



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking on the)
Commission's Own Motion into combined heat)
and power Pursuant to Assembly Bill 1613.)

Rulemaking 08-06-024
(Filed June 26, 2008)

COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338E)
ON AB 1613 PAY-AS-YOU-SAVE PILOT

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OPENING COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY

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**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338E)
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I.

INTRODUCTION

Pursuant to the Ruling of Administrative Law Judge Yip-Kikugawa, dated May 11, 2010 (“Ruling”), Southern California Edison Company (“SCE”) submits these comments on whether additional proceedings are necessary to consider policies and procedures for a Pay-As-You-Save (“PAYS”) Pilot Program for certain Combined Heat and Power (“CHP”) units pursuant to Assembly Bill (“AB”) 1613. Specifically, the Ruling requests briefing on the following four questions:

1. Is there current interest in the development and implementation of a PAYS Pilot?
2. How large is the pool of potential eligible customers for a PAYS Pilot Program and how does this potential pool correspond to the 100 megawatt program size cap set forth in Public Utilities Code Section 2842.4(f)?
3. What other financing options exist for potential eligible customers to use for purchasing CHP facilities, and what are the advantages of a utility PAYS Pilot Program over existing financing options?

4. Is a workshop necessary to discuss the issues listed above, or could the Public Utilities Commission (“Commission”) render a decision on a PAYS pilot through comments alone?

The Ruling also allows parties to comment on the questions initially posed in the November 4, 2008 Scoping Memo (“Scoping Memo”), as well as any other issues or concerns they may have.

The answers to the questions posed in the Ruling and the Scoping Memo depend largely on which entity acts as the lender under the PAYS Pilot Program. If third parties finance the purchase and installation of the CHP facilities, and the electrical corporations merely facilitate the on-bill repayment of those third party loans, then implementing the PAYS Pilot Program would require billing modifications and could be relatively straightforward. In that case, the costs of billing changes to implement the PAYS Pilot Program could be clearly identified and charged to participating customers. On the other hand, if the electrical corporations are expected to actually lend funds to nonprofit corporations that seek to install CHP units, then there will be numerous significant challenges to creating a workable program. SCE discusses these challenges and its concerns in further detail below.

In summary, SCE provides the following comments and recommendations:

- If the Commission seeks to implement the PAYS Pilot Program by having electrical corporations directly lend ratepayer funds, then the electrical corporations would be considered lending institutions and would be subject to complex lending laws. Unlike in the On-Bill Financing program for energy efficiency (“EE Program”), electrical corporations would very likely not be able to obtain an exemption from state or federal lending laws, thus placing onerous burdens on electrical corporations by requiring them to engage in activities for which they have no experience or expertise. If, however, the Commission implements the PAYS Pilot Program by requiring electrical corporations to facilitate the repayment of third party loans through an on-bill repayment,

electrical corporations would likely not be considered lending institutions and therefore would not be subject to lending laws.

- The EE Program cannot serve as a viable model for the PAYS Pilot Program. The differences between the two programs – the size of loans, the requirements of AB 1613, the concentration of risk, etc. – are substantial and thus make the EE Program an unsuitable model.
- As set forth in AB 1613, all electrical corporations should be required to participate in the PAYS Pilot Program, but such participation should be limited to facilitating on-bill repayment of third-party loans. As explained in detail below, forcing electrical corporations to act as lenders will create unnecessary and perhaps incurable problems.
- Ultimately, interest in the PAYS Pilot Program will be dictated by the attractiveness of the financial terms of the program. To date, SCE has not received any inquiries from potential eligible customers regarding the PAYS Pilot Program. As such, SCE cannot speculate about how potential interest might correspond to the 100 MW cap.
- Financing options exist in the open market for borrowers. If the Commission orders electrical corporations to function as lenders, they would be subject to lending and banking regulations. As such, there will likely be no advantage over existing financing organizations whose sole purpose is to operate as a financial institution. To be effective lenders, electrical corporations would have to implement best practices and enforce the terms and conditions of the loan just as a typical lender would in order to ensure that no costs of the loan are borne by non-participating customers, as mandated by AB 1613. Unlike in the EE Program, the electrical corporations would be required by law to charge compensatory interest and fees on any loans made pursuant to the PAYS Pilot Program to avoid shifting costs to other customers.

- Finally, workshops and further consideration of the issues raised by a PAYS Pilot Program are necessary. As set forth below, there are many unresolved questions that cannot be adequately addressed through comments alone.

SCE addresses each of these comments in further detail below.

II.

COMMENTS

A. Original Scoping Memo Questions

1. **Will the PAYS pilot program mean that the electrical corporations are functioning as lending institutions? If so, would the program be subject to state and federal lending laws?**

To the extent the electrical corporations are only offering on-bill repayment of loans made by third parties, electrical corporations would not likely be functioning as lending institutions. If, however, the electrical corporations are required to directly finance private ownership of CHP facilities by lending money to nonprofit organizations¹ for the purchase and installation of CHP facilities, then the electrical corporations would in fact be functioning as lending institutions and would likely be subject to lending laws.

This problem was addressed previously in connection with the implementation of a utility-as-lender on-bill financing program for energy efficiency programs established in Decision (“D.”) 05-09-043.² In that proceeding, the Sempra Utilities requested guidance from the California Department of Corporations on various issues related to the implementation of on-bill financing. On July 14, 2006, the California Department of Corporations issued Release No. 60-FS, which found that the investor-owned utilities (“IOUs”) are not engaged in the business of

¹ Nonprofit organizations are described in Section 501(c)(3) of the Internal Revenue Code.

² See Application (“A.”) 05-06-004; A.05-06-011; A.05-06-015; A.05-06-016.

a finance lender or broker under certain narrow circumstances. Specifically, to remain exempt from lending regulations, “lenders” had to (1) be public utilities (electrical and gas), (2) operate under the California Public Utilities Code subject to Commission regulation, (3) make loans in accordance with financing programs approved by the Commission, (4) administer financing programs in a manner that is merely ancillary to their business of providing energy, and (5) comply with all applicable federal and state laws with respect to any loans made under the financing programs. For their part, “borrowers” had to (1) be commercial, nonresidential customers of the public utility, including government agencies and owners of residential multi-family units who do not live on the premises, (2) be customers in good credit standing with the public utility, as determined by eligibility criteria set forth in the financing programs of public utilities, (3) complete loan applications and sign loan contracts pursuant to the financing programs, and (4) accept responsibility for purchasing and installing energy efficiency equipment.

Moreover, the loans themselves are heavily regulated and have to (1) be made to “borrowers” solely for the purpose of purchasing and/or installing energy efficiency equipment, (2) fall within the definition of commercial loan as set forth in Financial Code Section 22502 and therefore not be used for personal, family or household purposes,³ and (3) impose no costs on the “borrower” because the loans are provided free of any interest, fees, late payment penalties, and other charges.

A utility-as-lender PAYS Pilot Program would not meet the requirements set forth for the EE Program as discussed in Release No. 60-FS. First, Release No. 60-FS applies only to loans made to install energy efficiency equipment. CHP systems are not energy efficiency equipment. Rather, they are generators, which are supply-side resources and a form of energy production. Second, the requirements of AB 1613 preclude a zero-interest loan. AB 1613 mandates that “all costs of the pay-as-you-save program or financing mechanisms shall be borne solely by the

³ Finan. Code § 22502 states: “ ‘Commercial Loan’ means a loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit program . . . ”

combined heat and power generators that use the program or financing mechanisms, and the commission shall ensure that the costs of the program are not shifted to the other customers or classes of customers of the electrical corporation.”⁴ Accordingly, compensatory interest and/or fees must be charged to ensure that electrical corporation customers are not bearing any of the costs of PAYS Pilot Program loans. Because the exemption the California Department of Corporations afforded to the IOUs does not apply here, the electrical corporations would likely be deemed to be lenders under the law and would therefore have to comply with lending laws.

2. Can the on-bill financing program for energy efficiency programs serve as a model for the PAYS pilot program?

For several reasons, SCE does not believe that the EE Program can serve as a model for the PAYS Pilot Program. The EE Program is structured as follows: (1) As discussed above, pursuant to Release No. 60-FS, the IOUs are permitted to lend money without being subject to lending laws in the unique and narrow circumstances of the EE Program; (2) loans are limited to \$100,000 for commercial customers and \$250,000 for government and institutional customers;⁵ (3) there can be no interest or fees assessed on loans; (4) loans are limited to 10 years or the expected useful life of the energy efficiency measures to be installed; and (5) loans are not dispersed to customers until after the energy efficiency measures are purchased and installed.

Such a utility-as-lender model is not applicable to the PAYS Pilot Program. First, the PAYS Pilot Program would involve much larger and much more expensive projects than the EE Program. An eligible customer’s CHP unit can be as large as 20 megawatts.⁶ The costs of purchasing and installing a CHP system run from approximately \$1.2 to \$1.5 million per megawatt. Accordingly, electrical corporations could potentially be required to finance several projects costing up to \$30 million. This amount dwarfs the EE Program’s per-customer cap of

⁴ Publ. Util. Code § 2842.4(e).

⁵ Loans of up to \$1 million may be made to institutional customers for unique opportunities to capture large savings when all other terms are met. *See* D.09-09-047, p. 286.

⁶ Publ. Util. Code § 2842.4(b)(1).

\$250,000 and concentrates greater risk in a very small group of loan participants. Indeed, all available funding for the PAYS Pilot Program could potentially be spent on a total of three or four customers statewide, with each customer receiving many millions of dollars in financing.⁷ If electrical corporations are ordered to act as lenders, this concentrated risk will fall squarely on other non-participating customers.

Second, projects of this size would be subject to the terms and conditions of project financing, which has very different requirements than the EE program. Two typical conditions of project financing require that (1) the project assets be assigned to the lender (i.e., the electrical corporation) as collateral and (2) that the energy payments not be made to the seller but to the lender (i.e., the electrical corporation) and the lender pay all project costs until the loan is repaid. These conditions render a utility-as-lender program unworkable in the context of AB 1613. AB 1613 and Decision 09-12-042 require the utilities to purchase excess electricity from AB 1613 generators. If the utilities are both lenders and power purchasers, the utility would essentially be buying electricity from itself. This perverse arrangement could create a genuine conflict, or at the very least, the appearance of a conflict of interest.

Third, the installation costs and timing of energy efficiency measures and large generators differ greatly. Whereas energy efficiency measures can be installed in fairly short time-frames and monies provided under the EE Program are paid after the measures are installed, CHP generators often take two years to construct and participating borrowers would be financing the upfront costs of installing the CHP system. Thus, unlike with the EE Program, there may be a significant time lag between when money is loaned to a customer and when the “energy savings” might begin for loan repayment. During that period, electrical corporations would be exposed to numerous project finance risks such as escalating costs, delays, non-completion, and default. All these risk factors will raise the costs of the program, reduce project

⁷ Pursuant to Publ. Util. Code § 2842.4(f), each electrical corporation shall be required to participate in the PAYS Pilot Program until it meets its proportionate share of the 100 megawatt cap, as determined by the percentage of its peak demand to the total statewide peak demand. For SCE, this translates to roughly 45 megawatts.

savings, and extend the payback period of a CHP system. These costs cannot be absorbed by non-participating customers pursuant to AB 1613.

Additionally, unlike with energy efficiency measures, there is no assurance that a customer will have the electrical savings necessary to accommodate a 10-year repayment term. Whereas an energy efficiency customer is in fact reducing load through certain energy efficiency measures, a customer installing a CHP unit may be offsetting very little electrical load vis-à-vis the costs of the loan. AB 1613 requires participating customer-generators to size their CHP generators to meet their *thermal load*, not their electrical load. Thus, if a customer has very little electrical load to begin with, the customer may have very little electrical cost savings with which to repay the loan.

Fourth, AB 1613 makes clear that all costs “shall be borne solely by the combined heat and power generators ... and the commission shall ensure that the costs of the program are not shifted to other customers.”⁸ This mandate essentially requires lenders to charge compensatory interest on loans to account for the various costs and risks of lending large sums of money. If electrical corporations act as lenders they will have to structure the loans accordingly. The EE Program does not provide a workable model because the loans offered are essentially zero-interest and are far simpler in structure.

For these reasons, SCE recommends that the Commission not employ the EE Program model, and instead move towards a model in which electrical corporations partner with willing lending institutions to facilitate on-bill repayment of PAYS Pilot Program loans.

3. Should electrical corporations that are unable to finance CHP projects be required to participate in the pilot program?

AB 1613 requires all electrical corporations as they are defined in the Public Utilities Code⁹ to participate in the PAYS Pilot Program. However, AB 1613 does not require that

⁸ Publ. Util. Code § 2842.4(e).

⁹ See Publ. Util. Code § 218.

electrical corporations serve as lenders. AB 1613 merely provides that electrical corporations “shall make on-bill financing available to eligible customers.”¹⁰ Electrical corporations can satisfy this requirement by serving as facilitators to third party lenders and allowing CHP loans to be paid through a customer’s electric bill. If, however, electrical corporations are ordered to act as lenders, each of the questions as set forth in Section B(4), below, would need to be addressed.

B. Questions Posed In the Ruling

1. Is there current interest in development and implementation of a PAYS pilot?

To date, SCE has not received any inquiries from potential eligible customers¹¹ expressing interest in the PAYS Pilot Program. SCE believes that interest in the program will largely be determined by program eligibility, rules, and requirements.

2. How large is the pool of potential eligible customers for a PAYS pilot program and how does this potential pool correspond to the 100 megawatt program size cap set forth in Pub. Util. Code Section 2842.4(f)?

As stated above, SCE does not know how much interest in the PAYS Pilot Program exists at this time. As such, SCE cannot speculate about how potential interest might correspond to the 100 megawatt program size cap.

¹⁰ Publ. Util. Code § 2842.4(f).

¹¹ “Eligible customer” is defined as a customer of an electrical corporation that (1) uses a combined heat and power system with a generating capacity of not more than 20 megawatts that is in compliance with Public Utilities Code Section 2843, and (2) is a nonprofit organization described in Section 501(c) of the Internal Revenue Code that is exempt from taxation under Section 501(a) of that code. *See* Publ. Util. Code § 2842.4(b)(1), (2).

3. What other financing options exist for potential eligible customers to use for purchasing CHP facilities? What are the advantages of a utility PAYS Pilot Program over existing financing options?

Eligible customers are free to pursue all financing options available on the open market. SCE is not in the business of lending and thus it is not in a position to comment on potential lenders or financing options.

A PAYS Pilot Program in which electrical corporations act as lenders would not likely provide any significant advantages over a program using third party lenders for two main reasons. First, if thrust into the role of lender, electrical corporations would be required to comply with state and federal banking and lending requirements and will thus simply enforce the terms and conditions of a loan just as a normal lender would. Because they would be subject to all lending laws as described above, electrical corporations would not and should not be in a position to provide any special benefits to borrowers.

Second, if electrical corporations act as lenders it may drive up the costs for borrowers to the extent the electrical corporations would have to charge higher rates than commercial lenders to hedge against defaulting borrowers. For example, a typical lender has a large portfolio of borrowers. The more diverse pool of borrowers a lender has, the lower the overall risk of default will be to the lender. This lowered risk will lead to lower interest rates for borrowers. The situation for electrical corporations would be entirely different because their pool of borrowers would be comparatively small and homogeneous. Accordingly, default risks will likely be higher and so too will interest rates. This is compounded by the fact that AB 1613 prevents electrical corporations from shifting any PAYS Pilot Program costs to other non-participating customers.

4. Is a workshop necessary to discuss the issues listed above, or could the Commission render a decision on a PAYS pilot through comments alone?

SCE strongly recommends that the Commission pursue further fact gathering and consideration of the issues surrounding a PAYS Pilot Program. In addition to the issues addressed above, there are numerous other legal and practical considerations that must be addressed before a PAYS Pilot Program is implemented. For example, if the electrical corporations are facilitating the repayment of third party loans through on-bill repayment mechanisms, at a minimum the Commission must consider the following questions:

1. How will loan defaults be handled? Would disconnection for failure to pay on a third party loan be permitted?
2. How will late and partial payments be handled? Would payments go toward the electricity bill, the loan, or be prorated between the two?
3. What are the requirements for participating lenders?

If electrical corporations are required to act as lenders to customers seeking to install CHP systems, at a minimum the Commission must consider and resolve the following questions in addition to those listed above:

1. What interest rate should govern the loans?
2. Will the loans be secured or unsecured?
3. How will electrical corporations source the capital needed to fund the loans, and how should electrical corporations account for the results the loans will have on their risk profile?
4. If the loans are secured, what form of security should the loan take?
5. What are the appropriate credit and insurance requirements from a lender's point of view to protect the customers of electrical corporations?
6. How will electrical corporations recover the costs of loan administration activities?
7. What happens in the event of default?

8. The possibility of default reflects a potential cost to customers of electrical corporations, but the statute explicitly states that CHP generators will bear all costs of the PAYS Pilot Program. Does this mean that lending costs or risks must be spread across all PAYS participants through a separate charge?
9. Similar to question 6, above, how will the costs of the electrical corporation's compliance with lending laws be passed on to PAYS participants?
10. In the event of default, can an electrical corporation take ownership of a CHP system? Once an electrical corporation takes ownership, what will be its rights and obligations?
11. How are the electrical corporations to resolve potential conflicts of interest arising from their role as both lender and buyer of excess power? For example, how would an electrical corporation manage a foreclosure on a facility for which it is also a contract party?
12. Public Utilities Code Section 2842.4(a) provides that loans shall last no more than 10 years, and loan costs shall be repaid through on-bill financing "at the difference between what an eligible customer would have paid for electricity and the actual savings derived." CHP systems cost well over \$1 million per MW. If a customer is unable to pay back its loan amount in full within 10 years through monthly bills, is that customer ineligible for the PAYS Pilot Program?

Moreover, Public Utilities Code Section 2842.4(e) requires that the nonprofit organizations purchasing and installing CHP generators bear all costs of the PAYS Pilot Program. Accordingly, the electrical corporations must perform a careful analysis of all costs likely to be associated with the PAYS Pilot Program and develop ratemaking mechanisms to assure that no customers, other than PAYS Pilot Program customers, bear these costs. Consideration of this fundamental issue will require careful deliberation and collaboration with all stakeholders before a decision can be rendered.

III.

CONCLUSION

SCE appreciates the opportunity to comment on the development of the AB 1613 PAYS Pilot Program. As detailed above, there are significant challenges to implementing the PAYS Pilot Program and these challenges will be exacerbated if electrical corporations are ordered to act as lenders rather than facilitators of third party loans. Because of the myriad issues involved, SCE strongly urges the Commission to conduct a workshop to address the issues set forth above, as well as any concerns other parties may raise.

Respectfully submitted,

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Dated: May 25, 2010

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U-338E) ON AB 1613 PAY-AS-YOU-SAVE PILOT** on all parties identified in the attached service list(s). Service was effected by one or more means indicated below:

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Executed this **25th day of May, 2010**, at Rosemead, California.

/s/RAQUEL IPPOLITI

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