

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

Order Instituting Rulemaking on the Commission's Proposed Policies and Programs Governing Post-2003 Low-Income Assistance Programs.

Rulemaking 04-01-006
(Filed January 8, 2004)

And Related Matters.

A.04-06-038 (Filed June 30, 2004)
A. 04-07-002 (Filed July 1, 2004)
A. 04-07-010 (Filed July 1, 2004)
A. 04-07-011 (Filed July 1, 2004)
A. 04-07-012 (Filed July 1, 2004)
A. 04-07-013 (Filed July 1, 2004)
A. 04-07-014 (Filed July 1, 2004)
A. 04-07-015 (Filed July 1, 2004)
A.04-07-020 (Filed July 8, 2004)
A. 04-07-027 (Filed July 2, 2004)
A.04-07-050 (Filed July 29, 2004)

**JOINT UTILITY RESPONSE TO SECOND ADMINISTRATIVE LAW
JUDGE'S RULING REGARDING ASSEMBLY BILL 868**

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December 1, 2004

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In her ruling regarding Assembly Bill (AB) 868 dated November 22, 2004, the Administrative Law Judge requested that the investor-owned utilities (IOUs) and small and multi-jurisdictional utilities (SMJUs) file reply comments on the issues raised by the Commission's Office of Ratepayer Advocates (ORA) in their comments filed November 16, 2004. Specifically, these issues are:

1. Whether migrant farm labor centers other than those that report to the Office of Migrant Services are entitled to CARE discounts pursuant to AB 868 and, if not, whether the Commission can and should consider a similar eligibility exception for such facilities.
 - a. Whether it is appropriate to exempt some centers (i.e. those reporting to OMS) but not all migrant farm housing centers from the 100 percent eligibility requirement and whether the Commission can or should extend a similar exemption to other centers.
 - b. Whether migrant farm labor centers that may not work with OMS can or should be eligible for a similar eligibility exception.

2. Whether the IOUs and SMJUs should change their tariffs as ORA advocates.

In response to the November 22, 2004 Ruling, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (the Joint Utilities) submit the following comments.

1. Applicability of AB 868 to Non-OMS Migrant Farm Labor Centers

The Joint Utility¹ Comments on AB 868 filed on November 1, 2004 interpreted AB 868 to refer specifically to OMS-run migrant farmworker housing centers and thus did not address the applicability of AB 868 categorical CARE enrollment to any other agricultural employee housing.

Besides the OMS-operated migrant farm housing centers previously identified , there are other non-profit migrant farm housing centers in PG&E's service area that are operated by local government agencies. For example, the Napa Valley Housing Authority (NVHA), a local government agency, operates two migrant employee housing centers. NVHA provides dormitory-style migrant farmworker housing functionally similar to that operated by OMS and has previously attempted to enroll in PG&E's CARE program for qualified agricultural employee housing facilities but was unable to qualify due to the 100% eligibility criteria. Southern California Edison Company has not yet been able to identify any such housing centers in its service area.

The Joint Utilities would not oppose an interpretation of AB 868 that included other non-profit farmworker housing centers in its categorical CARE qualifications; however, the Joint Utilities do not know the number of such centers at this time. If there is no network similar to the OMS joining them together, the Joint Utilities know of no convenient means of categorically enrolling other centers. If the Commission determines that other non-OMS non-profit agricultural housing centers should qualify under AB 868, the Joint Utilities will work to identify, contact and enroll all such centers that qualify. The Joint Utilities have contacts at some housing centers now through past attempts to qualify them, and believe that through targeted networking and word-of-mouth others could be identified.

¹ Joint Utilities for the November 1, 2004 comments were: PG&E, Southern California Edison Company, Southern California Gas Company, and San Diego Gas and Electric Company.

The Joint Utilities believe that neither the utilities nor the Commission is the appropriate agency to be responsible for ensuring that the CARE discount was/will be used for the direct benefit of the residents. In their November 1, 2004 filing on AB 868, the Joint Utilities wrote:

Under the current Commission-approved CARE program application for Qualified Agricultural Employee Housing Facilities, the applicant is responsible for proving that the CARE discount was/will be used for the direct benefit of the resident.

Also:

The Joint Utilities believe oversight regarding appropriate use of the CARE discount for direct benefit of the migrant residents is most appropriately assigned to the OMS through their rent-setting responsibilities.

There is no central oversight agency for the non-OMS agricultural housing centers. The Joint Utilities do not have the enforcement authority or the necessary jurisdiction to act as the oversight agency to ensure the pass-through of the CARE discount. Thus, responsibility for passing the CARE discount through to the residents is one issue that will have to be considered if non-OMS housing centers are included under AB 868 enrollment provisions. One possible oversight agency could be the Department of Housing and Community Development, depending on its arrangements with the different housing centers. In addition, as these are non-profit facilities, the Joint Utilities believe that any discount provided by the utilities will be put back into the facility and thus used for the benefit of facility residents.

The Joint Utilities do not believe that for-profit housing centers or housing centers operated by commercial enterprises should be included in AB 868's categorical enrollment provisions. First, the Legislature, in the preamble to AB 868, specifically referred to "local public and private nonprofit agencies" that contract with the Department of Housing and Community Development to operate a "migrant farm labor center." This language indicates a special concern for centers run by public agencies and non-profit agencies, and the exclusion of for-profit entities. Moreover, AB 868's provisions concerning the CARE discount are found in Section 2, which amends Section 50710.1 of the California Health and Safety Code. Section 50710.1 is part of Chapter 8.5 of the Health and Safety Code, "Special Housing Program for Migratory Workers". The first section of Chapter 8.5, Section 50710, provides that "the Director of Housing and

Community Development may contract with school districts, housing authorities, health agencies, and other appropriate local public and private nonprofit agencies, for the procurement, or construction of housing or shelter and to obtain services for migratory agricultural workers...” Again, this provision does not include any reference to for-profit or commercial housing centers.

The Joint Utilities note that any qualifying commercial housing centers would still be eligible for the CARE discount under the provisions of the Joint Utilities’ respective CARE programs for qualified agricultural employee housing facilities.

2. Revising Current Tariffs

The Joint Utilities agree with ORA that current CARE expansion program tariffs will need to be modified to make the tariffs consistent with AB 868 and the Commission’s final Order in this matter. The extent of the tariff modifications will not be known until the Commission issues its final Order. The Joint Utilities would propose filing expedited compliance advice letters as soon as the Commission’s Order in this matter is final.

Respectfully submitted,

CHRISTOPHER J. WARNER
ANDREW L. NIVEN
MARGARET DEB. BROWN

/s/
By: MARGARET DEB. BROWN

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PACIFIC GAS AND ELECTRIC COMPANY

Dated: December 1, 2004

CERTIFICATE OF SERVICE BY ELECTRONIC AND FIRST CLASS MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105. I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 1st day of December 2004, I served a true copy of: JOINT UTILITY RESPONSE TO SECOND ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ASSEMBLY BILL 868 on all parties of record.

Service was affected by serving said document, via electronic mail to the parties who provided electronic mail addresses and by United States Mail in sealed envelopes and depositing said envelopes in the U.S. Mail with first-class postage affixed thereto addressed to:

To all parties on the official service list, R. 04-01-006

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Francisco, California on the 1st day of December 2004.

/s/

BELINDA BATES

December 1, 2004

VIA HAND DELIVERY

California Public Utilities Commission
Attn: Docket Clerk
505 Van Ness Avenue, Room 2001
San Francisco, CA 94102

Re: Order Instituting Rulemaking on Commission's Proposed Policies and Programs
Governing Post 2003 Low-Income Assistance Programs – R.04-01-006

Dear Sir/Madam:

Enclosed for filing are an original and five copies of JOINT UTILITY RESPONSE TO SECOND ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ASSEMBLY BILL 868 in the above-referenced matter.

Please file the original and return the stamped copy in the envelope provided. Thank you for your assistance with this matter.

Sincerely,

MARGARET deB. BROWN

MBD/bb

Enclosures

