurisdictional facilities for purposes of section 203. If so, Commission authorization under section 203 is required.

While the FPA does not specifically delineate the meaning of the disposition or "merger or consolidation" of jurisdictional facilities under section 203, it is clear under the language of section 203 itself as well as the Duke case that the Commission's jurisdiction under section 203 attaches to jurisdictional facilities and that Congress intended that the Commission be able

to secure the maintenance of adequate service and the coordination in the public interest of those facilities. Additionally, the references on the face of the statute [section 203(a)] to or otherwise dispose and the proposed disposition, consolidation, acquisition, or control (emphases added) reflect an intent to cast a broad net over various types of transactions so that public utilities and their affiliates cannot use form over substance to avoid regulatory oversight of corporate realignments affecting jurisdictional facilities, paper or otherwise. Similarly, the merge or consolidate clause of section 203 applies to public utilities that "by any means whatsoever, directly or indirectly" merge or consolidate their facilities (emphasis added), and reflects an intent to capture a broad scope of activities and means of accomplishing those activities.

Further, while section 203 applies to a public utility that disposes of or merges or consolidates its jurisdictional facilities, as explained above, the Commission may disregard corporate form and regard a parent and its subsidiary as a unit in order to determine whether statutory mandates would be frustrated by the proposed transaction. While the Commission does not have jurisdiction over the merger of holding companies that are not themselves public utilities, section 203 was intended to preserve the Commission's oversight of corporate realignments that may impact the coordination in the public interest of jurisdictional facilities, no matter how accomplished.

On the facts of this case, as discussed further below, we conclude that the proposed merger of Enova and Pacific will result in a transfer of control of the jurisdictional facilities of Enova's two public utility subsidiaries, SDG&E and Enova Energy. Therefore, we do not need to reach the question of whether the proposed merger also results in a direct or indirect merger or consolidation of the SDG&E or Enova Energy jurisdictional facilities with those of any other person. We further conclude that, for purposes of section 203, Enova and its public utility subsidiaries act as one company and are effectively disposing of jurisdictional facilities via a transfer of control over those facilities to NewCo. To hold otherwise would elevate form over substance.

In their petition for a declaratory order, the Petitioners rely on Missouri Basin as support for their argument that the Commission may not review mergers between holding companies. The petitioners also argue that the Commission may not review mergers involving public utilities unless there exists the type of indirect merger described in Illinois Power. Lastly, the petitioners argue that a disposition of facilities does not occur

in their proposed transaction because, the petitioners say, the stock of the public utilities will not be transferred.

There are several fundamental flaws in these arguments. First, as stated above, the Commission agrees that it does not have jurisdiction over mergers of holding companies that are not also public utilities. Our assertion of jurisdiction is not over the merger of the holding companies; rather, our concern is over the control of the jurisdictional facilities of the public utilities in the holding company system. Second, the Missouri Basin and Illinois Power cases did not address the situation here and cannot, in any event, be interpreted as holding that the Illinois Power scenario is the only type of indirect merger over which the Commission has section 203 jurisdiction. Third, since all the stock of SDG&E and Enova Energy is owned by Enova, and since all of Enova s stock will be transferred to the new holding company, the substance of the transaction will be a disposition of control of the public utilities jurisdictional facilities to the new holding company. Even though Enova will continue to own the public utilities stock after the transfer, control over the public utilities (and their jurisdictional facilities) will be exercised by NewCo and its shareholders under a divergently different corporate form with economic goals which reflect the corporate purposes of the newly-created holding company.

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Petitioners make two related arguments in support of their position that their merger will not result in any change in control over SDG&E's and Enova Energy's jurisdictional facilities. First, they note that the stock of Enova is widely dispersed among members of the public and the same will be true of NewCo's stock. Second, they argue that there will be no change in control since a majority of NewCo's shares, including those shareholders that currently own both Pacific and Enova stock, will be owned by former Enova shareholders. This is a variation of an argument rejected in Central Vermont.

> In Central Vermont, the Commission found that even though the current shareholders of the public utility would own the holding company's stock after the reorganization was completed, they would no longer have direct control over the public utility's jurisdictional facilities. Here, Enova's current shareholders will not be able to exercise the control over SDG&E and Enova Energy, and their jurisdictional facilities, as they are able to exercise today. This does not change because NewCo's stock will be widely dispersed, or because a majority of its stock will be owned by persons that currently own Enova shares.

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As such, there is indeed a disposition of jurisdictional facilities of SDG&E and Enova Energy.

The petitioners cite Missouri Basin and Duke to support their argument that section 203 only gives the Commission jurisdiction over actions taken by public utilities. They suggest that after the initial transfer of the public utility's

stock to a holding company, the public utility loses any ability to exert control over its jurisdictional facilities and therefore cannot dispose of its jurisdictional facilities in subsequent corporate transactions because control over its jurisdictional facilities lies solely with the holding company. Carried to its logical conclusion, this argument would lead to the result that if a stand-alone public utility created a holding company above it the Commission would have jurisdiction due to a change in control of the public utility s jurisdictional facilities, but if the holding company then immediately sold 100% of its stock to another party (who would then be able to control the first tier holding company and thus the public utility) the Commission would not have jurisdiction even though the control over the public utility s facilities is being transferred in both transactions. In short, form would be elevated over substance.

As discussed above, the Commission may regard corporations as one entity in order to ensure that statutory purposes are not frustrated by corporate form. Therefore, for purposes of ensuring that the transfer of control of SDG&E and Enova Energy is consistent with the public interest, Enova and its public

utility subsidiaries may properly be regarded as one entity.

In Central Vermont, the Commission discussed at some length the concern that the transfer of ownership and control of jurisdictional facilities could "present potential for abuses adverse to the public interest."

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Central Vermont at 61,960.
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The Commission has expressed concern over the potential effect such a corporate structure might have on reliability of service or use of operating utility funds for corporate activities unrelated to utility service,

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Id.
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as well as abuses adverse to the public interest which could result from the "ever-increasing reorganizations involving jurisdictional public utilities."

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Central Illinois at 61,328.
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The Commission has a broad public interest mandate in section 201(a) of the FPA to oversee the operational aspects of the electric power industry, including issues involving bulk power supply and transmission access. The industry currently is undergoing a fundamental restructuring which entails wholesale competitive power markets and, increasingly, competitive retail power markets. As the competitive energy markets evolve, the Commission has a public interest responsibility to be vigilant with respect to the corporate realignment of the jurisdictional facilities of both traditional public utilities and the public utility power marketers that are playing an increasingly larger

role in bulk power supply. Our interpretation of section 203 is clearly consistent with the Congress' intent in enacting the provision, and the jurisdictional responsibilities given to the Commission.

The Commission does not intend to affect the actions of public utility holding companies unnecessarily; nevertheless, the Commission would be remiss in upholding its statutory mandate if it allowed control over jurisdictional facilities to be removed from its oversight merely by how the transaction is structured. Accordingly, the petitioners' request for a declaratory order disclaiming jurisdiction over the merger of Enova and Pacific will be denied because the merger encompasses the disposition of the jurisdictional facilities of SDG&E and Enova Energy via a transfer of control.

F. Guidance for Future Cases

We understand that industry participants, in this time of restructuring, need as much certainty as possible concerning the circumstances in which we have jurisdiction under section 203, as well as a better understanding of how quickly the Commission will be able to process section 203 filings. We believe that the discussion above, applicable to the instant proceeding as well as to our companion orders in the NorAm

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Order Asserting Jurisdiction, NorAm Energy Services, Inc., Docket No. EL97-25-000.
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and Morgan Stanley

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Order Authorizing Dispositions of Jurisdictional Facilities and Denying Request for Disclaimer of Jurisdiction, Morgan Stanley Capital Group, Docket Nos. EC97-23-000 and EL97-30-000; Chi Power Marketing, Docket No. EC97-26-000.
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proceedings issued today, answers in large part the first question by providing the framework which we will use to analyze whether a proposed corporate realignment involves a disposition and/or direct or indirect merger of jurisdictional facilities.

We acknowledge that we cannot definitively identify every combination of entities or disposition of assets that may trigger section 203 jurisdiction, since we cannot anticipate every type of restructuring that might occur in response to rapidly evolving

competitive pressures. However, it should be clear that our concern is with changes in control, including direct or indirect mergers, that affect jurisdictional facilities (whether physical or "paper" facilities). We must maintain flexibility in responding to industry restructuring if we are to discharge our statutory responsibility "to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission."

In asserting jurisdiction over new types of corporate realignments that involve jurisdictional facilities, we will commit, within the constraints of our resources, to make every effort to efficiently process those section 203 filings that come before us. It is clear that many of these transactions may involve few public utility assets and may have little or no impact in the pertinent geographic and product markets. In these cases we intend to be flexible as to what information must be filed, to provide shortened comment periods on the filings, and to issue orders expeditiously.

We take this opportunity to comment briefly on the information we expect to see from applicants and the procedures we intend to follow, in those section 203 filings that, for example, do not involve a merger or consolidation of jurisdictional facilities or do not otherwise raise market power concerns. As reflected in the Merger Policy Statement, the mergers of greatest potential concern to the Commission are mergers between vertically integrated electric utilities that own generation and/or transmission facilities. Thus, for example, review of a disposition of a marketer's jurisdictional facilities alone may not necessarily raise complex issues and, therefore, may be amenable to expeditious action by the Commission. Even if a power marketer owns generation facilities, it may be that its facilities are geographically dispersed such that their transfer to another power marketer would not raise complicated issues.

Similarly, cases may arise, such as Morgan Stanley, in which the disposition of a marketer's jurisdictional facilities occurs within the context of a merger of entities engaged in businesses unrelated to our jurisdictional concerns under the FPA. There again, expeditious review and action by the Commission may be anticipated. On the other hand, additional review in various degrees may be required where, for example, a marketer is merging with another power marketer or with an entity with control over fuel resources or transportation facilities necessary for electric generation, thus raising concerns about the potential to create barriers to entry.

We believe that the Morgan Stanley proceeding, which we approved today, provides useful guidance on these types of disposition applications. Morgan Stanley involves a proposed merger of two Wall Street financial firms, one of which owns a public utility power marketer. We found that a disposition of the jurisdictional facilities of that public utility via a change in control will take place as part of the merger and we authorized the disposition. With respect to the information necessary to support the proposed disposition application, the applicants in Morgan Stanley addressed the effect the transaction would have on competition, on rates, and on regulation. They explained why an Appendix A competitive analysis was not needed in the circumstances presented but nevertheless proceeded to

explain why the transaction would not have an adverse effect on competition. This is an acceptable approach in circumstances that do not involve a merger or consolidation or other actions that would result in the aggregation of generation and/or transmission market power.

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Merger Policy Statement at 30,113 and 30,136.

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However, the fact that an Appendix A analysis was not needed in Morgan Stanley does not mean it may not be necessary in other applications involving dispositions of facilities that present different facts. Our focus will be on whether the transaction enhances the ability of the affected public utility or utilities to exercise market power in relevant geographic and product markets. The information applicants submit to support a disposition of facilities must be adequate for us to analyze the

effect on competition, if any.

Similarly, applicants must be prepared to address the effect on rates and regulation. As in Morgan Stanley where the only affected public utility was a power marketer authorized to sell at market-based rates and engaged only in wholesale power sales in interstate commerce, the information supplied can be concise. However, the type of information necessary to address these factors may vary depending on the circumstances.

Finally, we will make every effort to expedite the processing of disposition applications. While we normally provide a 60-day comment period on section 203 applications, a shorter notice period might be appropriate in cases of the type in Morgan Stanley or in unusual circumstances. In the Merger Policy Statement, the Commission stated its intent to make a reasonable effort to issue an initial order on a completed application 60-90 days after the comment period closes.

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Merger Policy Statement at 30,127.

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If the application does not raise significant concerns, the Commission may be able to take action on an even more expedited basis. Any request for expedited action must be fully supported and should discuss how long it took from the time the contract was signed until the date of filing with the Commission.

The Commission orders:

(A) The late, unopposed motion to intervene in this docket filed by NutraSweet Kelco Company is hereby granted, as discussed in the body of this order.

(B) Vernon s motion to consolidate Docket No. ER97-703-000 with this docket is hereby denied, as discussed in the body of this order.

(C) San Diego s motion to reopen Docket No. EC95-6-000 and to consolidate that docket with this docket is hereby denied, as discussed in the body of this order.

(D) San Diego s motion for late intervention in Docket No. EC95-6-000 is hereby denied, as discussed in the body of this order.

(E) The answer filed by the Petitioners and the responses filed by SoCal Edison are rejected, as discussed in the body of this order.

(F) The Petitioners' petition for declaratory order disclaiming jurisdiction is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Lois D. Cashell,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company) Docket No. EC97- -000
Enova Energy, Inc.)

APPLICATION
FOR AUTHORIZATION AND APPROVAL OF MERGER

San Diego Gas and Electric Company ("SDG&E"), and Enova Energy, Inc. ("Enova Energy") (collectively, the "Applicants") hereby submit this application pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. Section 824b (1988), and Part 33 of the Regulations of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. Part 33 (1995), requesting authorization and approval for the merger of Pacific Enterprises ("Pacific") and Enova Corporation ("Enova")

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Ensource, a subsidiary of Pacific, filed on December 6, 1996, a notice of cancellation of its electricity rate schedule in Docket No. ER97-703-000. Ensource joins in this application only if, and so long as, it is a "pubic utility" within the meaning of the FPA. If the Commission grants Ensource's notice of cancellation, Ensource will not be a "public utility" within the meaning of the FPA, and will not be a necessary party to the application.

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As described in Section III of this application, following the merger Pacific and Enova will be owned and controlled by a new holding company, "NewCo," and SDG&E and Enova Energy will become indirect subsidiaries of NewCo.

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NewCo is a California corporation, the outstanding stock of which is owned 50 percent by Enova and 50 percent by Pacific. NewCo was formed expressly for the purpose of facilitating the merger described herein. Immediately following the transaction the stock of NewCo will be held by the former shareholders of Enova and Pacific.

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On December 6, 1996, Enova and Pacific filed a Petition for Declaratory Order Disclaiming Jurisdiction

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Docket No. EL97-15-000.

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asking the Commission to declare that the proposed merger is not subject to the Commission's jurisdiction under Section 203 of the FPA. Issuance of the requested declaratory order would moot the instant application. If the Commission does not grant the requested declaratory order, the Applicants request that the Commission approve the proposed transaction within the 150-day processing time described in Order No. 592, the Commission's Merger Policy Statement

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Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act, Policy Statement, 61 Fed. Reg. 68,595, 68,605 (December 18, 1996).

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and, in any event, by December 1997.

I.

INTRODUCTION AND SUMMARY

As described in its Merger Policy Statement, the Commission will, in assessing mergers subject to its jurisdiction under Section 203, consider three factors: (1) effect on competition, (2) effect on rates, and (3) effect on regulation. The Pacific/Enova merger handily satisfies the Merger Policy Statement's criteria on each score.

Effect on Competition In essence, the merger would combine the holding companies of two utilities. One is a gas utility affiliated with a few QFs that are in the process of being partially divested. The other is an adjacent gas and electric utility. Thus, the merging firms do not, to any significant degree, have, in the words of the Merger Policy Statement, "facilities to sell relevant products in common geographic markets."

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  Id. at 68,597. Pacific does own Ensource, which is authorized to make sales of electricity for resale in interstate commerce and a public utility under the FPA. However, Ensource has made no sales and has no contracts to do so. As noted above, Ensource has filed a notice of cancellation of its tariffs and rate schedules.
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Accordingly, the screen analysis set forth in the Merger Policy Statement, which is designed to measure the horizontal effects of an electric utility merger, is unnecessary in this case. Under the most conservative assumptions, it can be shown that the increased concentration caused by the merger in even the smallest conceivable geographic markets falls well below the level of concern specified in the Department of Justice Merger Guidelines.

Pacific's role in sales and transportation of natural gas gives rise to no significant concerns about vertical effects on competition in the sale of electricity. Under requirements of the Public Utilities Commission of the State of California ("CPUC"), SoCalGas is subject to a strict regime of nondiscrimination and cannot favor SDG&E over other market participants in terms of service. SoCalGas has, moreover, undertaken to post contemporaneously, and to offer to other similarly-situated non-affiliated shippers, any discounts it offers to SDG&E. Similarly, Pacific and Enova have adopted a code of conduct that would forbid SoCalGas from providing sensitive market information to any marketing affiliate.

Pacific owns no electric transmission. For that reason alone the merger will have no adverse effects upon competition in transmission.

The Merger Policy Statement addresses competitive effects in wholesale electricity markets, leaving to state commissions the evaluation of any effects on retail competition. Such retail effects in the instant case will be scrutinized by the CPUC in determining whether to approve the combination under Section 854 of the California Public Utilities Code.

The Applicants have nonetheless analyzed the competitive effects of the proposed merger in the small portion of Orange County where SDG&E's electric service territory overlaps with the service territory of SoCalGas. There is scant fuel substitutability and little competition between the two fuels at present. Moreover, the merger will coincide in time with, and is largely prompted by, the fundamental restructuring of the electrical services industry in California and the advent of retail customer choice; strong intrafuel competition will discipline the market more effectively than interfuel competition could.

Effect on Rates The proposed combination likewise readily satisfies the standards of the Merger Policy Statement as to any adverse effect on rates. SDG&E has no existing firm wholesale customers. However, to assure that the transaction will not have any adverse effect on those electric rates that are subject to this Commission's jurisdiction, SDG&E undertakes, if this application is granted, to hold its future wholesale and transmission customers harmless for at least five years after the proposed merger from any increase in costs arising out of the merger. SDG&E will make the necessary showing in any filings for changed rates it makes after consummation of the merger.

Effect on Regulation The proposed merger is subject to approval by the CPUC, and it will not create a registered holding company. Accordingly, there are, as the Policy Statement recognizes, no concerns as to the effect on regulation.

II.

BACKGROUND

A. Enova

Enova is a California corporation with its principal place of business at 101 Ash Street, San Diego, California 92101. Enova does not itself own, operate, or directly control any electric generation, transmission, or distribution facilities. Enova is an exempt public utility holding company under Section 3(a)(1) of the Public Utility Holding Company Act, 15 U.S.C. Section 79c(a) (1) ("PUHCA").

Enova's principal subsidiary is SDG&E, a public utility owning and operating electric generation, transmission, and distribution facilities, and serving some 1.2 million electric customers at retail in San Diego and Orange Counties, California, as well as some 700,000 natural gas customers at retail in San Diego County. The only other subsidiary of Enova engaged in purchases or sales of electricity is Enova Energy, a power marketer authorized by the Commission to sell power at market-based rates.

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See Enova Energy, Inc., 76 FERC Para. 61,242 (Sept. 9, 1996).

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None of Enova's remaining affiliates is engaged in activities subject to the jurisdiction of this Commission under either the FPA or the Natural Gas Act ("NGA").

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One of Enova's subsidiaries, Enova Mexico, S.A. de C.V., is engaged in the planning, construction, and operation of one or more local gas distribution systems in Mexico. In addition, Enova and Pacific have formed a joint venture that will engage in marketing natural gas, among other things. Enova and Pacific will each own half of the joint venture. The joint venture will not engage in electricity sales subject to this Commission's jurisdiction prior to the consummation of the merger. Any wholesale electricity sales to be conducted by the joint venture following the merger would, of course, require prior Commission approval.

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SDG&E's adoption of a holding company structure, whereby Enova became the holder of all of SDG&E's common stock and SDG&E's former common stockholders became the stockholders of Enova, was approved by the Commission in February 1995.

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San Diego Gas & Electric Co., 70 FERC Para. 62,118 (1995).

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B. Pacific

Pacific is a California corporation with its principal place of business at 633 West Fifth Street, Suite 5400, Los Angeles, California 90071-2006. Pacific itself does not own, operate, or directly control any electric generation, transmission, or distribution facilities. Pacific, like Enova, is an exempt public utility holding company under Section 3(a)(1) of PUHCA.

Pacific's principal subsidiary is SoCalGas, a natural gas distribution utility providing gas service to approximately 4.8 million customers in central and southern California.

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SoCalGas is not a "public utility" under the FPA, since it engages in neither sales nor transmission of electricity subject to the Commission's jurisdiction. SoCalGas owns certain alternative energy projects -- totalling 1.6 MW in capacity -- that are qualifying facilities under Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Sales from these facilities are exempt, under PURPA Section 210, from the Commission's jurisdiction.

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Pacific has numerous other subsidiaries engaged in energy and non-energy business, including Pacific Interstate Transmission Company and Pacific Interstate Offshore Company, both of which are interstate pipelines subject to the Commission's jurisdiction under the NGA, and Pacific Offshore Pipeline Company, which the Commission has found to be exempt from its jurisdiction under the NGA.

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Pacific Offshore Pipeline Co., 64 FERC Para. 61,167 (1993).

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Pacific also owns Pacific Energy, which, in turn owns, either directly or, (in some cases) indirectly, an interest in alternative energy projects, totaling some 182 MW in capacity, that are qualifying facilities under PURPA. At the time of the proposed transaction, Pacific Energy will have reduced its interest in each of these QFs, as necessary, to satisfy the Commission's QF ownership criteria, set forth at 18 C.F.R. Section 292.206.

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Likewise, any QF interests held by SoCalGas will satisfy

the Commission's ownership criteria.

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To do so will require a divestiture of 88.5 MW of Pacific Energy's total QF capacity.

Additionally, Ensource, a wholly-owned subsidiary of Pacific, is authorized to make sales of electricity for resale in interstate commerce

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See Letter from Donald J. Gelinas, Director, Division of Applications, dated July 10, 1996, in Docket No. ER96-1919-000.

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and to the extent it makes such sales is a "public utility" under the FPA. However, Ensource has made no sales at wholesale and has no contracts to do so. Moreover, on December 6, 1996, Ensource filed in Docket No. ER97-703-000 a notice of cancellation of its tariffs and rate schedules to make such sales.

C. Electric Industry Restructuring in California

The proposed transaction is, in very real terms, an outgrowth of electric industry restructuring in California. As the Commission is aware, on December 20, 1995, the CPUC issued its Policy Decision on electric industry restructuring.

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CPUC Decision No. 95-12-063 (December 20, 1995), as modified by Decision No. 96-01-009 (January 10, 1996).

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Under that decision, SDG&E, Southern California Edison Company ("Edison") and Pacific Gas & Electric Company ("PG&E") are to offer competing suppliers direct access to their retail customers beginning on January 1, 1998. Moreover, subject to the approval of this Commission, the three utilities are to convey operational control of their respective transmission systems to an "Independent System Operator ("ISO") and to bid all of their fossil generation resources into (as well as purchase all of their native-load requirements from) a newly-established hourly spot market or "Power Exchange" ("PX"). In August 1996, the California Legislature enacted legislation ("AB 1890") affirming and codifying the main elements of the CPUC's restructuring orders, and in September the Governor signed that legislation into law.

SDG&E, Edison, and PG&E have applied to this Commission in Docket Nos. EC96-19-000, et. al., for the requisite authorizations to implement the CPUC's restructuring proposal on or before January 1, 1998. By orders dated October 30 and November 26, 1996, the Commission has conditionally approved certain fundamental elements of the proposal, and has directed SDG&E, Edison, PG&E and the ISO to submit detailed tariffs, contracts, by-laws and protocols on or before March 31, 1997, looking toward a commencement date of January 1, 1998 for the restructured market.

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Pacific Gas & Electric Co., 77 FERC Para. 61,077 (Oct. 30, 1996); Pacific Gas & Electric Co., 77 FERC Para. 61,204 (Nov. 26, 1996). In a further order issued on December 18, 1996, the Commission provided certain guidance concerning the applicants' market power showings and convened a technical conference on market power. Pacific Gas & Electric Co., 77 FERC Para. 61,265 (Dec. 18, 1996).

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III.

DESCRIPTION OF PROPOSED BUSINESS COMBINATION

The proposed transaction is a combination of equals between two utility holding companies, Enova and Pacific. The combination will be effected by the creation of a new holding company -- NewCo

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The actual name of NewCo has not yet been determined.

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that will own all of the stock of Enova and Pacific and will in turn be owned by their former shareholders. This combination will be carried out in the following manner:

NewCo is a recently created corporation, 50 percent

of whose outstanding stock is owned by Pacific and 50 percent of whose outstanding stock is owned by Enova. Under the Agreement and Plan of Merger and Reorganization among Enova, Pacific, NewCo, NewCo Enova Sub and NewCo Pacific Sub dated October 12, 1996, (the "Combination Agreement"),

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A copy of the Combination Agreement is contained in the application to the CPUC for approval of the merger. That application is contained in Exhibit G to this application. Certain additional parts of the Agreement that were redacted in the CPUC application appear in Exhibit H.

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NewCo Enova Sub, a subsidiary of NewCo, will be merged into Enova, with Enova as the surviving corporation. Similarly, NewCo Pacific Sub, another subsidiary of NewCo, will be merged into Pacific, with Pacific as the surviving corporation. Each issued share of Enova common stock will be converted into the right to receive a share of NewCo common stock, and each issued share of Pacific common stock will be converted into the right to receive 1.5038 shares of NewCo common stock. Thus, upon consummation of the proposed transaction, each of Enova and Pacific will be a wholly owned subsidiary of NewCo.

Enova, Pacific, SDG&E, and SoCalGas will continue their separate corporate existences under their existing names. Pacific and SoCalGas will maintain their corporate headquarters at Los Angeles, while Enova and SDG&E will maintain their corporate headquarters at San Diego. The headquarters of NewCo will be in San Diego.

The parties' obligation to consummate the Combination Agreement is subject, among other things, to the grant of all necessary regulatory approvals. Pacific and Enova have applied for approval of the business combination by the CPUC under Section 854 of the California Public Utilities Code.

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Section 854 is included in Exhibit G hereto.

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They also will file for approval by the Securities and Exchange Commission ("SEC") under Section 9(a)(2) of PUHCA and for exemption under Section 3(c)(e) of themselves and NewCo from the registration requirements of PUHCA.

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15 U.S.C. Section 79i(a)(2).

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In addition, the parties have filed for the requisite consent of the Nuclear Regulatory Commission under the Atomic Energy Act, and will make the appropriate pre-merger filings with the Department of Justice and the Federal Trade Commission under the Hart-Scott-Rodino Act. Pacific and Enova seek to consummate the merger in time to coincide with commencement of the restructured California electricity market described above.

IV.

THE PACIFIC/ENOVA MERGER MORE THAN SATISFIES THE REQUIREMENTS OF SECTION 203 AND THE COMMISSION'S POLICY STATEMENT

Under Section 203(a), the Commission will approve mergers that are "consistent with the public interest." In its Merger Policy Statement, the Commission has revised its criteria for evaluating proposed mergers under Section 203 to ensure that the Commission's policies do not impede the development of vibrant, fully competitive generation markets.

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61 Fed. Reg. 68,598.

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The Commission has reduced the criteria to be considered to three: (1) the effect of the merger on competition; (2) the effect of the merger on rates; and (3) the effect of the merger on regulation. The discussion below addresses those criteria.

A. The Effect of the Merger on Existing Competition

The prepared direct testimony of William H. Hieronymus attached hereto analyzes the effects that the combination of Pacific and Enova will have on competition.

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Dr. Hieronymus is an economist with extensive experience

in analyzing competition in the electric industry.

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Dr. Hieronymus considers, successively, the horizontal effects of the merger on competition in wholesale electric markets, the vertical effects on such markets arising out of the role of SoCalGas as a gas transporter, the effects of the merger due to the merging entities' interests in electric transmission, and the effects of the merger on retail interfuel competition in the small overlap area between the electric service territory of SDG&E and the gas service territory of SoCalGas. The prepared direct testimony of Jeffrey K. Hartman

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61 Fed. Reg. 68,597.

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addresses SoCalGas's ability, in its role as a gas transporter, to favor SDG&E over other electric generators.

(1) Horizontal Effects on Electric Generation Markets

In its Merger Policy Statement, the Commission has adopted a methodology -- the competitive analysis screen described in Appendix A to the Policy Statement -- that will allow it to assess the horizontal effects of a given merger on competition in the electric generation markets in which the merging entities compete. Because, however, the screen analysis is designed to analyze competitive effects in instances where the merging entities do compete, the Commission has provided that such analysis need not be submitted where they do not compete:

> However, it will not be necessary for the merger applicants to perform the screen analysis or file the data needed for the screen analysis in cases where the merging firms do not have facilities or sell relevant products in common geographic markets. In these cases, the proposed merger will not have an adverse competitive impact (i.e., there can be no increase in the applicants' market power unless they are selling relevant products in the same geographic markets) so there is no need for a detailed data analysis.

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61 Fed. Reg. 68,597.

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Pacific and Enova do not compete to any meaningful extent in the sale of electricity. The only interests Pacific has in electric generation are the 182 megawatts of QFs in which it currently holds an ownership share, of which 71 megawatts are in northern California and 78 megawatts are in southern California.

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Pacific's subsidiary Ensource has authorization to make sales at market based rates, but, as noted above, has not made any and has no contracts to do so. Ensource owns no generation and has filed notice of cancellation of its FERC tariffs. For those reasons, among others, Ensource does not affect the analysis of effects on competition.

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In order to assure that those QFs maintain their qualifying status under PURPA, however, Pacific will divest itself of some or all of its interests (depending on who owns the remaining interest) prior to the consummation of the merger. Thus, at the time of the merger, Pacific's QF interests will not exceed 23 megawatts in northern California, 15 megawatts in southern California and 2.5 megawatts elsewhere in the WSCC.

Total generation in California alone exceeds 50,000 megawatts. Viewed in that context, Pacific's generation capacity -- all of which is committed under long-term contracts until at least 2007 -- is so minimal as to bring the combination of Pacific and Enova within the class of mergers for which the Merger Policy Statement does not require performance of the screen analysis; in no practical sense do Pacific and SDG&E "compete" in generation.

In any event, making extremely conservative "worst-case" assumptions about transmission constraints and

transmission rates, Dr. Hieronymus was able to demonstrate that, if the Commission's screen analysis had been performed in full, the results would show precisely what one would expect: no increase of more than 16 points in the Herfindal-Hirschman Index ("HHI") for any destination market. Under the Department of Justice's Merger Guidelines, which form the foundation of the Merger Policy Statement, such a small increase provides no basis for concern.

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Dr. Hieronymus refers at page 18 of his testimony to a proposed merchant plant in Nevada in which Enova Energy may be a participant. It should be noted that Enova Energy's participation in that project does not depend in any way upon consummation of the Pacific-Enova merger.

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It is true that SDG&E is currently able to exercise horizontal market power within the San Diego Basin by virtue of the fact that, at certain hours and under certain conditions, its own units within the Basin are needed to meet load (because of limitations on transmission capacity into the Basin), to assure reliability, or both. SDG&E has, in the California restructuring proceeding, undertaken to bid its generating units within the Basin into the Power Exchange at their incremental cost and to credit back to customers any revenues received from the PX in excess of its bid. It has also proposed, in broad terms, a rigorous monitoring program to enforce these undertakings and assure against the exercise of market power.

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See the Supplement of Southern California Edison Company and San Diego Gas & Electric Company to Application for Authorization to Sell Electric Energy at Market-Based Rates Using a Power Exchange, filed in Docket No. ER96-1663 on May 29, 1996, at III-23 to III-27.

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Whether or not these measures are sufficient need not be determined here, however, for two reasons. First, SDG&E has no wholesale customers within the San Diego Basin, i.e., within the area subject to the above-described transmission constraints. Second, and more importantly, it is the effect of the merger on competition that is at issue here, and the merger will have no appreciable effect on SDG&E's generation market power.

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If and to the extent that the Commission concludes that despite the above-quoted language in the Merger Policy Statement and despite the analysis presented by Dr. Hieronymus, further divestiture of Pacific's remaining interests in QFs within the WSCC is necessary to obviate the need to perform the full screen analysis or to avoid an evidentiary hearing, or for grant of this application, then Applicants would accept such a condition. They request, however, that Pacific be afforded a period of up to a year after the merger to complete such divestiture. During that time, Pacific would credit any net revenue it receives from the QFs back to the purchasing utility.

Conversely, if the Commission should determine that, regardless of further divestiture, submission of the full Appendix A analysis is necessary, then the Applicants respectfully request that it so notify them at the earliest possible time.

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(2) Vertical Effects on Electric Generation Markets

SoCalGas transports natural gas on behalf of SDG&E and various other owners of gas-fired generation in Southern California. Concerns about the exercise of vertical market power would in theory arise if and to the extent that SoCalGas could favor SDG&E over competing generators in the terms of service or in pricing of transportation, or to the extent that SoCalGas could provide valuable market information to its affiliates but not to competing sellers of electricity.

As the attached testimony of Jeffrey K. Hartman, makes clear, the current CPUC regulatory regime, combined with the undertakings by SoCalGas before the CPUC and in this proceeding, preclude such favortisim on SoCalGas's part, even if it were in the interest of the merged entity.

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Under the CPUC's regulatory regime, discounting comes at the expense of shareholders rather than other customers.

Moreover, as described by Mr. Hartman, the California electric restructuring legislation, A.B. 1890, imposes a rate cap on SDG&E and other electric utilities, which means that increases in the Power Exchange price will likely decrease recovery of stranded costs. This creates an incentive for the combined Pacific/Enova entity to keep gas transportation prices low.

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As required by the CPUC, SoCalGas provides transportation service at tariffed rates and on nondiscriminatory terms. SoCalGas is willing to commit in this proceeding, as it has before the CPUC, to follow the policy this Commission adopted in Order No. 497 with respect to discounting. Thus, SoCalGas will not offer any discount to SDG&E unless it contemporaneously posts that discount on its electronic bulletin board and makes it available to similarly-situated non-affiliated shippers.

With respect to information sharing, SoCalGas has already submitted a code of conduct to the CPUC under which it must not provide any valuable market information (such as customers lists, billing records, or usage patterns) to any affiliated electric marketer unless it simultaneously makes such information available to unaffiliated electric marketers. As Mr. Hartman further describes, that obligation will be triggered not only if SoCalGas provides sensitive information to a marketing affiliate, but also if it provides such information to personnel of SDG&E, or of any other affiliate, engaged in the electric merchant function.

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To the extent that it is relevant, the Commission may note that the CPUC has every incentive to enforce the foregoing restrictions stringently. This is not a case in which a state commission might favor parochial interests at the expense of out of state customers or suppliers. If SoCalGas were to favor SDG&E in its transportation practices, or in the transfer of sensitive market information, the victims would be California customers. Thus, even if the CPUC were otherwise inclined to favor in-state interests, that inclination would have no application here.

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(3) Competitive Effects Due to Merger of Transmission Facilities

Similarly, the merger will have no adverse effects on competition in transmission. Quite simply, Pacific has no transmission facilities. In any event, SDG&E has on file and in effect the open access tariffs prescribed by Order No. 888 and as described above will turn over operational control of its transmission system to an Independent System Operator with the onset of the restructured market.

(4) Effects on Interfuel Competition in the Retail Overlap Area

The Merger Policy Statement makes clear that the Commission will focus on competition in electricity at the wholesale level.

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The Commission notes in the Statement that "[i]n cases where a state commission asks us to address the merger's effects on retail markets because it lacks adequate authority under state law, we will do so." 61 Fed. Reg. 68,605. As noted above, the CPUC will review the Pacific/Enova merger under Section 854 of the Public Utilities Code.

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Nonetheless, Dr. Hieronymus also considered whether the Pacific-Enova merger would adversely affect retail competition within the small area in which the electric service territory of SDG&E overlaps with the gas service territory of SoCalGas. He concluded that it would not. For example the California Energy Commission, ("CEC") in modeling electricity demand in the commercial sector has found such demand unaffected by gas prices. The CEC also characterizes substitution in the residential sector as "minor."

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Hieronymus testimony at 21.

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Moreover, with the advent of direct access under California's electric industry restructuring program, a plethora of marketers and other suppliers will compete to provide electric service to customers within the overlap area. Similarly, gas marketers and aggregators are already competing

for retail customers within that area. This interfuel competition will continue after the merger.

B. The Effect of the Merger on Rate Levels

In its Merger Policy Statement, the Commission recognized that an investigation of merger costs and benefits can be both contentious and time-consuming.

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61 Fed. Reg. 68,602.
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The Commission required merger applicants to propose mechanisms to assure that customers are protected if the expected merger benefits do not materialize. Among the mechanisms discussed were open seasons, hold-harmless provisions, rate freezes, and rate reductions.

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Id. 68,603.
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In the instant case, SDG&E has no wholesale requirements customers.

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Nor does Enova Energy or Ensource.
- --

Indeed, SDG&E currently makes no sales at wholesale other than economy energy sales and very short-term (less than 12 months) sales of capacity. Moreover, as noted above, under the CPUC's restructuring orders, SDG&E will be obligated, after the commencement of the proposed Power Exchange, to bid all of the output of its fossil generation into the PX for a five-year period, and has committed in Docket No. ER96-1663 to bid that generation into the PX at variable costs and to rebate to customers any PX revenues for such generation exceeding variable costs. These variable costs will not be affected by the proposed Pacific-Enova merger. Thus, the merger will have no adverse effect on wholesale rates.

Similarly, SDG&E has no firm transmission contracts in place for service through its system (other than for short-term as-available service and mutual assistance short-term back-up transmission assignments). Its other transmission commitments arise from various interchange contracts and the Western System Power Pool (as-available commitments) and the open access transmission tariff it filed in compliance with Order No. 888.

The Merger Policy Statement encourages applicants to negotiate the particular form of rate protection they propose with their customers and favors an open season as a form of protection.

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61 Fed. Reg. 68,603.
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SDG&E does not oppose the concept of an open season. However, because SDG&E lacks firm wholesale or transmission customers, an open-season commitment would not, it appears, serve the Commission's purposes. For the same reason, prior negotiation with pre-existing customers is not practicable.

Nonetheless, to comply fully with the letter and spirit of the Merger Policy Statement, SDG&E undertakes, if this application is granted, to hold customers harmless from any increase in FERC-jurisdictional rates arising out of the merger. In that circumstance, SDG&E will undertake the burden in any FERC rate case it files within five years after the consummation of the merger to show that its rates are not higher than they otherwise would have been absent the merger.

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The initial transmission access fees proposed by SDG&E, Edison, and PG&E in Docket No. ER96-19-000 are to reflect the cost of each utility's transmission facilities as of the start-up of the ISO. Under AB 1890 the rate design proposed by the three utilities is to remain in effect for two years after commencement of the ISO's operations, if the Commission approves. After two years, however, the ISO is to propose a rate methodology determined by its governing board and, if the Board cannot agree, and alternative dispute resolution fails, the default methodology proposed to the Commission is to be different from the initial rate design. Thus, it appears likely that SDG&E will make a further rate filing at that time.
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C. The Effect of the Merger on The Effectiveness

of Regulation

In the Merger Policy Statement, the Commission made clear that an application will not be deemed`to raise any issue as to the effect on regulation if (a) the merger will not create, or maintain the existence of, a registered holding company, and (b) the merger will be subject, under state statute, to review by a state commission.

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Id. at 68,604.

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Both conditions are satisfied here. First, as stated above, Enova and Pacific are both exempt from registration under Section (3)(a)(1) of PUHCA as intrastate holding companies; they will file requests with the SEC to maintain such status for themselves and for Newco.

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The Applicants will promptly advise the Commission of the SEC's action on those requests.

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Second, Section 854 of the California Public Utilities Code requires the companies to obtain CPUC approval prior to the proposed merger, and they have applied to the CPUC for such approval. The CPUC may approve the merger, disapprove the merger, or approve the merger with conditions. Under Section 854 the CPUC must address, among other things: the short-term and long-term benefits of the merger, the allocation of such benefits between ratepayers and shareholders, the merger's effect on competition, the effect of the merger on service levels, the effect of the merger on the quality of management, the effect of the merger on competition, the effect of the merger on employees and the effect of the merger on state and local economies. In short, the CPUC will generally address all factors relevant to whether the proposed merger is in the public interest. Thus, the CPUC has all of the authority it needs to protect its jurisdiction and to determine whether the proposed merger is in the public interest.

VII.

REQUEST FOR EXPEDITED REVIEW

One of the stated purposes of the Merger Policy Statement is to provide "greater regulatory certainty and expedition of regulatory action in order to respond quickly to rapidly changing market conditions."

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61 Fed. Reg. 68,596.

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Market conditions are, indeed, changing rapidly in California; retail competition will begin in less than a year. The merger of Enova and Pacific -- if it falls within Section 203 at all -- presents no serious wholesale competitive issues, and no issues at all as to rates or regulation. The CPUC is examining any effects on retail competition and rates. The Applicants accordingly request that, if the Commission does not disclaim jurisdiction, it grant the instant application within the 150-day processing time set forth in the Merger Policy Statement and, in any event, by December 1997.

VIII.

REQUIRED INFORMATION

The following information is submitted in response to 18 C.F.R. Section 33.2.

(a) The exact name and address of the principal business office.

The names and principal business offices of Ensource, SDG&E, and Enova Energy are:

Ensource
555 West Fifth Street
Los Angeles, California 90013-1011

San Diego Gas & Electric Company

101 Ash Street
San Diego, California 92112-9400

Enova Energy, Inc.
12555 High Bluff Drive
Suite 155
San Diego, California 92130

(b) Name and address of the person authorized to receive notices and communications in respect to the application.

The following individuals are authorized to receive notices and communications in respect to the Joint Application:

For Ensource:

Frederick E. John
555 West Fifth Street
Los Angeles, California 90013-1011

For SDG&E and Enova Energy:

Don Garber
P.O. Box 1831
San Diego, California 92112-4150

The Applicants request that notices and communications also be sent to counsel for the Applicants, designated below, and that such counsel be placed on the official service list for this proceeding:
For SDG&E and Enova Energy:

Michael C. Tierney
P.O. Box 1831
San Diego, California 92112-4150
Phone: (619) 699-5033
Fax: (619) 699-5027

Nicholas W. Fels
Matthew S. Yeo
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
Phone: (202) 662-6000
Fax: (202) 662-6291

For Ensource:

Leslie E. LoBaugh, Jr.
Thomas R. Brill
David J. Gilmore
633 West Fifth Street
Suite 5400
Los Angeles, California 90071
Phone: (213) 895-5138
Fax: (213) 629-9621

c. Designation of territories served, by counties and states.

SDG&E provides gas service to San Diego County and electric service to San Diego County and a portion of Orange County.

d. A general statement briefly describing the facilities owned or operated for transmission of electric energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce.

Neither Pacific nor any subsidiary of Enova other than SDG&E has any such facilities, other than certain books, contracts and accounts.

SDG&E's fossil generating capacity consists of two steam stations, Encina with a capacity of 951 MW, and South Bay with a capacity of 690 MW, plus various relatively small combustion turbines with a total capacity of 332 MW. Additionally, SDG&E owns a 430-MW share of Units 2 and 3 of the San Onofre Generation Station ("SONGS").

SDG&E's transmission system includes 279 circuit miles of 500 kV lines, 358 circuit miles of 230 kV lines, 318 circuit miles of 138 kV lines; and 938 circuit miles of 69 kV lines.

SDG&E's ownership interest in the 500 kV Southwest Powerlink ("SWPL") includes 159 circuit miles in California and 120 circuit miles in Arizona, for a total of 279 circuit miles.

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The SWPL is comprised of three 500 kV line segments, partially or wholly owned by SDG&E. SDG&E's ownership share of the various SWPL line segments is as follows: Palo Verde - North Gila 76.22 percent, North Gila - Imperial Valley 85.64 percent and Imperial Valley - Miguel 100.00 percent.

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SDG&E owns five 230 kV transmission lines interconnecting SDG&E to Edison at the SONGS 230 kV substation. It also owns two 230 kV lines interconnecting SDG&E to the Comision Federal de Electricidad ("CFE") at Miguel and Imperial Valley Substations. These facilities, combined with SDG&E's entitlements described in the following paragraph, primarily serve to integrate the SONGS generating resources, the Pacific Northwest (via the 500 kv AC and 1000 kV DC Pacific Intertie), Baja Norte California (Republic of Mexico), and the southwestern United States (Arizona and other interconnected States) with SDG&E's load.

In addition, SDG&E has entitlements to 161 MW on the California Pacific AC Intertie ("PACI") and to 105 MW on the California Pacific DC Intertie ("PDCI"), for a total Pacific Intertie share of 266 MW in the North-to-South direction. In the South-to-North direction, SDG&E's total entitlement is 108 MW. SDG&E's entitlement points of delivery or receipt are at the California-Oregon Border for the PACI and the Nevada-Oregon Border for the PDCI, and ultimately at the SONGS substation.

(e) Whether the application is for disposition of facilities by sale, lease or otherwise, a merger or consolidation of facilities, or for purchase or acquisition of securities of a public utility, also a description of the consideration, if any, and the method of arriving at the amount thereof.

As described more fully above, pursuant to the Combination Agreement, which Pacific and Enova negotiated at arms length, Pacific and Enova will be merged with and into NewCo, which will be the surviving corporation. Upon completion of the merger process, Pacific shareholders will have the right to receive 1.5038 shares of NewCo common stock, no par value per share, for each share of Pacific common stock outstanding; Enova shareholders will have the right to receive 1.0 share of NewCo common stock for each share of Enova stock outstanding. The merger involves a combination of two companies through exchanges of stock; no "consideration" is being paid.

(f) A statement of facilities to be disposed of, consolidated, or merged, giving a description of their present use and of their proposed use after disposition, consolidation, or merger. State whether the proposed disposition of facilities or plan for consolidation or merger includes all the operating facilities of the parties to the transaction.

The proposed merger includes all of the operating facilities of the Applicants. They are described above. Appropriate disposition of Pacific's interest in the above-described QFs will be made prior to completion of the merger to assure that they do not lose their qualifying status under PURPA as a result of the merger. As noted above, Applicants would accept a condition requiring full divestiture of Pacific's QFs in relevant geographic markets if the Commission concludes that such divestiture is necessary for merger approval, to avoid the need for filing the full market screen analysis set forth in the Merger Policy Statement, or to avoid evidentiary hearings. If the Commission imposes a condition of full divestiture of Pacific's QFs, Applicants request that Pacific be provided one year following consummation of the merger to dispose of these facilities to

avoid a "fire sale" and potential loss of shareholder value. Applicants would propose that Pacific credit any net revenues back to the purchasing utility during this interim period to address any market power concerns.

(g) A statement of the cost of the facilities involved in the sale, lease, or consolidation.

All of the jurisdictional facilities of the Applicants are, and after the merger is consummated will continue to be, accounted for pursuant to the Commission's Uniform System of Accounts. Original cost is the basis for the valuation of Pacific's and Enova's utility plant service. Statements of the utility plant in service and the cost thereof are included as part of Exhibit C to this application.

(h) A statement as to the effect of the proposed transaction upon any contract for the purchase, sale, or interchange of electric energy.

The merger will have no effect on any contract for the purchase, sale or interchange of electric energy. In particular, as described above, SDG&E and Enova Energy will maintain their corporate existence and will remain bound by existing contracts.

(i) A statement as to whether or not any application with respect to the transaction or any part thereof is required to be filed with any other Federal or State regulatory body.

Pacific and Enova have filed for, or will file for, several other regulatory approvals, in addition to those required from this Commission. The following approvals are required:

1. Securities and Exchange Commission - As described above, Pacific and Enova will file with the SEC for approval of the transaction under Section 9(a)(2) of PUHCA. They will, simultaneously, ask the SEC to rule that both they and NewCo will, after the consummation of the transaction, be exempt under Section 3(a)(1) from PUHCA's registration requirement.

2. Nuclear Regulatory Commission - SDG&E owns a 20 percent undivided interest in San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3 under a license issued by the Nuclear Regulatory Commission ("NRC"). On December 2, 1996, SDG&E submitted a letter to the NRC seeking consent, pursuant to the Atomic Energy Act, if such consent is required, for the proposed merger. There will be no change in the operation of either SONGS 2 or 3 as a result of the proposed merger. A copy of this filing is part of Exhibit G.

3. Other Regulatory Approvals - On October 30, 1996, the Pacific and Enova filed an application with the CPUC seeking approval of the merger pursuant to Section 854 of the California Public Utilities Code. A copy of this application is included herewith as part of Exhibit G, along with supporting testimony Pacific and Enova have submitted to the CPUC.

In addition to the applications identified above, Pacific and Enova are required to file a notification or report form to the Federal Trade Commission ("FTC") and the Antitrust Division of the United States Department of Justice ("DOJ") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"). HSR requires that certain information be filed with the FTC and DOJ, and that certain waiting periods expire before completing the merger transaction.

(j) The facts relied upon by Applicants to show that the proposed disposition, merger, or consolidation of facilities or acquisition of securities will be consistent with the public interest.

The instant application, with accompanying exhibits and prepared direct testimony, provides the facts relied upon by the Applicants to show that the combination will be consistent with the public interest.

(k) A brief statement of franchises held, showing

date of expiration if not perpetual.

SDG&E has separate electric and gas franchises with the two counties and the 25 cities in its service territory. These franchises allow SDG&E to locate facilities for the transmission and distribution of electricity and gas in the streets and other public places. The franchises do not have fixed terms, except for the electric and gas franchises with the Cities of Chula Vista (expiring in 1997), Encinitas (2012), San Diego (2021), and Coronado (2028); and the gas franchises with the City of Escondido (2036) and the County of San Diego (2030).

(l) A form of notice suitable for publication in the Federal Register, which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose.

A form of notice, suitable for publication in the Federal Register is set forth in Appendix A to the transmittal letter submitted herewith.

IX.

REQUIRED EXHIBITS

Pursuant to Section 33.3 of the Commission's Regulations, the following exhibits are attached.

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Applicants believe that these exhibits comply substantially with the requirements of Section 33.3. To the extent that they do not meet any of those requirements, Applicants respectfully request that the requirements be waived.

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Exhibit A
Copies of Corporate Resolutions Authorizing the Transaction

Attached as Exhibit A.

Exhibit B
Statement as to Measure of Control or Ownership

Attached as Exhibit B.

Exhibit C
Balance Sheets

Attached as Exhibit C.

Exhibit D
Contingent Liabilities

Attached as Exhibit D.

Exhibit E
Income Statements

Attached as Exhibit E.

Exhibit F
Retained Earnings

Attached as Exhibit F, Pacific and Enova for the period covered by the income statements referred to in Exhibit E is provided as Exhibit F.

Exhibit G
State and Federal Applications

As of the date of this application, the only applications filed with any other Federal or State regulatory body in connection with the proposed merger are the application filed with the CPUC on October 30, 1996 (copy attached) and the application for the requisite NRC approval filed on December 2, 1996. Also included in Exhibit G is testimony filed in support of the application, and a copy of Section 854 of the California Public Utilities Code.

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The CPUC Application and testimony are not being served on parties to the CPUC proceeding. Applicants will provide copies to those parties that do not have them.
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Exhibit H
Copy of All Contracts with Respect to the Proposed Transaction

The application to the CPUC for approval of the proposed merger, Exhibit G hereto, includes a copy of the Agreement and Plan of Merger and Reorganization By and Among Enova Corporation, Pacific Enterprises, Mineral Energy Company, G Mineral Sub and B Mineral Sub dated October 12, 1996 (the "Combination Agreement").

At the time they submitted the Combination Agreement to the CPUC, Enova and Pacific withheld certain exhibits to the Combination Agreement on the grounds that the exhibits contained confidential and commercially sensitive information. Since the original submission to the CPUC, Enova and Pacific have disclosed to the parties in the CPUC proceeding certain portions of those exhibits. Those portions are provided in Exhibit H hereto. Also included in Exhibit H is a subsequent amendment to the Combination Agreement ("Amendment No. 1 to Agreement and Plan of Merger and Reorganization").

Other exhibits to the Combination Agreement, or portions thereof, remain privileged and confidential. Certain other contracts with respect to the proposed transaction are also privileged and confidential. Enova and SDG&E have submitted these materials to the Commission under separate seal, and request that they be treated as privileged and confidential pursuant to 18 C.F.R. Section 388.112.

Exhibit I
Map

Exhibit I is a map showing the service area and transmission facilities of SDG&E, the only party to the transaction having physical facilities subject to the Commission's jurisdiction under the FPA.

X.

CONCLUSION

Because the merger of Pacific and Enova is clearly consistent with the public interest, and because of the imminent onset of retail competition in California, the Applicants respectfully request that the Commission grant its approval as promptly as possible, and in any event, by December 1997.

Respectfully submitted,

SAN DIEGO GAS & ELECTRIC COMPANY ENSOURCE
ENOVA ENERGY, INC.

By:	By:
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January 27, 1997

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company   )
) Docket No. EC97-___-000
Enova Energy, Inc.   )

PREPARED DIRECT TESTIMONY

OF

WILLIAM H. HIERONYMUS

I. QUALIFICATIONS AND SUMMARY OF CONCLUSIONS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
A. I am William H. Hieronymus. My business address is Putnam, Hayes & Bartlett, 1 MemoriaI Drive, Cambridge, MA, 02138.

Q. WHAT IS YOUR OCCUPATION?
A. I am a Managing Director of Putnam, Hayes & Bartlett, Inc. ("PHB"), an economic and management consulting firm with offices in Cambridge, Washington, DC, Palo Alto, CA, Los Angeles, CA, London, England, Auckland, New Zealand, and Wellington, New Zealand.

I received my Bachelor's degree from the University of Iowa in 1965, my Master's degree in economics in 1967 and a Doctoral degree in economics in 1969 from the University of Michigan, where I was a Woodrow Wilson Fellow and National Science Foundation Fellow. After serving in the U.S. Army, I began my consulting career. In 1973, I joined Charles River Associates Inc. as a specialist in antitrust economics. By the mid-1970s my focus was principally on the economics of energy and network industries. In 1978, I joined PHB, where my consulting practice has focused almost exclusively on network industries, particularly electric utilities.

During the past 23 years, I have completed numerous assignments for electric utilities; state and federal government agencies and regulatory bodies; energy and equipment companies; research organizations and trade associations; independent power producers and investors; international aid and lending agencies; and foreign governments. While I have worked on most economics-related aspects of the utility sector, a major theme has been public policies and their relation to the operation of utility companies.

Since about 1988, the main focus of my consulting has been on electric utility industry restructuring, regulatory innovation and privatization. In that year I began work on the restructuring and privatization of the electric utility industry of the United Kingdom, an assignment on which I worked nearly full time through the completion of that restructuring in 1990. I also led a major study of the reorganization of the New Zealand electricity sector, focusing mainly on competition issues in the generating sector. Following privatization of the U.K. industry, I continued to work in the United Kingdom for electricity clients based there, and I was also involved in restructuring studies concerning the former Soviet Union, Eastern Europe, the European Union and specific European countries.

In 1993, I returned to the United States, where I have worked on restructuring, regulatory reform and, more generally, on the increasingly competitive future of the U.S. electricity industry. In this context, I have sponsored testimony before the Federal Energy Regulatory Commission (FERC or "the Commission") and state utilities commissions in several merger and market rate cases. In particular, I have sponsored testimony before the FERC and the California Public Utilities Commission (CPUC) on the restructuring process in California and the market power issues that it raises.

More generally, I have testified before state and federal regulatory bodies, legislative bodies and federal courts on

numerous occasions, principally on electric utility matters but also on antitrust and civil litigation. My resume is attached as Exhibit No. ___ (WHH-1).

Q. WHAT IS YOUR ASSIGNMENT IN THIS PROCEEDING?
A. I have been asked by San Diego Gas & Electric Company (SDG&E) and Enova Energy, Inc. ("Enova Energy"; collectively, "Applicants") to evaluate the impact of the proposed merger of Pacific Enterprises (PE) and Enova Corporation ("Enova") on the competitiveness of electricity markets. This testimony contains the findings of that analysis.

Q. WHAT MARKETS DID YOU CONSIDER?
A. I examined the merger's potential impact on horizontal market power in markets for wholesale electricity generation.

- ---

In its Order No. 592, the Commission has stated that its merger assessments will address retail competition when it is requested to do so by a state commission that lacks authority under state law to conduct such a review. Docket No. RM-96-6-000, Order No. 592 ("Merger Policy Statement"), slip. op. at 51. The CPUC has jurisdiction over any retail markets affected by the proposed merger, and I have filed testimony before the CPUC that addresses those issues. Therefore, I have not examined retail electricity markets in this proceeding, other than with respect to interfuel competition.

- ---

I have examined the potential for horizontal or vertical market power associated with electricity transmission. I have also considered whether the combination of PE's gas distribution and Enova's generation businesses could give rise to vertical market power. Finally, I have also considered whether retail interfuel competition exists in the limited area that is common to the franchised electric service territory of SDG&E and the franchised gas service territory of Southern California Gas Company ("SoCalGas," the gas utility subsidiary of PE).

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.
A. This merger will not reduce competition or create market power in any of the markets I have examined. Fundamentally, the merger will combine the holding companies of two utilities. One is a gas utility whose electricity market participation is limited to ownership of a small number of affiliated qualifying facilities (QFs) that are in the process of being at least partially divested. The other is an adjacent gas and electric utility.

The two companies do not compete to any significant extent, and the merger will have no adverse horizontal effects. Any potential vertical effects will be prevented by existing CPUC rate regulation and standard regulatory restrictions on affiliate dealings.

More specifically, the merger will not create horizontal market power in electric generation. It involves a small and severely capacity-short electric utility, which currently has very little ability to compete in wholesale electricity markets and will be a small player in the planned WEPEX market, and an alternative energy company (PE's subsidiary, Pacific Energy) that has very little capacity. All of the PE capacity resources are sold under long-term contracts and PE will have to divest substantially more than half of those resources before the merger is consummated to comply with PURPA restrictions on qualifying facility ownership.

Because the merging companies will have so little capacity available to participate in the wholesale electricity market, it necessarily follows that the merger will have, at most, a very small effect on the merged entities' market share and in the concentration level (as reflected by the Herfindahl-Hirschman Index, or HHI) of any geographic or product market. Even using the narrowest possible geographic market definition, and greatly underestimating the amount of capacity available to compete with the companies' resources, the change in the HHI associated with this merger is less than 10 points. According to the Department of Justice/Federal Trade Commission Merger Guidelines ("Merger Guidelines"), mergers that change the HHI by less than 50 points are presumed not to reduce market competitiveness, even in highly concentrated markets. This merger clearly meets that criterion.

Because these facts are so clear, I have taken a very conservative approach to implementing the market power analysis described in Commission Order No. 592 ("Merger Policy Statement"). As is discussed below, I have limited my analysis

to a highly conservative analysis of the structure of potential geographic markets using the guidance set forth in Appendix A to that Statement. From this analysis, I believe that it clearly and logically follows that the merger would fall well within the allowable limits of the screening criteria for any other markets that the Appendix A methodology would suggest to be appropriate, as such markets would almost certainly be more liberally defined than those I have examined here. As the Applicants have stated in the application in this proceeding, if the Commission disagrees with the conclusion that the full Appendix A analysis is unnecessary, and determines that its review of the proposed merger requires the complete screening analysis, then PE is willing to divest the remaining QF capacity in the Western Systems Coordinating Council (WSCC) that it could otherwise retain under PURPA. If this complete divestiture occurs, PE will no longer own any electric generation facilities in any relevant geographic area and will have no electricity to sell. As the Commission states on Page 8 of the Merger Policy Statement, when merging firms lack facilities and do not sell relevant products in common geographic areas, there is no need for a screening analysis since the merger cannot have an adverse competitive impact.

Given the de minimis participation of PE in electricity markets, the only potential competitive issue affecting electricity arises from the merger of SDG&E's electricity operations into a company also owning PE's gas operations. This merger will not have meaningful effects on horizontal market power stemming from the potential for competition between gas and electricity. Gas clearly is not directly substitutable for electricity in wholesale electricity markets. Any possible substitutability is derived from substitution at the retail level.

While gas and electricity are substitutes in some uses, the weakness of substitution means that they cannot be considered to be in the same market under the Guidelines criteria for product market definition. Such substitution as is possible requires replacement of expensive durable appliances and other equipment.

Further, the fact that there will be direct and vigorous competition among electricity suppliers in California means that the weak barrier to the exercise of market power that gas competition represents is redundant and irrelevant.

I also find that this merger will neither create nor enhance horizontal or vertical market power related to electricity transmission. PE neither owns nor controls transmission facilities, and, under the California restructuring plan, operational control over SDG&E's transmission system will be transferred to an Independent System Operator (ISO). The merger therefore will not affect the breadth of transmission alternatives available to transmission service purchasers. Further, SDG&E has filed an open-access tariff in compliance with the Commission's Order No. 888. The existence of the ISO and SDG&E's open-access tariff ensure that no vertical market power exists, or could be augmented, by the merger. In this context it is also notable that PE will own only two MW of generation in the areas served by SDG&E transmission facilities.

Hence, the merger cannot meaningfully increase any incentive that SDG&E might have, were it possible to do so, to manipulate its transmission to favor newly-affiliated generation.

Similarly, this merger raises no significant concerns about the potential exercise of vertical market power in electricity generation through the combination of PE's gas operations with SDG&E's electricity operations.

There is no competition between SDG&E and SoCalGas to provide gas transportation services to generators, and indeed they cannot do so under California franchise regulation. SDG&E is a transportation customer of SoCalGas. However, SoCalGas's transportation operations are subject to open-access regulation by the CPUC, and the price and other terms of its tariffs are CPUC-regulated, which provides protection against SoCalGas favoring affiliated generation. SoCalGas has undertaken to follow Commission Order No. 497 (as modified by subsequent Commission orders), so that if SDG&E receives any transportation discounts from SoCalGas, SoCalGas will contemporaneously post notice of those discounts on the SoCalGas electronic bulletin board and make a comparable discount available to all similarly situated non-affiliated shippers.

Further, SoCalGas will not provide non-public market information to any affiliated marketer or to SDG&E's electricity marketing personnel.

Finally, while the Commission's recent Merger Policy Statement focuses solely on wholesale competition, I have also

considered the merger's possible impact on retail competition in the small area where the franchised gas and electric utility service territories of SDG&E and SoCalGas overlap. The overlap area (south Orange County) affects only seven percent of SDG&E's customers and less than two percent of SoCalGas's. The other 93 percent of SDG&E electric customers are already served by SDG&E's gas operations. Virtually all gas customers, and all electric customers in this area are served under CPUC regulated tariffs and electricity will be subject to electricity-on-electricity competition. Hence, the merger will not meaningfully affect competitive restraints on electricity pricing to the small proportion of customers that will now be served by an affiliated gas company.

Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?
A. Section II briefly describes the merging parties' business operations. In Section III, I review the critical issues of merger analysis raised by the Merger Policy Statement. In Section IV, I describe the very minor competitive presence of the merging parties and show that, even in the most narrowly-defined market, the merger will not create or enhance market power. Section V summarizes my conclusions.

II. DESCRIPTION OF THE MERGING PARTIES

Q. PLEASE DESCRIBE PACIFIC ENTERPRISES.
A. PE is an exempt public utility holding company whose principal operating company is SoCalGas. SoCalGas, which is not engaged in the generation, sales or transmission of electricity, provides gas service to 4.7 million customers in central and southern California.

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SoCalGas owns seven fuel cell demonstration projects in southern California, with a total capacity of 1.6 megawatts. The electricity generated by each of these cells is used only by the facility at which the cell is located.

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Exhibit No. ___ (WHH-2) depicts the SoCalGas service area. PE has a number of other subsidiaries, including two companies (Pacific Interstate Transmission Company and Pacific Interstate Offshore Company) that operate pipelines jurisdictional to FERC under the Natural Gas Act and Pacific Offshore Pipeline Company, a non-jurisdictional gathering facility.

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See Pacific Offshore Pipeline Co., 64 FERC Para. 61,167 (1993).

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Two PE subsidiaries have some involvement in electricity markets. Pacific Energy has direct or (in some cases) indirect ownership interests in QFs that have a total of 182 megawatts (MW) of capacity. Of that total capacity, 166 MW is located in the western United States, including 71 MW in northern California (of which PE owns 58.25 MW) and 78 MW in southern California (of which PE owns 54 MW). Exhibit No. ___ (WHH-3) lists these facilities, their total capacities, PE's share and their current contractual commitments. By the time the merger is consummated, in accordance with PURPA requirements Pacific Energy will have reduced its share in each of these plants to no more than 50 percent. Because some of these facilities already are partly owned by other electric utilities, PE will, in some cases, have to sell its entire ownership share. Specifically, it will be able to retain only 37.75 MW of the entitlements that it has in California, 15 MW of which are in southern California and 22.75 MW in northern California. It will retain only 2.5 MW of capacity elsewhere in the WSCC.

Another PE subsidiary, Ensource, has been authorized by the FERC to sell electricity at market-based rates.

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See letter of Mr. Donald J. Gelinas, Director, Division of Applications, dated 10 July 1996 in FERC Docket No. ER96-1919-000.

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Ensource currently has no wholesale purchase or sales contracts and does not expect to undertake any such contracts in the future. Additionally, Ensource has filed a notice of cancellation of its FERC rate schedule in Docket No. ER97-703-000.

Q. PLEASE DESCRIBE ENOVA CORPORATION.
A. Enova is an exempt public utility holding company with

several subsidiaries. Its main subsidiary is SDG&E, a franchised utility serving 1.2 million electric customers in San Diego County and a small part of southern Orange County and 700,000 gas customers in San Diego County. Exhibit No. ___ (WHH-2) outlines SDG&E's gas and electric service territories.

As an electric utility, SDG&E is significantly capacity-short. It has 2,403 MW of owned capacity and 1996 firm purchases (including purchases from QFs) of 1,434 MW; SDG&E makes no firm capacity sales.

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SDG&E occasionally makes spot sales of very short-term capacity.

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Its total firm resources in 1996 thus totaled 3,837 MW, against a forecast 1996 peak load and reserves of 3,919 MW.

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SDG&E's actual 1996 peak, excluding reserves, was 3,305 MW.

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SDG&E has for more than a decade followed a strategy of meeting its load through capacity purchases rather than generation expansions. It has therefore been capacity-short for several years and expects to remain so at least through the end of the decade. Exhibit No. ___ (WHH-4) shows SDG&E's loads and resources for 1996 through 2000. Not surprisingly, given its capacity/load balance, SDG&E has significant net purchases of energy; in 1995, for example, its net purchases were 10.1 million megawatt-hours (MWh), or 65 percent of its retail sales of 15.5 million MWh.

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SDG&E FERC Form 1, 1995, page 401. Its purchases were 10.5 million MWh and its non-requirements sales for resale were 0.4 million.

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Under the California electric restructuring process ("WEPEX"), SDG&E, along with the other investor-owned utilities in California and other parties, will participate in the California power exchange (PX) and the California Independent System Operator (ISO), and has submitted extensive filings to both FERC and the CPUC concerning the creation and functioning of those institutions. As a generator, SDG&E will be a relatively small participant in the power exchange; it is about one-fifth the size of both Southern California Edison (SCE) and Pacific Gas and Electric (PG&E) and one-third the size of the Los Angeles Department of Water and Power (LADWP). Even after the divestiture that SCE and PG&E have proposed in response to the CPUC's orders, each of those utilities will own more generating capacity than SDG&E.

Other utilities that are wholly or primarily located outside California but are directly interconnected with California utilities, such as the Bonneville Power Administration and PacifiCorp, also are much larger than SDG&E. Under the Commission's restructuring orders, SDG&E is committed to bid in all of its generation to the exchange for the first five years, and to serve its retail load through purchases from the exchange. In testimony before the Commission and the CPUC, SDG&E has reported that it will have the ability, in about 750 hours a year, to exert market power within the San Diego Basin, due to transmission constraints on imports into the Basin. As I will describe a greater length below, SDG&E has submitted proposals that fully mitigate that market power.

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See FERC Docket No. ER96-1663-000, Supplement of Southern California Edison Company and San Diego Gas & Electric Company to Application for Authority to Sell Electric Energy at Market-Based Rates Using a Power Exchange, 29 May 1996, at III-23 to III-27.

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Enova has another subsidiary engaged in sales of electricity. Enova Energy is a power marketer with recent FERC authorization to sell at market-based rates.

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Enova Energy, Inc., 76 FERC Para. 61,242, (9 September 1996).

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Enova Energy has made no sales of electricity at wholesale to date, and has no long-term purchase contracts.

III. MERGER ANALYSIS UNDER THE MERGER POLICY STATEMENT AND ITS APPLICATION TO THIS PROCEEDING

Q. WHAT ARE THE GENERAL MARKET POWER ISSUES RAISED BY MERGER PROPOSALS?

A. Market power analysis of a merger proposal examines whether the merger would cause a material increase in the merging firms' market power or a significant reduction in the competitiveness of relevant markets. Market power is defined as the ability of a firm or group of firms to profitably sustain a significant increase in the price of their products above a competitive level.

In merger market power analyses, the critical issue is the change in market competitiveness due to the merger, rather than whether relevant markets are fully competitive (i.e., were fully competitive prior to the merger). While the pre-merger competitiveness of markets may, as under the DOJ/FTC Merger Guidelines adopted by the Commission in the Merger Policy Statement,

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Merger Policy Statement, slip op. at 22.

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affect the amount of such change that is acceptable, the focus still is on the change in market competitiveness caused by the merger.

This focus on the effect of the merger means that the merger analysis examines those business areas where the merging firms are competitors. As the Commission has noted, markets in which the merging firms do not compete will, in most instances, be unaffected by the merger. That is, no horizontal market power will be created by the merger of two companies that do not compete.

It is possible, however, that mergers of non-competing companies could create vertical market power. This may occur in the case of a combination of a provider of an input with a user of that input. Vertical market power relates to the effect of the merger on the merging firms' ability and incentives to use their market position in a related business to affect competition. In the case of a merger of electric utilities, for example, vertical market power could result if the merger created an opportunity and incentive to operate transmission in a manner that created market power for the merged companies that did not exist previously.

Q. WHAT ARE THE MAIN ELEMENTS IN DEVELOPING AN ANALYSIS OF MARKET POWER?

A. Broadly, understanding the competitive impact of a merger requires defining the relevant market (or markets) in which the merging firms participate. Participants in a relevant market include all suppliers (and in some instances, potential suppliers) that can compete in the supply of the products produced by the merging parties and whose ability to do so restrains the ability of the merging parties to increase prices. Thus, determining the scope of a market is fundamentally an analysis of the potential for competitors to respond to an attempted price increase. Typically, markets are defined in two dimensions: geography and product attributes. The relevant market is thus composed of companies that can supply a given product (or its close substitute) to customers in a given geographic area.

Q. WHAT METHOD DOES THE COMMISSION, IN ITS MERGER POLICY STATEMENT, SUGGEST USING FOR THE ANALYSIS OF PROPOSED MERGERS INVOLVING ELECTRIC UTILITIES?

A. The Commission has adopted the Guidelines approach to evaluating mergers. In adapting the Guidelines to the particular features of electricity, it has outlined a "screening analysis" that it expects will provide a conservative measure of competition in relevant product and geographic markets. The screening analysis method seeks to identify supply resources that are economically viable alternatives for the products sold by merger applicants and are physically capable of being delivered to the purchasers. The screening analysis will consider the supply alternatives available to electric utilities that are directly interconnected to either of the merging parties, as well as those electric utilities that historically have been trading partners with either or both merger applicants.

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Merger Policy Statement, slip op. at Appendix A, p. 5.

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In identifying these alternative capacity resources, the Commission has described a number of factors that should be considered, including the prevalence of transmission constraints, the level of posted transmission tariffs, and the costs associated with generation from that capacity.

After the scope of these markets has been identified, i.e.,

the amount of capacity that can be expected to compete in making sales to each purchasing utility, and the ownership of that capacity, the merger's effect on their competitiveness is assessed. Mergers that meet the threshold criteria of the Guidelines, in terms of the change in HHI, will likely not be subject to further review of market power issues. Mergers that do not meet the Guidelines criteria will likely be set for hearing or otherwise be subject to additional examination. The Commission has suggested that the product markets it has previously found relevant long-term capacity, short-term capacity, and non-firm energy will continue to be its focus, although there may be cases in which those products should be considered under varying load or supply conditions.

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Merger Policy Statement, slip op. at Appendix A, p. 4.

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I should note that the screening analysis addresses issues of horizontal market power, but does not prescribe any particular methodology for analyzing vertical market power.

IV. COMPETITION BETWEEN ENOVA AND PE

Q. IN ITS MERGER POLICY STATEMENT, HAS THE COMMISSION REQUIRED THAT THE SCREENING ANALYSIS BE PERFORMED IN SUPPORT OF EVERY MERGER INVOLVING AN ELECTRIC UTILITY?

A. No, it has not. In both the body of the Merger Policy Statement, as well as in its Appendix A, which details the competitive analysis screen, the Commission has stated that proposed mergers of companies that do not compete in common markets need not be evaluated through the screening analysis.

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Merger Policy Statement, slip op. at 8 and at Appendix A, p. 22.

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Q. ARE THE PARTIES PROPOSING A MERGER FOR WHICH THE SCREENING ANALYSIS IS NECESSARY?

A. No. PE's capacity resources are extremely small, providing it with virtually no ability to compete in electricity markets. Combining the PE resources with the SDG&E capacity which is relatively minor itself will produce a tiny change in the HHI (less than 10 points), even using the narrowest possible definition of geographic markets and severely limiting the capacity that is considered to compete with the companies' capacity.

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In my analysis, I focus on non-firm energy markets. The Commission has previously found that long-term capacity markets are presumptively competitive; in Docket No. ER96-1663-000, SDG&E has noted that it does not control generation sites. See FERC Docket No. ER96-1663-000, Supplement of Southern California Edison Company and San Diego Gas & Electric Company to Application for Authority to Sell Electric Energy at Market-Based Rates Using a Power Exchange, 29 May 1996, at III-28. Analysis of short-term capacity markets is unnecessary because SDG&E is, as discussed above, severely capacity-short and all of PE's capacity is committed via long-term contract.

Consequently, the companies have no uncommitted resources with which to compete in capacity markets.

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Q. PLEASE DESCRIBE HOW YOU REACHED THE CONCLUSION THAT THE MERGER WILL NOT CREATE A MATERIAL CHANGE IN HHI LEVELS.

A. As I have said, PE's only generation resources are the Pacific Energy QFs located in California, Washington, Maine and Maryland. Clearly, only the California and Washington facilities (with a total capacity of 166 MW) could conceivably be relevant to the analysis of this merger. In order to comply with PURPA standards that require utilities and their affiliates to own no more than a 50 percent share of any QF, PE will, by the time of the merger, divest all but 40.25 MW of its interest in the WSCC facilities. This is all of the capacity that PE brings to the merger under the broadest possible definition of a relevant geographic market.

Similarly, SDG&E is a very small participant in wholesale electricity markets. As shown in Exhibit No. ___ (WHH-4), for 1997 (at the time of the summer peak) the company projects 3,939 MW of total resources: 2,403 of owned capacity, 236 MW of purchases from cogeneration facilities and other non-utility generators, and firm purchases of 1,300 MW.

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These figures are based on SDG&E's April 1996 submission to the California Energy Commission ("CEC"). I am advised that as part of its standard procurement process, SDG&E is completing short-term contracts that will allow it to meet its 1997 peak.

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Thus, this merger will add at most 40.25 MW, about 1 percent, to the capacity currently available to SDG&E. This capacity is still more trivial relative to the capacity in the region as a whole; California alone contains over 50,000 MW of generating capacity. Even after the implementation of their announced divestitures, SCE and PG&E will both be larger than the combined company, as will LADWP; moreover, if SCE accepts, as it has announced it might, just two purchasers for its divested generation, each of those two purchasers would also be larger than the combined Pacific/Enova entity. In short, the new company will be a small participant in a region characterized by larger participants.

Q. HAVE YOU PERFORMED ANY ANALYSIS THAT MEASURES HOW THE MERGER WILL AFFECT CONCENTRATION?

A. Yes, I have. In Appendix A to the Merger Policy Statement, the Commission has described an approach to analyzing electricity related markets that focuses on the factors determining the scope of geographic and product markets. I have considered these factors, and made extremely conservative assumptions for each. The results of this analysis show that the proposed merger will not create or enhance market power in any geographic market under any load conditions.

Specifically, I have analyzed competition in a geographic market consisting only of southern California, under the assumption that only generation located in southern California can compete in that market. Southern California is the narrowest destination market that could be addressed under FERC policy guidance. The assumption that no outside generation can compete in that market is very conservative. As a logical matter, it also is the case that if the merger does not increase concentration in southern California, it cannot increase it in any other destination market.

As the Commission requests in Appendix A, I have examined the southern California market under different load conditions. SDG&E's generation consists only of must-take capacity (nuclear and cogeneration resources), fossil steam units, and peaking capacity.

PE's only resources are QFs. Therefore, I have considered three potential load conditions: minimum load conditions, when only must-take and hydro resources are in the market; moderate load conditions, when fossil steam units are the marginal units, and peak conditions, when peaking capacity sets the market price. My analysis makes extremely conservative assumptions on the amount of competing capacity that would be in the market in each setting.

Q. WHY IS SOUTHERN CALIFORNIA THE MOST CONSERVATIVE POSSIBLE DESTINATION MARKET?

A. Southern California is the smallest possible relevant market because of the nature of transmission pricing under the California restructuring and the absence of transmission constraints within southern California.

Under the restructuring proposals embodied in California Assembly Bill 1890, signed into law last year, there is no tariff pancaking within southern California indeed, there is none using the transmission owned by California utilities. Hence, transmission pricing cannot define a smaller market (i.e., no individual utility in California can properly be considered a destination market separate from other California utilities).

In addition, I am advised by SDG&E that the company has identified no constraints that limit the flow of power within southern California.

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SDG&E has previously reported to the Commission that the simultaneous import limit (SIL) may, at times, constrain transfers into the San Diego Basin, and has proposed mitigation measures to address that possibility. It is important to recognize that this "constraint" is a construct of the market power analysis. That is, the analysis for the WEPEX filing noted that the SIL could bind if SDG&E were to withdraw capacity in order to drive up prices. This does not mean that, in practice, there is a transmission constraint within southern California. Indeed, given the SDG&E undertaking to keep its units available and bid them into the PX at marginal cost, it is unlikely that the SIL will bind. In any event, there are no wholesale

electricity customers within the San Diego Basin that could be affected by this posited constraint.

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Hence, all generation in southern California competes on an essentially equal basis to serve all southern California utilities.

Q. WHY IS IT CONSERVATIVE TO ASSUME THAT ONLY SOUTHERN CALIFORNIA GENERATION COMPETES IN SOUTHERN CALIFORNIA DESTINATION MARKETS?

A. Southern California is heavily interconnected to northern California, to the Pacific Northwest, and to the Desert Southwest. Historically, it imports large amounts of energy, even under transmission pricing provisions that are less favorable to imports than those that will apply in the future. The links to the Desert Southwest are historically unconstrained. While flows from the north are sometimes constrained, even during those periods there are significant imports.

Further, much of the capacity that I have conservatively excluded from the market such as Southwest nuclear and minemouth coal units and northern nuclear and hydro units would be included under the Commission's delivered price test.

Q. DO THE MERGING COMPANIES SERVE DESTINATION MARKETS OUTSIDE OF SOUTHERN CALIFORNIA?

A. Yes. SDG&E is directly connected to utilities in the Desert Southwest, Northern California and the Pacific Northwest. Its direct connections are shown on Exhibit No. ___ (WHH-5).

PE serves no destination markets as FERC has defined them. All of its output is committed under long term contracts with existing customers, so it cannot compete in any market.

Q. HOW DO YOU KNOW THAT THE EFFECT OF THE MERGER ON CONCENTRATION IN SOUTHERN CALIFORNIA WILL BE GREATER THAN THE EFFECT IN ANY OTHER DESTINATION MARKET?

A. Almost all of the merged company's capacity will be in southern California. Because the effect of a merger on HHIs depends solely on the shares of the merging parties (the change in HHI is equal to two times the product of the companies' pre-merger shares), the change in HHI will be greatest in the markets where the shares are largest.

As an example to show why southern California is, from the merging company's perspective, the least favorable market definition, consider an alternative destination utility, for example, Arizona Public Service (APS). All of the southern California capacity that SDG&E competes with in the southern California market I am analyzing would also compete to the same degree in Arizona. This is true even if there are transmission limitations, since a limitation that requires that other southern California capacity be "squeezed down" would have the same pro rata effect on the merged company's capacity. However, there would be other capacity included in the APS market. Hence, the merged companies' market shares must be smaller than in southern California and it follows that the HHI change caused by the merger also would be smaller. This same logic applies also to all other destination markets outside southern California.

Q. HAVE YOU ALSO ADOPTED A CONSERVATIVE DEFINITION OF COMPETING CAPACITY UNDER THE COMMISSION'S DELIVERED PRICE TEST?

A. Yes. In addition to assuming that no capacity from outside southern California can be counted, I also have very conservatively restricted the definition of competing capacity within southern California under different load conditions.

It is at least theoretically possible that during very low load hours, the only generation required to serve load will be must-take resources and very low-cost generation, such as hydro generation. Because SDG&E's and PE's generation capacity of this sort is limited and their ability to profit from increased market prices for that capacity is trivial at most, it is highly unlikely that the merger could create market power under these load conditions.

SDG&E has no hydro capacity. Its must-take capacity consists of its share of the San Onofre Nuclear Generating Station (SONGS), which it does not operate (and the revenues of which are based on a performance incentive mechanism approved by the CPUC and thus independent of market prices), and the QFs in its territory, in which it has no ownership interest. PE will have a total of 15 MW of QF capacity in southern California (2 MW of which lie in the SDG&E territory), a tiny amount relative to the amount of must-take capacity in the region as a whole.

Consistent with PURPA, PE will not hold a majority interest in any of its QFs at the time of the merger. During low-load periods, PE's 15 MW will be the combined company's only capacity that could be used to affect market prices or that could benefit from artificial increases in market prices (under the California restructuring legislation, QFs will receive market-based prices). It would surely be impossible for this amount of capacity to affect market outcomes in the southern California market. Because this conclusion is so clear, I have not separately examined the merger-induced HHI change for periods of low load; as I discuss below, however, my examination of moderate load periods provides ample confirmation.

To examine market conditions during periods of somewhat higher load, when fossil steam units will set the market price, I have made the most restrictive assumption possible: that the only fossil steam units in the market will be those owned by SDG&E (i.e., SDG&E's Encina and South Bay gas units, but not its peaking combustion turbines). Must-take capacity, including nuclear and QF

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I have reduced the cogeneration figures for each of the utilities by the amount of PE capacity in their service territories.

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capacity in southern California owned by others, along with hydro capacity, is also assumed to be "in the market" during these hours. Thus, I have included all of the capacity that would be included under a delivered price test when the price is such that all of SDG&E's capacity, but no competing steam capacity, is in the market according to the delivered price test. This set of conditions may never exist in the real world, since they assume that SDG&E's steam capacity is lower in cost (by at least 5 percent) than any other utility-owned fossil capacity in southern California. However, this stylized market conservatively represents any possible similar real world market, in that inclusion of any additional steam or combined cycle capacity would simply reduce the merging companies' shares and hence the change in HHIs. I excluded peaking units from this analysis because in load conditions in which no non-SDG&E steam units were running, the peaking units of SDG&E and others certainly would not be running.

Even using this extremely conservative definition of competing capacity, the HHI change for the southern California is a mere eight points (Exhibit No. ___ (WHH-6)). This demonstrates that the merger essentially has no effect on market concentration, even when the market is severely restricted.

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This analysis reflects PE's ownership share of its QFs after the PURPA-mandated divestiture. This is consistent with Commission treatment of capacity in jointly owned plants. Even if PE were able to control the entire capacity of those plants, however, my conclusions would not change. After the divestiture, PE will own shares in plants in southern California with a total capacity of 30 MW. If one assumed that PE controlled the availability of the entire 30 MW, PE's share when SDG&E's steam units were on the margin would be 0.3 percent and the HHI change would be 16 points.

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This analysis also demonstrates that the merger can have no effect on competition during low-load periods. It includes almost all of SDG&E's capacity, but only the must-take and hydro resources of other companies. If the market in low-load hours were restricted to must-take and hydro resources, the must-take and hydro capacity of other companies would remain in the market, but the many hundred megawatts of SDG&E gas capacity would be eliminated. The merging companies would have a correspondingly smaller presence.

This analysis includes all of the merged company's capacity except for its peakers. That is, there is no capacity owned by the merging parties except for the peakers that is not included in it. In order to assure that there is no other set of circumstances in which the change in HHIs would be higher than those calculated above, I have also considered a second market condition in which the load level, and thus the price at the destination market, is higher high enough that all of the merging parties' capacity, including SDG&E's peakers, are included in the computation of HHIs.

Under this high price regime, essentially all capacity in southern California will meet the delivered price test. Using this product market definition, the HHI change is just two points in the southern California market (Exhibit No. ___ (WHH-7)).

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The analysis includes the effect of the announced SCE divestiture. While this affects the measured concentration level of the market, it does not affect the HHI change induced by the proposed merger.

The SCE divestiture does not involve its must-take or hydro capacity, and therefore does not affect the analysis reported in Exhibit No. ___ (WHH-6).

If PE controlled all capacity in the QFs in which it will have a share (30 MW), the PE share would be 0.1 percent and the HHI change would be three points.

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To determine whether PE's QF capacity in northern California (which will total 22.75 MW at the time of the merger) could affect the market concentration analysis, I have examined a geographic market that includes capacity in northern as well as southern California.

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I have incorporated PG&E's announced divestiture in the analysis. PG&E, like SCE, has not announced any plans to divest must-take or hydro capacity. Including the divestiture affects only the overall market concentration level and does not affect the HHI change resulting from the merger.

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The HHI changes in this market are five points (when SDG&E gas steam units are on the margin; Exhibit No. ___ (WHH-8)) and one point (when prices are high enough that peaking units are running; Exhibit No. ___ (WHH-9)).

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The northern California QFs in which PE will have some share have a total capacity of 45.5 MW. If the HHI calculations were to consider all of that capacity to be under PE's control, the PE capacity would be 75.5 MW (45.5 MW in northern California and 30 MW in southern California). If SDG&E gas steam units were on the margin, the PE share would be 0.4 percent and the HHI change would be 10 points. If peakers were included in the market, the PE share would be 0.2 percent and the HHI change would be two points.

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Q. WOULD YOUR CONCLUSIONS CHANGE IF THE ANALYSIS INCLUDED ENOVA ENERGY'S SHARE OF THE MERCHANT PLANT THAT IS CURRENTLY BEING PLANNED FOR SOUTHERN NEVADA?

A. No, they would not. I am informed that Enova Energy is in the process of negotiating the terms of its involvement in this project, and that while it currently plans to hold a 37.5 percent equity interest in the plant (157.5 MW of the plant's total capacity of 420 MW), no final commitments have been made. Including this project's capacity would not affect the conclusions I have put forward because, during those periods when its energy would be able to compete in the California spot market, energy from the abundant generation resources in the Southern Nevada area (and likely the Desert Southwest) would also be able to compete in California. The merger would have no effect on the competitiveness of such a large market.

Q. BASED ON YOUR ANALYSIS, DO YOU FIND ANY REASON TO BELIEVE THAT THE DETAILED SCREENING ANALYSIS WOULD REVEAL THAT THE MERGING PARTIES HAVE MARKET POWER JOINTLY, OR THAT THE PROPOSED MERGER WILL CREATE OR ENHANCE MARKET POWER?

A. No. I have emphasized that my analysis excludes a great deal of capacity that would be included in any delivered price analysis. It also uses the most conservative geographic market definitions. The results show unambiguously that the proposed merger meets the criteria set forth in the Merger Guidelines. The time-consuming and costly examination contemplated in the screening analysis would necessarily produce results that show the merger to have even smaller effects than those I have calculated above.

I am advised that, should the Commission nonetheless find that the combination of PE's minuscule capacity resources with the SDG&E resources requires the screening analysis, PE has committed to selling its entire share of the QF facilities in order to facilitate the timely review of the merger.

Q. IN PREVIOUS SUBMISSIONS TO THIS COMMISSION, SDG&E HAS ACKNOWLEDGED THAT IT MAY, AT TIMES, HAVE MARKET POWER WITHIN THE SAN DIEGO BASIN. PLEASE DESCRIBE THAT MARKET POWER AND ITS RELEVANCE TO THIS PROCEEDING.

A. As referenced earlier in my testimony, SDG&E has previously reported to this Commission and the CPUC, it is possible that the simultaneous import limit (SIL) on transfers into the San Diego

Basin, which will bind in about 750 hours a year, could confer retail market power on SDG&E under the CPUC plans for open access.

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This constraint does not affect wholesale competition because, as I have noted, no utilities other than SDG&E lie within the Basin, and SDG&E has no transmission-dependent utilities (TDUs) either within or outside the Basin.

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The proposed merger, however, will have no effect on the market power conferred by the SIL. There will be no change in the pattern of ownership of the physical transmission and generation system, and the merger will not change SDG&E's plans to upgrade its transmission into the Basin. Consequently, the merger will not change the impact of the SIL constraint. In any event, SDG&E has proposed mitigation measures that both eliminate its ability to manipulate market prices through its bidding practices for its units and remove any financial benefits it would receive from an artificial increase in market prices. Specifically, SDG&E has proposed to bid its non-nuclear generation into the PX at marginal cost. It also proposes to offset any market revenues it collects in excess of marginal cost against regulated recovery of fixed operations and maintenance costs.

Q. DO THE ACTIVITIES OF THE MERGING PARTIES' MARKETING AFFILIATES, ENOVA ENERGY AND ENSOURCE, CREATE POTENTIAL MARKET POWER ISSUES?

A. No. Ensource's and Enova Energy's activities have no effect on competition in electricity products. As a factual matter, Ensource has made no power marketing transactions and has filed to cancel its tariffs. It has therefore never been a competitor in electricity products, nor will it be. Similarly, Enova Energy has made no wholesale sales of electricity to date, and has no long-term purchase contracts. I have already discussed why Enova Energy's possible participation in a Nevada merchant plant will not affect the analysis of this merger.

Q. WILL THE COMPETITIVENESS OF TRANSMISSION SERVICES BE AFFECTED BY THE CONSUMMATION OF THE PROPOSED MERGER?

A. No. In this case, competition in transmission services will not be affected by the proposed merger. First, while Enova (through SDG&E) owns electric transmission facilities, PE owns none (directly or indirectly through subsidiaries). Therefore, the merger does not combine ownership of transmission, and therefore can have no effect on the availability of transmission alternatives for transmission purchasers. Second, Commission Orders No. 888 and 889 ensure that transmission owners such as SDG&E will not be able to foreclose access to any transmission facilities. Third, as part of the California restructuring, SDG&E will turn over operational control of its transmission facilities and Pacific Intertie entitlements to the California ISO.

Q. YOUR DISCUSSION ABOVE HAS FOCUSED ON ELECTRICITY MARKETS. THE PROPOSED MERGER INVOLVES A GAS UTILITY AND AN ADJACENT GAS ELECTRIC UTILITY. WILL COMPETITION BETWEEN GAS AND ELECTRICITY BE ADVERSELY AFFECTED BY THE MERGER?

A No, it will not. Horizontal competition can occur between two different products only if the products are effective economic substitutes for each other. This is not currently the case for gas and electricity, nor is it likely to be the case in the future. First, it is important to recognize that at the wholesale level, there is no substitutability whatsoever between natural gas and electricity. An electric utility seeking to purchase electricity to re-sell to retail customers cannot decide to buy natural gas instead. Thus, any possible substitutability between natural gas and electricity will occur only at the retail level.

Even at the end-use level, relatively little substitutability can occur between gas and electricity. Any substitution possibilities that exist tend to take considerable time to occur due to the need to change durable capital equipment to substitute between them.

Moreover, at current prices, and at future prices as currently foreseen, most end uses clearly are better served by one form of energy or the other. These factors all contribute to the conclusion that gas and electricity should not be considered as substitutes for each other.

For example, the California Energy Commission ("CEC"), in its modeling of commercial electricity demand, has found that

demand for electricity is unaffected by gas prices, suggesting that gas and electricity are not substitutes for each other for the entire commercial sector.

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California Energy Commission, "Staff Report: California Energy Demand: 1995-2015, Volume II, Electricity Demand Forecasting Methods ("CEC 1995 Forecasting Methodology"), at 3-65.

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The CEC further assumes that, even for those residential end uses where substitution is possible, it is "minor,"

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CEC 1995 Forecasting Methodology, at 2-10.

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and finds that "electrical energy use [in the process and extraction industries] does not have significant inter-fuel competition."

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CEC 1995 Forecasting Methodology, at 6-3.

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In addition, open access competition for serving retail electricity customers in California will mean that there will be such strong intra-fuel competition that any incentives consumers might have to substitute between fuels will be far outweighed by the intensity of competition among the providers of each fuel. Clearly, electricity provided by any of the many retailers expected to enter retail markets is closely substitutable for electricity provided by any single electricity retailer, far more closely than is gas.

Finally, while I am aware that the topic of electric/gas convergence is frequently discussed in today's energy industry, I do not believe that the concept of convergence suggests that gas and electricity are meaningful substitutes. None of the frequently cited examples of convergence suggests that customers will actually substitute, to any meaningful extent, between electricity and gas in a given application. Instead, gas tolling and arbitraging the "sparks spread" are simply means by which enterprising companies can provide value to customers in certain circumstances. The predicted desire of consumers to consolidate their activities with a single supplier of energy services is simply a reaction to information acquisition costs and to the transaction costs of paying multiple providers for similar services.

This "economy of scope" in energy retailing is not, however, "convergence," in the sense that electricity and gas have become substitutes. Indeed, none of the examples of convergence of which I am aware suggests that gas and electricity are effective substitutes.

Q. YOU HAVE DESCRIBED THE VERY LIMITED COMPETITION THAT EXISTS BETWEEN ELECTRICITY AND NATURAL GAS. WILL THE CONSUMMATION OF THE PROPOSED MERGER REDUCE THAT MINIMAL COMPETITION?

A. No, it will not. Because of the absence of wholesale substitutability, competition between gas and electricity can exist only at the retail level. SDG&E is a combination utility and already owns the gas system serving the geographic area containing well over 90 percent of its electric customers. Hence, the merger does not change the competitive picture for such customers. The great bulk of SoCalGas's customers are in the franchise areas of other electric utilities that are not parties to this merger. Hence, competition there is also unaffected. The only area in which it hypothetically could be affected is a small overlap area in southern Orange County that contains approximately 80,000, or about seven percent, of SDG&E's electric customers and less than two percent of SoCalGas's customers. Only in this area will the merger mean that the franchised local gas utility and the franchised local electric utility become commonly owned.

I am informed that in this overlap area, residential and light commercial customers constitute the overwhelming majority of load. The area contains only seven customers eligible for non-core service. Because the overlap is part of SoCalGas's franchised gas service area, rather than part of open territory that could be serviced by more than one company, its hookups and core service are all subject to the system-wide tariffs on file with the CPUC.

Q. HOW MIGHT COMPETITION IN THIS LIMITED OVERLAP AREA BE AFFECTED BY THE PROPOSED MERGER?

A. I do not believe that competition in this relatively small

overlap area will be adversely affected by the merger. Customers in the overlap area face the same economic and technical limits on gas/electric competition that I discussed earlier. The opportunities for switching fuels are limited to long-run decisions on equipment purchases in a few end uses. Further, the vigorous competition among electricity retailers and among gas retailers will be far more important than competition between the fuels. Finally, those customers without access to competing retail suppliers will be served under regulated tariffs.

All customers in the overlap area are electricity customers, and their rates are currently set by CPUC-approved tariff. Those that also have gas hookups will be able to engage in whatever limited fuel switching that is technically and economically feasible, with or without the merger: Because the vast bulk of SoCalGas's customers in the overlap area are core customers, they purchase their gas subject to CPUC-approved tariffs. Clearly, neither SDG&E nor SoCalGas will be able to increase prices for its franchise customers without regulatory approval. Five of the seven customers eligible for non-core service have elected to pay non-core transportation rates for their gas supplies, and all five have chosen to use companies other than SoCalGas to procure their gas supplies. Of the two remaining customers eligible for non-core service, one has chosen to pay core transportation rate to SoCalGas and to procure its gas through a company other than SoCalGas. The other has elected to pay core transportation rates and to purchase gas from SoCalGas. With retail access in gas available either directly or through core aggregation, and electric retail access coming in the relatively near future, even the existing customers purchasing under core tariffs will be able to choose from among many suppliers of both fuels. As I have noted, the CPUC and this Commission will assure by their open access requirements that neither SDG&E (in electricity) nor SoCalGas (in gas) can limit vigorous competition from numerous other suppliers of the same fuel. The merger of two of those many competitors will not affect the options available to those customers. Thus, to the extent that there is interfuel competition in the overlap area, it will continue or increase after the merger: many sellers of electricity will vie with many sellers of gas.

Q. DOES THE PROPOSED MERGER OF A GAS TRANSPORTATION COMPANY AND A COMPANY THAT OWNS GAS-FIRED GENERATION CREATE THE POTENTIAL FOR VERTICAL MARKET POWER OR AFFILIATE ABUSE?

A. I do not believe that the affiliation of SDG&E with SoCalGas, which delivers gas to SDG&E and throughout the rest of southern California, presents any meaningful concern about the potential for vertical market power or affiliate abuse. Vertical market power would arise if SoCalGas could impose unfavorable gas delivery costs on other owners of gas-fired generation, which artificially pushed up the costs of generators competing with SDG&E and permitted SDG&E to gain market share and higher profits on its gas-fired generation. As the testimony of Mr. Hartman makes clear, however, SoCalGas is prevented (by CPUC regulations and by its own commitments to comply with Order No. 497's provisions on transportation rate discounts and not to provide SDG&E with sensitive market information) from favoring SDG&E.

Q. COULD THIS MERGER ADVERSELY AFFECT COMPETITION IN ELECTRICITY-RELATED BUSINESSES, SUCH AS POWER MARKETING OR ENERGY SERVICES?

A. No. Ensource and Enova Energy are relatively new participants in power marketing and have made no wholesale purchases or sales. The elimination of Ensource as a power marketer therefore would not affect competition in power marketing. More importantly, power marketing itself is characterized by very easy entry and is a highly competitive business in which power marketers act only as intermediaries. A market characterized by easy entry and many players is highly unlikely to be vulnerable to the attempted manipulation of prices by any participant, and it is equally unlikely that a combination of two power marketers even power marketers much larger than the two tiny competitors at issue here would result in the creation of market power. Similarly, there are many actual competitors beginning to provide energy services, and many more potential competitors waiting in the wings.

An important reason for the conclusion that the merging parties' power marketing operations are of no concern is that power marketing, in and of itself, conveys no control over resources that could be withdrawn from the market. Most power contracts between generators and power marketers are short term;

even if a marketer assembled enough such contracts to affect prices, the result would be quite temporary. Further, the terms of most such contracts usually convey to the power marketer no ability to withhold capacity.

As noted earlier, the marketing affiliates of Enova and PE do not have power purchase contracts of any type in the WSCC.

V. CONCLUSIONS

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.

A. This merger poses no anticompetitive concerns. It will not reduce competition in electric generation. The merging parties are at most minor competitors in a market that includes much larger suppliers. Because of the extremely limited substitutability between gas and electricity, they do not compete in the provision of substitutes for electricity. Nor will competition in generation be affected by SoCalGas' operation of gas distribution facilities; CPUC regulation, and SoCalGas' undertaking that discounts provided to SDG&E will be available to similarly-situated shippers, will ensure that vertical market power will not be exercised.

Transmission-related competition similarly will be unaffected by the merger. The merging parties are not competitors in transmission services; PE owns no transmission facilities.

Nor is there any potential for the exercise of vertical market power through control of transmission lines; SDG&E has filed an open-access tariff and will cede operational control of its system to the California ISO.

The merger will not reduce competition in the limited area in which their gas and electric franchises overlap. The nature of retail competition in gas and electricity will ensure that energy prices are set competitively. CPUC oversight of the gas and electric distribution functions within the overlap area will ensure that the prices for regulated services will be set appropriately.

Competition in other electricity-related markets, such as energy services or power marketing, will not be affected by the merger.

In short, the proposed merger will not reduce the competitiveness of any market.

Q. DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY?

A. Yes, it does.

December 2, 1996

By Hand

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
11555 Rockville Pike
Rockville, Maryland 20852 10 C.F.R. Section 50.80

Subject: Docket Nos. 50-206, 50-361, and 50-362
San Onofre Nuclear Generating Station Units
1, 2, 3 SDG&E Corporate Restructuring

Commissioners:

San Diego Gas & Electric Company ("SDG&E") is the holder of operating Licenses Nos. DPR-13, NPF-10, and NPF-15 for the San Onofre Nuclear Generation Station ("SONGS") Units 1, 2 and 3. SDG&E is a 20% co-owner of the SONGS units, with the remainder of the ownership held by Southern California Edison Company and two municipal utilities. SDG&E's parent, Enova Corporation ("Enova"), is embarking on a corporate restructuring that, as more fully described below, will result in Enova combining with Pacific Enterprises ("Pacific"), with each becoming a subsidiary of newly created holding company, Mineral Energy Company ("New Holding Company"). I am writing to assure that any necessary NRC approvals for the restructuring are received in a timely manner.

SDG&E will not be affected by the restructuring; it will remain a subsidiary of Enova. After the restructuring is complete, SDG&E will continue to be a public utility providing the same utility services as it did prior to the restructuring. SDG&E will also continue to be a licensee of the SONGS units, and no transfer of the operating licenses or interests in the units will result from the restructuring. Control of the operating licenses for the SONGS units, now held by SDG&E and its co-owners, will remain with SDG&E and the same owners and will not be affected by the restructuring.

Under these circumstances, SDG&E believes that neither the Atomic Energy Act nor the regulations of the Nuclear Regulatory Commission ("NRC") require the NRC's approval of the planned restructuring. The restructuring will not involve the transfer of the NRC licenses for the SONGS units, nor should it be considered a transfer of control, particularly in view of SDG&E's minority ownership interest in the SONGS units. SDG&E is aware, however, that the NRC has taken official action to approve a variety of similar restructurings by its licensees in recent years. Accordingly, by this letter, SDG&E requests that the Commission concur in the proposed restructuring pursuant to 10 C.F.R. Section 50.80, if the Commission is of the view that NRC approval is necessary. As shown below, the proposed restructuring will not affect SDG&E's qualifications as a holder of the operating licenses for the SONGS units and is consistent with applicable provisions of law, NRC regulations, and Commission orders.

In order to assist the Commission in its review of this request, I shall describe the proposed restructuring and then shall show that the restructuring fully satisfies the criteria that are applied by the NRC in considering such matters.

I. The Restructuring

Enova and Pacific have determined that it is in the interests of their respective shareholders and employees, as well as the customers and communities served by their utility subsidiaries, for the two companies to engage in a business combination as peer firms in a strategic merger of equals. Each

believes that such a combination will improve its ability to compete in the rapidly evolving energy marketplace. The restructuring will result in Enova and Pacific becoming subsidiaries of New Holding Company.

Enova is a holding company whose principal subsidiary is SDG&E. (On April 20, 1995, the NRC approved a corporate restructuring that resulted in SDG&E becoming a subsidiary of Enova.) SDG&E is engaged in electric and gas businesses; it generates and purchases electric energy and distributes it to approximately 1.2 million customers in San Diego County and an adjacent portion of Orange County, California. It also purchases and distributes natural gas to approximately 700,000 customers in San Diego County and transports gas for others. Enova also has certain non-utility subsidiaries, including Enova Financial, Inc., Califia Company, Enova Energy, Inc., Pacific Diversified Capital Company, Enova Technologies, Inc., and Enova International.

SDG&E is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. Section 824(e). It sells electric energy at wholesale to, and transmits electric energy in interstate commerce for, other electric utilities under rate schedules approved by the Federal Energy Regulatory Commission ("FERC"). In addition, SDG&E's utility operations are subject to pervasive regulation by the California Public Utilities Commission ("CPUC") under the California Public Utilities Code. The CPUC regulates, inter alia, SDG&E's retail rates and charges, issuances of securities (other than short-term debt securities), services, facilities, classification of accounts, transactions with affiliated interests, and other matters. The restructuring will not affect the extensive regulatory oversight of SDG&E's utility activities.

Pacific is a holding company. Its principal subsidiary, Southern California Gas Company ("SoCalGas"), is engaged in supplying natural gas throughout most of the southern and part of central California. SoCalGas provides gas service to approximately 4.7 million customers in a 23,000-square mile service area. Through other subsidiaries, Pacific is also engaged in interstate and offshore natural gas transmission to serve its utility operations, in alternate energy development, in centralized heating and cooling for large building complexes, and in investment in foreign utility operations.

Pacific and Enova view the combination of the two companies as a natural outgrowth of the utility deregulation and restructuring that is reshaping energy markets in California and throughout the nation. The combination joins two companies with highly complementary operations that are geographically contiguous. The combination is expected to provide substantial strategic, financial and other benefits. These benefits include a greater capacity to compete effectively in a changing regulatory environment, a larger and more diverse natural gas customer base which, together with Enova's electricity capability, will enable New Holding Company to be a prominent competitor in markets for energy and energy services, an ability to consolidate corporate and administrative functions, the capacity to draw on a large and more diverse pool of management, and an improved ability to assist in the economic development of communities served by Pacific and Enova.

New Holding Company is a California corporation with 50 percent of the outstanding capital stock owned by Pacific and 50 percent by Enova. In order to effect the restructuring, Enova will merge with a subsidiary of New Holding Company, with Enova being the surviving corporation. Pacific will similarly merge with another subsidiary of New Holding Company and will remain as the surviving corporation. The outstanding common stock of Enova, other than shares held by shareholders who perfect dissenter's rights under California law, will be converted into a right to receive shares of New Holding Company. Similarly, the outstanding common stock of Pacific will be converted into shares of New Holding Company. Thus, as a result of the transaction, Enova and Pacific will each become a subsidiary of New Holding Company, and their respective shareholders will become shareholders of New Holding Company.

There will be no change in the capital structure of SDG&E as a result of the restructuring. SDG&E's preferred stock and debt will not be affected by the restructuring and will

remain securities and obligations of SDG&E.

The corporate restructuring must be approved by the shareholders of both Enova and Pacific and, in addition to review by the NRC, is subject to review by the CPUC, the Securities and Exchange Commission ("SEC"), and possibly FERC. (A copy of the CPUC application is enclosed.) I anticipate that the restructuring will be accomplished, assuming all the necessary approvals are received, by the end of 1997.

II. The Restructuring is Consistent with Applicable Provisions of Law, NRC Regulations and Commission Orders.

In its review of similar restructurings, the NRC has customarily examined three specific areas:

- o Whether the proposed restructuring will reduce the funds available to the licensee to carry out activities under its operating licenses;

- o Whether the proposed restructuring will adversely affect the management of the licensee's utility operations; and

- o Whether the proposed restructuring will result in the licensee becoming owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

This section addresses these issues.

1. Funding. The proposed restructuring will have no adverse impact on the funds available to SDG&E to carry out activities under the operating licenses. The proposed restructuring is not expected to result in a sale or lease of facilities or assets of SDG&E and is also not expected to have an effect on SDG&E's capital structure. However, Enova and Pacific anticipate that certain cost savings will arise out of the restructuring. A portion of those savings is expected to reduce SDG&E's wholesale and retail rate levels in relation to what they would be but for the combination. SDG&E will seek CPUC approval to retain a portion of the savings, thereby improving SDG&E's financial condition.

Following the restructuring, SDG&E will remain subject to the jurisdiction of the CPUC with respect to, among other things, retail rates. Any changes in SDG&E's wholesale or transmission rates will be subject to FERC review and approval.

The restructuring will not adversely affect the source of funds for SDG&E to operate its utility facilities, including operating costs and the eventual decommissioning costs of the SONGS units. That source is and will remain the utility revenues derived from the rates charged to its ratepayers and, in the case of decommissioning costs, money earned from invested ratepayer funds. If the proposed restructuring causes any changes to those revenues, it will be to reflect anticipated decreases in costs, and in particular costs unrelated to the operation and decommissioning of the SONGS units. Capital costs, including capital improvements or additions to SONGS, will be financed after the restructuring in the same manner as they were prior to the restructuring.

In sum, the regulatory process as it relates to SDG&E and the continued funding of its operations will not be adversely affected by the restructuring. Accordingly, SDG&E believes that the restructuring does not and cannot reasonably be seen to threaten any adverse change in the funds available for the conduct of licensed activities.

2. Management. The proposed restructuring will promote efficiency in the management of SDG&E's operations, allowing the elimination of certain positions that will become redundant and by providing access to talent and expertise (e.g., with regard to natural gas procurement) in areas in which Pacific is also engaged. However, SDG&E management will continue to make its own decisions with respect to utility planning, operation, financial requirements, purchasing, and sales. The SDG&E nuclear management structure will not be changed by the restructuring. The proposed restructuring will not adversely affect the management of SDG&E's utility operations.

3. Ownership. After the restructuring, Enova will remain the sole owner of SDG&E's outstanding common stock, although the current holders of the stock of Enova and Pacific will become the owners of New Holding Company. Based upon the information available as at June 1996, foreign accounts represent less than one percent of the total outstanding shares of Enova and less than one percent of the total outstanding shares of Pacific. As a result, foreign accounts should represent less than one percent of the ownership of New Holding Company.

The restructuring will not result in SDG&E becoming owned, controlled, or dominated by foreign interests.

CONCLUSION

As shown above, the proposed restructuring will not in any way adversely affect SDG&E's qualifications as holder of the operating licenses for the SONGS units. The proposed restructuring is consistent with applicable provisions of law and the Commission's regulations. Accordingly, if the Commission concludes that its approval is necessary, we respectfully request that the Commission consent to the proposed restructuring.

I understand from conversations with the NRC staff that it should prove feasible for the NRC to rule on this matter by June 1, 1997. If additional information is needed or if you have any questions, please feel free to contact me.

Respectfully submitted,

Richard A. Meserve

Counsel for San Diego Gas & Electric Company

cc: Mr. Frank J. Miraglia, Jr.
Mr. David B. Matthews
Mr. Mel B. Fields
Mr. Leonard J. Callan
Mr. James Sloan