

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**05-08-07
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May 8, 2007

Agenda ID #6630
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 06-06-032 ET AL.

This is the proposed decision of Administrative Law Judge (ALJ) Kim Malcolm. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

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

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Malcolm at kim@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **PROPOSED DECISION OF ALJ MALCOLM** (Mailed 5/8/2007)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902 M) for Approval of Low-income Assistance Programs for Program Years 2007 and 2008.

Application 06-06-032
(Filed June 30, 2006)

And Related Matters.

Application 06-06-033
(Filed June 30, 2006)
Application 06-06-034
(Filed June 30, 2006)
Application 06-07-001
(Filed July 3, 2006)

**OPINION GRANTING PETITIONS TO MODIFY DECISION 06-12-038 TO
DELAY COMPETITIVE BID PROCESS FOR LOW INCOME ENERGY
PROGRAMS AND TO MAKE MINOR CORRECTIONS AND MODIFICATIONS
TO DECISION 06-12-038**

This decision grants a petition to modify Decision (D.) 06-12-038 filed by San Diego Gas and Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) and a similar one filed by Richard J. Heath and Associates (RHA). As requested by the petitions, this decision defers for one year a competitive bid process for third-party administration low income energy efficiency programs on the basis that changing the process at this time may cause program disruptions without providing offsetting benefits.

This decision also addresses petitions to modify D.06-12-038 filed by SDG&E and Southern California Edison Company (SCE) seeking minor corrections to the order and the tables attached to it.

1. Background

D.06-12-038 adopted budgets, policies and program parameters for the Low Income Energy Efficiency (LIEE) and California Alternate Rate for Energy (CARE) programs of PG&E, SCE, Southern California Gas Company (SoCalGas) and SDG&E for 2007 and 2008. The order adopted combined budgets for the four utilities of over \$977 million for CARE and over \$157 million for LIEE programs. The LIEE programs provide energy efficiency services and products to more than 150,000 low income households in California and discounted energy rates to more than 3.9 million low income customers in 2007. In addition to adopting utility budgets for LIEE and CARE programs, D.06-12-038 adopted several policies to guide and inform CARE and LIEE program implementation, and signaled the Commission's intent to investigate a number of policy and program issues in the coming year. These issues include multi-family and renter issues, program participation by disabled customers, program outreach, enrollment and certification, natural gas appliance testing and program administration.

The Commission issued D.06-12-038 on December 14, 2006, which, in addition to adopting budgets resolved various program and policy matters. Most relevant to this order, D.06-12-038 directed SDG&E and PG&E to conduct a competitive bid process for their administration of LIEE programs, as discussed more below.

2. Petitions Seeking Suspension of Competitive Bid Process

PG&E and SDG&E filed a petition to modify D.06-12-038, which seeks an extension of time to retain RHA as program administrator for PG&E's LIEE program and prime contractor for SDG&E's LIEE program (for simplicity, this order refers to RHA's work as "administration" for both companies). PG&E and SDG&E's existing contracts with RHA expire at the end of 2007. D.06-12-038 directed PG&E and SDG&E to conduct competitive bids in 2007 for program administration work beginning in 2008. In compliance with D.06-12-038, PG&E on March 15, 2007 and SDG&E on March 30, 2007 submitted to Energy Division their plans for conducting a competitive bid process. SDG&E and PG&E ask the Commission to permit them to suspend the competitive bid and allow them to retain RHA through the end of 2008. They raise concerns that conducting a competitive bid process now could result in program disruption because RHA would have to wind down its operations over the course of 2007 or face the prospect of abrupt dislocation if it fails to win the bid. A new contractor, should one be hired, would have to develop a new infrastructure for program administration in a short timeframe. SDG&E and PG&E represent that a number of LIEE contractors support the extension of the contracts for an additional year while the Commission is considering administrative issues in Rulemaking (R.) 07-01-042.

RHA's petition to modify makes similar comments and also raises concerns that community-based organizations (CBOs) that implement LIEE programs would have to bid for their subcontracts twice in two years if a new administrator were to be hired. This process is burdensome for CBOs, according

to RHA. Thirty-two subcontractors signed a joinder that is attached to the petition and expresses support for the petition.

The Division of Ratepayer Advocates (DRA) filed in opposition to the petitions, arguing that competitive bidding will assure a reasonably priced program, consistent with Commission policy. DRA believes the utilities' concerns regarding program delivery are unfounded: RHA is required to assure program delivery under the terms of the existing contract and may not "slow down" its operations in order to avoid an abrupt end to its contract. If RHA were to slow down program delivery it would be in breach of contract, according to DRA, and the utilities should address the matter accordingly. DRA believes the prospects for a three-year budget cycle are speculative and therefore not a reason to change the Commission's order with regard to competitive bidding.

We appreciate DRA's comments and agree with its general observations that competitive bidding may not only promote efficient program administration but may also promote innovation and equity. We also agree with DRA that a contractor does not have the discretion to ramp down its obligations under the contract: put another way, most contracts end "abruptly" and contractors must plan accordingly.

On the other hand, we realize that it is late in the game to assure an effective and efficient competitive bid process. Both SDG&E and PG&E have concerns relating to the timing of this process, which requires significant lead-time in order to retain an efficient operation and continue effective program delivery. If the utilities were to change their administrative procedures for 2008 – and especially if they were to change contractors for 2008 – these objectives could be compromised. Moreover, the contract process would have to be conducted again after only a year, following the issuance of our decision

addressing the next budget cycle, which represents an additional administrative cost. Finally, extending the current administration contracts for SDG&E and PG&E is consistent with the Commission intent to promote cost-effective programs since the utilities can negotiate more effectively for a three-year contract than for a one-year contract, resulting in lower overall administration costs for California ratepayers. We do not see significant risks with retaining the status quo for an additional year and herein grant the requests for a one-year extension.

3. SoCalGas/SDG&E Petition Seeking Minor Corrections to D.06-12-038

On February 20, 2007, SDG&E and SoCalGas filed a joint petition for modification of D.06-12-038, as follows:

- Table 8 should be modified to correspond to the findings of fact and conclusions of law regarding the amount of the funding authorized for the “Bill System/Programming” and “Measurement and Evaluation” categories under the CARE program;
- Ordering Paragraph 6 should be clarified to specify that prior approval of the Energy Division pertains solely to Measurement and Evaluation (M&E) studies, consistent with the discussion in Section II. H.;
- Ordering Paragraph 17 should be modified to eliminate the inadvertent reference to the CARE program; and
- Ordering Paragraph 18 should be modified to reflect the extension of the contract date for its prime LIEE contractor from December 1, 2007 to December 31, 2007, consistent with the Conclusion of Law 27.

No party filed a response to the petition to modify.

We have already addressed here the petition's proposed changes to the competitive bid process for SDG&E's LIEE contractor, which obviates the need for the changes it requests to Ordering Paragraph 18. Of the remaining items, with one exception, the modifications the petition requests are in the nature of corrections to the order and those modifications would make the order internally consistent and also consistent with our intent. We make the changes requested by the petition as follows:

- Table 8 (SoCalGas CARE Budgets 2007-2008) should be modified to reflect \$392,631 for 2007 and \$379,600 for 2008 for the Bill System/Programming category;
- Table 8 (SoCalGas CARE Budgets 2007-2008) should be modified to provide for spending in the amount of \$96,000 for 2007 only in the Measurement and Evaluation category; and
- Ordering Paragraph 17 should be changed to remove the reference to CARE and should therefore state "The utilities may shift funds between LIEE programs so as to promote the efficient and effective implementation of the LIEE program but may not shift additional funds to administrative overhead costs, regulatory costs or the costs of studies as set forth herein."

Ordering Paragraph 6 addressing an approval process for contracting, requires no change. Section II. H. of D.06-12-038 requires the utilities to receive Energy Division's approval before issuing requests for proposals and before signing contracts the decision and clearly so states. So there is no question of our intent, we add additional text to Section E. - PG&E, 2. Program Administration and Section F.- SDG&E, 2. Program Administration clarifying that the utilities must receive approval in writing by the Energy Division Director before issuing a request for proposal which approves of the process and specifications for program administration and also before signing a contract.

4. SCE Petition Seeking Minor Corrections to D.06-12-038

On February 20, 2007, SCE filed a petition for modification of D.06-12-038, as follows:

- Table 1 should be modified to fund \$260,000 a year for measurement and evaluation and should be modified to show \$32,043,290 for each program year for total LIEE costs;
- Table 1 should be modified to remove \$556,000 per year for the Cool Center program funding because SCE had requested that this program be funded by way of a separate balancing account;
- Table 2 should be modified to show \$1.45 million in 2008 for “other outreach” costs; \$928,000 for “Processing, Certification and Verification”: \$950,000 in 2008 for Bill System/ Programming” and total program costs for 2008 should be adjusted to \$4.199 million to account for the other revisions. Total Program Costs and Customer Subsidies” should be adjusted to \$252,599,000 for 2007 and \$264,599,000 for 2008;
- Tables on Page 2 should be corrected to show the LIEE program budget is \$32,043,290 in 2007 and \$32,043,290 in 2008; the CARE program budgets should be corrected to show a total of \$252,599,000 in 2007 and \$264,599,000 in 2008. These changes reflect the corrections addressed above;
- Page 31 should be corrected to show that SCE’s M&E budget is \$260,000, not \$270,000 as the decision states;
- Page 50 should show that SCE proposed and the Commission adopted \$55,500 for the M&E budget, not \$55,000, as the decision states;
- The decision should adopt SCE’s proposal to fund Cool Center costs through a separate balancing account;

- The decision should clarify that the Energy Division's approval of requests for proposals (RFPs) and contracts be limited to M&E contracts; and
- Ordering Paragraph 17 should be corrected to remove the reference to the CARE program, as SDG&E proposed in its petition to modify.

No party filed a response to the petition to modify.

We have already addressed here the petition's proposed changes to Ordering Paragraph 17 and Energy Division's role in approving RFPs and contracts in response to SDG&E's petition. The resolution for SDG&E would apply equally to SCE. Of the remaining items, the modifications the petition requests are in the nature of corrections to the order and those modifications would make the order internally consistent and also consistent with our intent. We include among these corrections SCE's proposal to account for Cool Center costs in separate balancing accounts with the understanding that this accounting change would not modify SCE's spending authority in any way. We herein adopt all of the changes SCE requests.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

6. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner, and Kim Malcolm is the assigned ALJ in this proceeding.

Findings of Fact

1. Initiating a competitive bid process for the administration of SDG&E's and PG&E's 2008 LIEE programs at this time could compromise program integrity and be costly because such a bidding process would need to be conducted again in one year for 2009 and beyond.
2. D.06-12-038 contains a number of inadvertent errors that are inconsistent with the language or intent of the order.
3. SCE's proposed change to Cool Center accounting would not change SCE's spending authority.
4. D.06-12-038 requires that all applicant utilities receive Energy Division approval before issuing an RFP or signing an associated contract of any kind related to LIEE or CARE programs.

Conclusions of Law

1. The Commission should permit PG&E and SDG&E to defer for one year the competitive bid process for the administration of their respective LIEE programs.
2. The errors in D.06-12-038 should be corrected to be consistent with the language and intent of the order.
3. SCE's proposed change to Cool Center accounting is reasonable in that it would not change SCE's spending authority and permit a reasonable allocation of costs to rates.
4. D.06-12-038's requirement that all applicant utilities receive Energy Division approval before issuing an RFP or signing an associated contract of any kind should not be changed.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 06-12-038 is modified as follows:
 - a. Table 8 (Southern California Gas Company California Alternative Rate for Energy (SoCalGas CARE) Budgets 2007-2008) shall reflect \$392,631 for 2007 and \$379,600 for 2008 for Bill System/Programming.
 - b. Table 8 (SoCalGas CARE Budgets 2007-2008) shall provide for spending in the amount of \$96,000 for 2007 in the Measurement and Evaluation (M&E) category.
 - c. Ordering Paragraph 17 shall state in its entirety "The utilities may shift funds between LIEE programs so as to promote the efficient and effective implementation of the LIEE program but may not shift additional funds to administrative overhead costs, regulatory costs or the costs of studies as set forth herein."
 - d. The end of Section E on page 34 regarding Pacific Gas and Electric Company's (PG&E) program administration is modified to include: "We direct PG&E to receive approval in writing by the Energy Division Director or the Director's designee before issuing a request for proposal which approves of the process and specifications for program administration and also before signing a contract."
 - e. The end of Section F on page 40 regarding San Diego Gas & Electric Company's (SDG&E) Program Administration is modified to include:

"We direct SDG&E to receive approval in writing by the Energy Division Director or the Director's designee before issuing a request for proposal which approves of the process and specifications for program administration and also before signing a contract."

- f. Table 1 shall provide Southern California Edison Company (SCE) funding in the amount of \$260,000 for each program year for M&E and to show \$32,043,290 for each program year for SCE's total low income energy efficiency (LIEE) costs.
- g. Table 1 shall no longer include \$556,000 per year for SCE's Cool Center program funding but shall identify that \$556,000 per year is allocated to SCE's Cool Center program in a separate account.
- h. Table 2 shall show \$1.45 million in 2008 for SCE's "other outreach" costs; \$928,000 for SCE's "Processing, Certification and Verification" costs; \$950,000 in 2008 for SCE's "Bill System/Programming" costs; and \$4.199 million for SCE's total program costs for 2008. Table 2 shall show that SCE's Total Program Costs and Customer Subsidies" are \$252,599,000 for 2007 and \$264,599,000 for 2008.
- i. Tables on Page 2 shall show SCE's LIEE program budget is \$32,043,290 in 2007 and \$32,043,290 in 2008; the tables shall show that SCE's total CARE program budgets are \$252,599,000 in 2007 and \$264,599,000 in 2008.
- j. Page 31 shall show that SCE's M&E budget is \$260,000.
- k. Page 50 shall show that SCE proposed and the Commission adopted \$55,500 for the M&E budget.
- l. The third full paragraph, fourth sentence on page 34 shall state "For these reasons, we expect PG&E to conduct a competitive process for program administration services for 2009 and beyond PG&E shall work with the Commission's Energy Division staff to develop a solicitation for program administration in local communities, which would be open to any qualified agency, firm or CBO (including Richard Heath)."
- m. The first full paragraph, fourth sentence on page 40 shall state "Consistent with our discussion of PG&E's contract with RHA,

we do not authorize SDG&E to renew RHA's contract without a competitive process, beginning with the program year 2009."

- n. Conclusion of Law 25 is modified to state: "PG&E should be required to conduct a competitive process for hiring a program administrator for the period following December 31, 2008, as set forth herein."
 - o. Conclusion of Law 27 is modified to state: "SDG&E should be required to conduct a competitive process for hiring a program administrator for the period beginning in January 2009, as set forth herein, and should not be required to interrupt its existing contract with RHA which terminates at the end of 2007."
 - p. Ordering Paragraph 14 is modified to state: "PG&E shall present a plan to Energy Division no later than March 15, 2008 for conducting a competitive bidding process for its LIEE administrator for hiring the LIEE administrator beginning in January 2009."
 - q. Ordering Paragraph 18 is modified to state: "SDG&E shall present a plan to Energy Division no later than March 30, 2008 for conducting a competitive bidding process for its LIEE administrator and, unless Richard Heath and Associates wins a contract through a competitive process, shall not extend the existing contract with Richard Heath and Associates past December 31, 2008."
3. Application (A.) 06-06-032, A.06-06-033, A.06-06-034 and A.06-07-001 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated May 8, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid