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

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| Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues. | Rulemaking 09-11-014 (Filed November 20, 2009) |

## ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO REGARDING PUBLIC PURPOSE PROGRAM FUNDS, PHASE III

This ruling and scoping memo establishes this phase of the proceeding and its scope pursuant to Rule 7.3 of the California Public Utilities Commission Rules of Practice and Procedure. This Scoping Memo also proposes a method whereby reductions in Public Purpose Program (PPP) funding recently authorized by statute would be implemented, and addresses a motion to shift uncommitted energy funds that was filed by the Pacific Gas and Electric Company, the San Diego Gas & Electric Company, and the Southern California Gas Company on July 1, 2011 in Application 08-07-021 et al.

### 1. Background

On June 30, 2011 Senate Bill (SB) 87 was chaptered. Among other things, SB 87 authorizes the transfer of "up to $155,000,000 from the Gas Consumption Surcharge Fund" (Fund) to the state's General Fund. The Fund is used to fund the utilities' gas PPPs. On July 1, 2011 the Pacific Gas and Electric Company (PG&E), the San Diego Gas & Electric Company (SDG&E), and the Southern California Gas Company (SoCalGas) (collectively, the IOUs) filed a motion in

Application 08-07-021 et al., seeking permission to shift unspent, uncommitted energy efficiency funds so as to ensure adequate funding for the 2010-2012 energy efficiency portfolio in the wake of SB 87.[1]

This ruling expands the scope of this proceeding to address issues raised by the potential transfer of up to $155 million from the Fund. Also, in this ruling I propose reductions in gas PPP funding, if the transfer is made, and provide guidance on program prioritization related thereto. In anticipation of a Commission decision that will fully address the issues raised by SB 87, this ruling solicits comments on my proposal, responses to the July 1, 2011 motion filed by the IOUs, and comments on the following issues:

1) What specific programs should be continued and at what level, given the priorities set out within and the funds available?
2) To what extent does the California Public Utilities Commission (Commission or CPUC) have the ability to shift PPP funds among the various IOUs?
3) What, if any, limitations are there on the Commission's ability to use non surcharge funds to support gas PPPs?
4) What is the legality and propriety of requiring ratepayers to pay additional surcharges to fund gas PPPs?
5) Can electric funds can be shifted to gas PPPs in accordance with the energy efficiency manual or Commission decisions?

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[1] The IOUs' July 1, 2011 motion is affixed hereto as Attachment 1.

## 2. Discussion

### 2.1. The Public Purpose Programs

Assembly Bill (AB) 1002 which was enacted on September 29, 2000, implemented a gas PPP surcharge to recover Commission authorized gas funding for, among other things, Energy Efficiency, Low Income Energy Efficiency, and California Alternate Rates for Energy administrative program costs through a separate surcharge. The first gas PPP surcharges associated with AB 1006 were adopted by the CPUC in Resolution G-3303. The amounts collected by each of the utilities from the surcharge are remitted to the California State Board of Equalization (BOE) on the last day of the month following a calendar quarter.[2] The total amount remitted is then transmitted to the State Treasurer, to be deposited in the Fund. The utilities' programs are financed through monies appropriated to the utilities from the Fund by the CPUC. Current estimates place the amount to be collected for energy efficiency in the Fund this fiscal year at approximately $176.6 million.

### 2.2. Budget Language

In broad terms, SB 87 makes appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California. Section 8660-011-3015 of SB 87 provides for an appropriation to the state General Fund by a transfer by the Controller from the Fund. Specifically, this section provides that:

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[2] The amount remitted is calculated by each utility as the sum of the product of each customer class rate multiplied by the customer class throughput.

1. At the discretion of the California Public Utilities Commission (CPUC), all program activities and requirements related to the transfer of $155,000,000 from the Gas Consumption Surcharge Fund to the General Fund may be suspended for any period impacted by this funds transfer. To the extent such program activities and requirements are suspended for a gas corporation's programs and the gas corporation has not secured a different source of funding authorized by the CPUC, that gas corporation shall be relieved of the obligation to meet and shall not be held responsible for the program goals for the period of time affected by the transfer.
2. Upon the request of the Director of Finance, the Controller shall transfer up to $155,000,000 from the Gas Consumption Surcharge Fund to the General Fund.

By its terms, SB 87 takes effect immediately.

In addition to authorizing the Controller to transfer up to $155 million from the Fund to the General Fund in response to a request from the Director of Finance, I interpret the bill provisions as authorizing the CPUC to, among other things, suspend or downsize any and all of the IOUs' gas PPP activities and requirements.

## 3. Scope of Phase III

### 3.1. Funds Currently Available

The amount of funds currently available that could be used to fund gas PPPs is an issue in Phase III. The utilities estimate that the normal 12-month Fund collection for this fiscal year will be approximately $176.6 million. This estimate does not include funds expected to be collected for low income energy efficiency programs, to support the California Rates for Energy (CARE) low income rate discount, and for gas public interest research, development, and demonstration programs. The Commission's Energy Division (ED) staff estimate that the estimated $176.6 million in the Fund would normally be allocated to the IOUs as follows: $89.9 million for PG&E; $66 million for SoCalGas; and $20.7 million for SDG&E. If the full $155 million transfer is made, there will only be $20.6 million (of the estimated $176.6 million) remaining in the Fund this year. However, each of the IOUs has some amount of unspent pre-2010 and/or 2010-2011 gas Energy Efficiency (EE) funds, which I understand are held in their own accounts and not at the BOE or in the Gas Consumption Surcharge Fund. Specifically, ED staff estimate that PG&E has approximately $7.2 million in unspent authorized gas funds from pre-2010 and a $1.2 million deficit in unspent 2010-2011 gas EE funds; SDG&E has approximately $7.6 million in unspent authorized gas funds from pre-2010 and $0.6 million from unspent 2010-2011 gas EE funds; and SoCalGas has approximately $25.6 million in unspent authorized gas funds from pre-2010 and $47.3 million from unspent 2010-2011 gas EE funds.

### 3.2. Options and Alternatives for Dealing with the gas PPP Funding Shortage

If the $155 million is transferred, the $20.6 million expected to be left in the Fund (of the $176.6 million described above), which represents approximately 11% of the previously planned fiscal year 2011-2012 funding, will not be sufficient to support the full continued operation of the IOUs' gas PPPs. Options for dealing with the PPP funding shortage are an issue in Phase III. Most options that have been presented thus far, such as authorizing new funds or directing that funds from other programs be shifted over to the gas PPPs, would, among other things, disturb policies and procedures that have been set forth in prior Commission decisions and can only be implemented by a full Commission decision that modifies the prior decisions. Because the outcome of this phase may produce modifications to certain decisions, I have determined that the categorization of this proceeding should be changed from quasi-legislative to ratesetting.[3]

We must be prepared to act expeditiously if money is transferred from the Fund. Many of the gas PPPs involve long-term contacts, substantial numbers of employees, and the long-term commitment of substantial utility and private sector resources. The ED staff have been informed by the IOUs that a minimum of three months lead time would be necessary if the gas PPPs were shut-down in order to best avoid contractual liability, unnecessary personnel disruptions, and conserve resources.[4] This ACR establishes program priorities and directs the IOUs to begin the process of planning so as to facilitate the expedient and organized down-sizing and/or curtailment of their gas PPPs.

### 3.3. Program Prioritization

By itself the $20.6 million (of the $176.6 million estimate) that would be left in the Fund if the $155 million is transferred would not be sufficient to provide for an orderly curtailment of the gas PPPs. However, as noted above, in addition to the approximately $20.6 million, PG&E has approximately $7.2 million in unspent authorized gas funds from pre-2010 and a $1.2 million deficit in unspent 2010-2011 gas EE funds, SDG&E has approximately $7.6 million in unspent authorized gas funds from pre-2010 and $0.6 million from unspent

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[3] I will place a resolution before the Commission to confirm my determination in this ruling that the categorization of this proceeding should be changed from quasi-legislative to ratesetting.

[4] On March 24, 2011 ED met with the SoCalGas and PG&E, and on April 1, 2011 ED forwarded a data request to SoCalGas, PG&E, and SDG&E (collectively, "the utilities" or "the IOUs") to gather input from the IOU's on this issue.

2010-2011 gas EE funds, and SoCalGas has approximately $25.6 million in unspent authorized gas funds from pre-2010 and $47.3 million from unspent 2010-2011 gas EE funds. These sums represent 40% and 110% of the expected fiscal year 2011-2012 budgets for SDG&E and SoCalGas (respectively), but only 6.7% of PG&E's expected 2011-2012 budget. How the remaining funds will be used (or program priorities) is an issue in Phase III. I propose that the IOUs use the funds available to them as set forth below and that PG&E plan to use the approximately $20.6 million remaining in the Fund to support its gas PPPs, if the $155 million transfer is made.[5] If the transfer is made and the amount remaining in the Fund is greater than $20.6 million, I propose that PG&E be allotted up to 40% of its 2011-2012 budget after which any remaining sums be split between PG&E and SDG&E so as to afford them an equal percentage of their 2011-2012 budgets.

### 3.3.1. Program Prioritization for SoCalGas

As noted above, SoCalGas has approximately $25.6 million in unspent authorized gas funds from pre-2010 and $47.3 million from unspent 2010-2011 gas EE funds which when combined is equal to 110% of the 2011-2012 budget for SoCalGas. SoCalGas may therefore fully fund its FY 2011-2012 gas PPPs from these sources, if the $155 million transfer is made.

### 3.3.2. Program Prioritization for SDG&E

SDG&E has approximately $7.6 million in unspent authorized gas funds from pre-2010 and $0.6 million from unspent 2010-2011 gas EE funds. Combined, these sums amount to 40% of the 2011-2012 budget for SDG&E.

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[5] The addition of the latter funds will give PG&E approximately 30% of its budget.

SDG&E is directed to plan to fully fund the American Recovery and Reinvestment Act (ARRA) programs, primarily the Energy Upgrade California (EUC) incentive program if the $155 million transfer is made. Should SDG&E have sufficient funds left over after funding the ARRA programs, it should plan to fund its highest Total Resource Cost (TRC) ranking gas PPPs.

### 3.3.3 Program Prioritization for PG&E

PG&E has approximately $7.3 million in unspent authorized gas funds from pre-2010 and a $1.2 million deficit in unspent 2010-2011 gas EE funds. Adding the approximately $20.6 million remaining in the Fund (of the $176.6 million if the transfer is made) to PG&E's pre 2010 and unspent 2010-2011 EE funds would give PG&E approximately 30% of its 2011-2012 budget.[6] PG&E should plan to utilize these funds to continue its ARRA programs, primarily the EUC incentive program, and to fund its highest TRC ranking gas PPPs if the $155 million transfer is made.

## 4. Comments and Responses

Parties are asked to serve and file comments on the approach set forth above. In particular, parties are asked to identify computational errors verify all numbers set forth in this scoping memo and suggest alternate funding priorities. Parties are also asked to respond to the request set forth in the IOUs' July 1, 2011 motion. Finally, parties are asked to comment on following:

- What specific programs should be continued and at what level, given the priorities set out above and the funds available;

[6] Specifically, PG&E would have approximately $18.7 million to continue its ARRA programs and approximately $7.9 million to continue its TRC gas programs.

- The Commission's ability to shift PPP funds among the various IOUs;
- The Commission's ability to use non surcharge funds to support these programs;
- The legality and propriety of requiring ratepayers to pay additional surcharges to fund these gas PPPs; and
- Whether electric funds can be shifted to gas PPPs in accordance with the energy efficiency manual or Commission decisions.

Comments and responses addressing the issues above must be filed within 14 days of the mailing date of this Scoping Memo. Reply comments must be filed within 7 days of the comments.

**IT IS RULED** that:

1. The scope of Phase III of this proceeding is modified as described herein.

2. The final categorization of this proceeding is changed to ratesetting. This ruling as to category is appealable under Rule 7.6.

3. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company shall file plans for the reduction or curtailment of their Public Purpose Programs (that comport with Section 3 above) within 14 days of this ruling.

4. Comments on the questions presented in Section 4 above must be filed within 14 days of this ruling's mailing.

5. Reply comments must be filed one week after the above comments are filed.

6. This proceeding will be completed within 18 months of the date of this Scoping Memo.

7. This ruling and scoping memo shall be served on the service list in Application 08-07-021 et al.

8. This ruling is effective today.

Dated July 7, 2011, at San Francisco, California.

/s/ CHARLOTTE TERKEURST for
Mark J. Ferron
Assigned Commissioner