

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
11-04-13
04:59 PM

Application of the California Energy
Commission for Approval of Electric
Program Investment Charge Proposed
2012 through 2014 Triennial
Investment Plan.

Application 12-11-001
(Filed November 1, 2012)

And Related Matters

Application 12-11-002
Application 12-11-003
Application 12-11-004

**OPENING COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES**

ROBERT W. HAGA

Attorney
Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2538
Email: robert.haga@cpuc.ca.gov

ZHEN ZHANG

CHRISTOPHER MYERS
Analysts
Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2624
Email: zzl@cpuc.ca.gov

November 4, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of the California Energy
Commission for Approval of Electric
Program Investment Charge Proposed 2012
through 2014 Triennial Investment Plan.

Application 12-11-001
(Filed November 1, 2012)

And Related Matters

Application 12-11-002
Application 12-11-003
Application 12-11-004

**OPENING COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Office of Ratepayer Advocates (ORA") hereby submits these comments on the *Revised Proposed Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 Through 2014* ("RPD"), issued October 15, 2013 in Application ("A.") 12-11-001 et al.

ORA supports the modifications made to the RPD, particularly:

- Capping the collections of Electric Program Investment Charge ("EPIC") funds at \$162 million per year,
- Denying the California Energy Commission's ("CEC") request to increase by \$25 million per year in 2013 and 2014 its EPIC budget to fund the New Solar Homes Partnership ("NSHP"); and

- Identifying Rulemaking (“R.”) 12-11-005 as the proper proceeding to consider the NSHP.

ORA also recommends the following modifications in order to ensure transparency and accountability:

- The Commission should make public to parties to this proceeding each of the reports the CEC submits to the Legislature pursuant to Public Resource (Pub. Res.) Code § 25711.5(e); and
- The Commission Should Extend Sole Source Bidding Requirements to the Investor-owned Utilities (“IOU”) EPIC Administrators.

Appendix A to these comments contains ORA’s recommended amendments to the Conclusions of Law (“CoL”) and Ordering Paragraphs (“OP”) to provide the requested modifications.

II. BACKGROUND

The RPD incorporates substantive modifications to the Commission’s May 24, 2013 Proposed Decision (“PD”) adopting CEC, Pacific Gas and Electric Company’s (“PG&E”), Southern California Edison Company’s (“SCE”), and San Diego Gas & Electric Company’s (“SDG&E”) (collectively, “Administrators”) 2012-2014 EPIC program Triennial Investment Plans (“Plans”).¹ The substantive modifications reflect changes in law following the passage of Senate Bill (“SB”) 96,² which was codified in Pub. Res. Code §§ 25711.5 and 25711.7. Senate Bill (SB) 96 does not change the authorization status of the EPIC program as adopted in Decision (“D.”) 11-12-035³ and

¹ *Proposed Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 through 2014*, issued May 24, 2013.

² Chapter 356, Statutes of 2013.

³ D.11-12-035, Phase 1 Decision that Establishes Interim Research Development and Demonstration and Renewable Program Funding Levels; in Rulemaking (“R.”) 11-10-003.

D.12-05-037,⁴ rather SB 96 (1) institutes an annual EPIC budget cap of \$162 million;⁵ and (2) requires the CEC to comply with specific guidelines and reporting requirements when administering its portion of the EPIC program.⁶

The RPD clarifies that parties' initial comments filed in response to the Commission's May 24, 2013 PD have already been considered, and thus limits comments to Sections 2.2 (Funds to be Devoted to Particular Program Areas), 2.4.1 (Funding for Section 2851(e)(3) Solar Energy Systems on New Construction), 2.6 (Competitive Bidding and Sole Source Contracts), 2.15 (Annual Reports) and 2.18 (Intellectual Property (IP) Rights).

III. DISCUSSION

A. **RPD SECTIONS 2.2 (Funds to be Devoted to Particular Program Areas), 2.4.1 (Funding for Section 2851(e)(3) Solar Energy Systems on New Construction), 2.6 (Competitive Bidding and Sole Source Contracts), 2.15 (Annual Reports), 2.18 (Intellectual Property ("IP") Rights) – ORA supports the modifications made to the RPD.**

ORA supports the modifications made to the RPD to incorporate the statutory changes required pursuant to SB 96. The RPD correctly caps the collection of EPIC funds at \$162 million per year,⁷ which ensures that ratepayers will not be burdened by future proposals seeking to increase EPIC's spending authority. The cap also compels the Administrators to stay within their allocated budgets, which will avoid waste and budget overruns. SB 96 also requires many new oversight mechanisms for the CEC, and

⁴ D.12-05-037, Phase 2 Establishes Purposes and Governance for Electric Program Investment Charge and Establishes Funding Collections for 2013-2020; in Rulemaking ("R.") 11-10-003.

⁵ See, Pub. Res. Code § 25711.7.

⁶ See, Pub. Res. Code § 25711.5.

⁷ RPD, OP 1, p. 126.

the RPD recognizes that the CEC must comply with those statutory changes in order to continue its administration of the EPIC program.

Lastly, ORA supports the RPD's denial of the CEC's proposal to allocate \$25 million per year in 2013 and 2014 for funding for the NSHP.⁸ Due the annual EPIC budget cap, the RPD correctly states:

[F]unding for solar on new construction pursuant to § 2851, if funded through the EPIC program, must come from the "mainline" \$162 million EPIC budget and must accordingly subtract from the budget for the CEC's other investment initiatives.⁹

ORA agrees. Therefore, requiring the CEC to request funds for the NSHP in Rulemaking ("R.") 12-11-005, the Commission's Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues,¹⁰ is a prudent decision. The NSHP aligns more closely with the scope of R.12-11-005 where parties and the Commission will have a better opportunity to decide on the merits of providing additional ratepayer funds to that program.

B. RPD SECTION 2.15: Annual Reports – The Commission should make public to parties to this proceeding each of the reports the CEC submits to the Legislature pursuant to Pub. Res. Code § 25711.5(e).

Pub. Res. Code § 25711.5(e) requires the CEC to "prepare and submit to the Legislature no later than April 30 of each year an annual report" that details specific administrative and program activities.¹¹ The RPD identifies these reports and directs the

⁸ RPD, OP 4, p. 127.

⁹ RPD, p. 37.

¹⁰ RPD, p. 37.

¹¹ Pub. Res. Code § 25711.5 states:

(e) Notwithstanding Section 10231.5 of the Government Code, prepare and submit to the Legislature no

CEC to “provide copies of each of these reports to the Commission through the Commission’s Executive Director and Energy Division Director.”¹² ORA recommends that the Commission also make the reports available to interested parties by posting them in a public location such as the Commission website.

ORA’s recommendation is consistent with D.12-05-037, which ordered the EPIC Administrators to file comprehensive triennial investment plans,¹³ annual reports,¹⁴ and mandated that the EPIC Administrators consult with parties biannually on the status of the program.¹⁵ The recommendation is also consistent with the detailed reporting requirements incorporated in the RPD.¹⁶ The reporting requirements set forth in Pub. Res. Code § 25711.5(e) do not intrude on competitive or other confidential matters, so it

later than April 30 of each year an annual report in compliance with Section 9795 of the Government Code that shall include all of the following:

- (1) A brief description of each project for which funding was awarded in the immediately prior calendar year, including the name of the recipient and the amount of the award, a description of how the project is thought to lead to technological advancement or breakthroughs to overcome barriers to achieving the state’s statutory energy goals, and a description of why the project was selected.
- (2) A brief description of each project funded by the EPIC program that was completed in the immediately prior calendar year, including the name of the recipient, the amount of the award, and the outcomes of the funded project.
- (3) A brief description of each project funded by the EPIC program for which an award was made in the previous years but that is not completed, including the name of the recipient and the amount of the award, and a description of how the project will lead to technological advancement or breakthroughs to overcome barriers to achieving the state’s statutory energy goals.
- (4) Identification of the award recipients that are California-based entities, small businesses, or businesses owned by women, minorities, or disabled veterans.
- (5) Identification of which awards were made through a competitive bid, interagency agreement, or sole source method, and the action of the Joint Legislative Budget Committee pursuant to paragraph (2) of subdivision (g) for each award made through an interagency agreement or sole source method.
- (6) Identification of the total amount of administrative and overhead costs incurred for each project.

¹² RPD, p. 59.

¹³ D.12-05-037, OP 12, pp. 102-104.

¹⁴ D.12-05-037, OP 16, p. 105.

¹⁵ D.12-05-037, OP 15, pp. 104-105.

¹⁶ See RPD, Attachments 5& 6.

seems unlikely any confidentiality issues would prohibit parties from accessing the reports. It is clear that the State’s goal is to promote transparency and accountability within the program, and the reports will provide parties greater opportunities to review and monitor EPIC activities.

C. RPD SECTION 2.6: Competitive Bidding and Sole Source Contracts – The Commission Should Extend Sole Source Bidding Requirements to the IOU EPIC Administrators.

ORA recommends that the sole source bidding provisions set forth in Pub. Res. Code § 25711.5(g), currently applicable to CEC, should extend to the IOU EPIC Administrators as well. Pub. Res. Code § 25711.5(g) requires the CEC to solicit applications and award funds using sealed competitive bids. Pub. Res. Code § 25711.5(g) allows the CEC to use sole source or interagency agreement methods provided that the following conditions are met:

- The CEC, at least 60 days prior to making an award pursuant to this subdivision, notifies that Joint Legislative Budget Committee and the relevant policy committees in both houses of the Legislature, in writing, of its intent to take the proposed action.
- The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 60 days from the date of notification.¹⁷

In response to these statutory requirements, the RPD observes that “25711.5(g)(2) permits the CEC to use a sole source or interagency agreement method under certain circumstances.”¹⁸

Through the adoption of Pub. Res. Code § 25711.5(g), the Legislature has clearly indicated a preference for competitive bidding methods over sole source methods, only allowing sole source methods on a limited basis and under strict oversight, stating “[i]t is

¹⁷ See, Pub. Res. Code § 25711.5(g)(2)(A).

¹⁸ RDP, CoL 32, p. 113.

the intent of the Legislature to enact this [law] to ensure legislative oversight for awards made on a sole source basis, or through an interagency agreement.”¹⁹ Consistent with the clear legislative intent for the CEC’s use of competitive solicitation in its administration of EPIC funds, the Commission should adopt the same conditions regarding use of sealed competitive bids and sole source bids for the IOUs as Pub. Res. Code § 25711.5(g) establishes for the CEC. Such requirements are also consistent with the Commission’s original considerations in D.12-05-037, where the Commission indicated a preference for competitive bids, stating:

During consideration of the first set of investment plans, we will also consider whether there should be a separate approval process required for any contract or grant not awarded through a competitive bidding process, to set a higher standard for the use of a non-competitive process.²⁰

Today, in light of recent legislative actions, requiring all EPIC Administrators to adhere to sole source contracting requirements is reasonable. It is appropriate to extend the provisions set forth in Pub. Res. Code § 25711.5(g) to the IOU EPIC Administrators via the following modifications to the RPD (see Appendix A):

- ~~The commission~~ *Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company* shall use a sealed competitive bid as the preferred method to solicit project applications and award funds pursuant to the EPIC program.
- ~~The commission~~ *Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company* may use a sole source or interagency agreement method if the project

¹⁹ Pub. Res. Code § 25711.5(g)(2)(B).

²⁰ D.12-05-037, p. 37.

cannot be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in a solicitation for bid and if both of the following conditions are met:

- ~~The commission Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, at least 60 days prior to making an award pursuant to this subdivision, notifies~~ shall submit a Tier 2 Advice Letter to the Commission seeking authorization to enter into a sole source contract. ~~the Joint Budget Committee and the relevant policy committees in both houses of the Legislature, in writing, of its intent to take the proposed action.~~
- ~~The Joint Legislative Budget Committee~~ The Commission either approves or ~~does not~~ disapproves the proposed action ~~within 60 days from the date of notification required by clause (i).~~
- It is the ~~intent~~ *policy* of the Legislature Commission to ~~enact this paragraph to ensure legislative oversight for awards made on a sole source basis, or through an interagency agreement.~~

IV. CONCLUSIONS

For the reasons stated above, ORA respectfully requests the Commission adopt the recommendations provided herein.

Respectfully submitted,

/s/

ROBERT W. HAGA

ROBERT W. HAGA

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2538
Email: robert.haga@cpuc.ca.gov

November 4, 2013

APPENDIX A

Proposed Changes to the RPD

Conclusion of Law

31. ~~The Investment Plans adequately address the use of sole source contracts. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company should use competitive bids as the preferred method to solicit project applications and award EPIC funds. However, sole source contracts are permitted under certain circumstances. However,~~ *The Administrators should be required to report the use of non-competitive awards in their annual reports to the Commission.*

33. Public Resources Code § 25711.5(e) requires the CEC to submit reports to the Legislature on its administration of the EPIC program. The CEC should provide to the Commission copies of each of these reports. *The Commission should make the reports available to the service lists of Rulemaking (R.) 11-10-003 and Application (A.) 12-11-001 et al or the most recent EPIC proceeding.*

36. ~~A separate approval process should not be required for contracts or grants that are not awarded through a competitive bidding process. However,~~ *The IOU Administrators should be required to file a Tier 2 Advice Letter with the Commission seeking authorization to enter into to justify any contract or grants exempted from competitive bidding. in their annual report, and* ~~The Administrators' use of non-competitive awards should be reviewed in the next triennial investment plan cycle.~~

XX. It is the policy of the Commission to ensure oversight for awards made on a sole source basis.

Ordering Paragraph

29. The California Energy Commission (CEC) must:

- a Provide to the Commission copies of the Electric Program Investment Charge (EPIC) reports to the Legislature required by Public Resources Code § 25711.5(e); *The Commission should make the reports available to the service lists of Rulemaking (R.) 11-10-003 and Application (A.) 12-11-001 et al or the most recent EPIC proceeding;*

XX. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall use a sealed competitive bid as the preferred method to solicit project applications and award funds pursuant to the EPIC program.

XX. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company may use a sole source method if the project cannot be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in a solicitation for bid and if both of the following conditions are met:

- a The commission Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall submit a Tier 2 Advice Letter to the Commission seeking authorization to enter into a sole source contract.*
- b The Commission either approves or disapproves the proposed action.*