

Decision **PROPOSED DECISION OF ALJ EDMISTER (Mailed 7/13/2015)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

**DECISION DENYING MARIN CLEAN ENERGY PETITION FOR
MODIFICATION OF DECISION 14-01-033**

Summary

This Decision denies Marin Clean Energy's (MCE's) Petition for Modification of Decision 14-01-033 (Petition). Decision (D.) 14-01-033 set out the manner in which Community Choice Aggregators (CCAs) will administer energy efficiency programs.

MCE has failed to demonstrate that we should modify D.14-01-033. The arguments MCE raises in its petition are among those that we addressed at length in D.14-01-033 only two months prior to the Petition. The "new facts" that MCE proffers with its petition in support of those old arguments do not advance MCE's case. They are consistent with the state of affairs that we expressly said we expected when we issued D.14-01-033. Nothing in MCE's petition presents the "extraordinary circumstances"¹ that would justify a departure from that decision.

¹ D.09-02-032 at 8.

We reiterate here that a CCA must administer a cost-effective portfolio (as MCE's filings in Rulemaking 13-11-005² assert that it can). We also reiterate that CCAs may not use money taken from *electricity* ratepayers to pay for *gas* savings. CCAs can access gas public purpose funds through agreements with the relevant gas utility, per D.14-10-046.

1. Factual Background

Marin Clean Energy (MCE) is a community choice aggregator (CCA);³ the first of its kind.⁴ CCAs may administer energy efficiency (EE) programs, pursuant to Section 381.1. We explained the governing statutory framework in Decision (D.) 14-01-033:

Section 381(b) requires the Commission to “allocate funds collected pursuant to [Section 381(a)] . . . to programs that enhance system reliability and provide in-state benefits as follows: (1) Cost-effective energy efficiency and conservation activities.” Section 381(a), in turn, has the Commission “require each electrical corporation” to collect a nonbypassable charge from the electrical corporation's distribution customers. The charge the electrical corporation collects is nonbypassable “to ensure that funding for the programs described in subdivision (b) . . . are not commingled with other revenues.”

² Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues

³ See Cal. Pub. Util. Code § 366.2(a)(1) (“Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators”). All subsequent statutory references are to the California Public Utilities Code, unless otherwise noted.

⁴ Since certifying MCE as a CCA, we have also registered Sonoma Clean Power as a CCA. We have also certified CleanPower S.F.'s Updated Implementation Plan, and the Lancaster CCA Revised Implementation Plan.
http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm

D.14-01-033 details how CCAs will administer EE programs under Section 381.1. As summarized in the decision itself:

CCAs are henceforth eligible to administer EE programs under Cal. Pub. Util. Code Section 381.1(a)-(d) subject to the same policies and standards as Investor-owned Utilities (IOUs) program administrators (PA), except as noted below. The Commission's goal is to make EE program administration more manageable by harmonizing the EE rules for CCA PAs with those of IOU PAs.

We limit funding under section 381.1 for CCA-administered programs to electricity, and not gas programs. We do so because the funding source for CCA-administered programs under Section 381.1 is a non-bypassable charge on electricity, not gas, and because CCAs provide only electricity, and not gas, to their customers.

D.14-01-033 mailed on January 23, 2014. MCE filed its Petition on March 21, 2014.

2. Issues Before the Commission

MCE takes issue with our implementation of CCAs' statutory obligations to administer cost-effective portfolios. MCE also takes issue with our prohibition on CCAs using money collected from *electricity* ratepayers to pay for *gas* savings. MCE asks the Commission to apply an alternative cost-effectiveness approach to its energy efficiency portfolio and/or that CCA requests to administer particular programs be "considered before requests from IOUs."⁵ MCE also seeks to access public purpose program ("PPP") charges collected from gas customers.

Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE)

⁵ Petition at 7.

(collectively, IOUs) timely opposed MCE's petition by filing responses on April 21, 2014. MCE filed a response on May 1, 2014, after obtaining authorization to do so from the assigned Administrative Law Judge (ALJ).

3. Discussion and Analysis

3.1. The Legal Standard Governing Review of Petitions to Modify

Section 1708 confers on the Commission broad authority to grant or deny a petition for modification. Within that authority is the discretion to reject attempts to relitigate arguments we considered and rejected. Only a persuasive indication of a major change in material facts and circumstances, "which would create a strong expectation that we would make a different decision based on these facts or circumstances, would cause us to reopen the proceedings."⁶We see no such persuasive indication here.

3.2. Cost-effectiveness

Section 381.1 requires that we approve "cost-effective" energy and conservation programs. In D.14-01-033, we applied to CCAs a more liberal cost-effectiveness standard than we apply to the IOUs. MCE contended in comments prior to our adoption of D.14-01-033 that the standard we ultimately adopted was not liberal enough; MCE renews those arguments in the Petition.

We evaluate cost effectiveness using, *inter alia*, a set of calculators that yield a "Total Resource Cost" (TRC).⁷ "The TRC test is a measure of EE program cost-effectiveness to the utility ratepayers to whom the revenue requirements as

⁶ D.09-02-032 at 8-9 (citing D.03-010-057; internal citations omitted).

⁷ D.07-09-043 at 157.

well as benefits accrue.”⁸ A TRC >1 means that a portfolio’s⁹ return exceeds its cost. We have historically required IOUs portfolios to have a TRC above 1.0.¹⁰ A rule of thumb has been that IOUs’ portfolio TRCs should be at least 1.25. This is reflected in D.14-01-033. There, we noted that we expect IOUs to be at or above 1.25, but that we would set the TRC at 1.0 for CCAs for the first three years they administer programs so that CCAs could have an “on-ramp” to program administration.

MCE again asserts here, as we characterized its comments in D.14-01-033, that “the on-ramp is still too steep.”¹¹ The Petition renews MCE’s prior argument “that CCAs will have a hard time hitting a TRC of 1.0.”¹² The “new facts”¹³ offered with the Petition simply confirm what we had already observed in D.14-01-033: the programs that MCE has opted to administer “tend towards the less cost-effective side (e.g., residential programs).”¹⁴ These “new facts” do not alter our reasoning.

⁸ D.08-01-006 at 9-10.

⁹ “We have interpreted [‘cost-effective’] to mean that portfolios of programs, rather than all individual programs, must be cost-effective.” D.14-10-046 at 8.

¹⁰ See D.09-09-04 at 99 (approving 2010-12 budgets; “In order to mitigate the risk of non-cost effective portfolios, we performed specified budget reductions in order to approach an overall budget TRC ratio of 1.5. The adopted budgets provide TRC ratios that we estimate to be between 1.0 and 1.3 for each utility.”).

¹¹ D.14-01-033 at 32.

¹² *Id.*

¹³ “MCE now has evidence to demonstrate that achieving a TRC comparable to that of the IOUs on a smaller geographical scale is quite challenging for CCAs. This new information confirms previous concerns that CCAs’ largely residential customer class hampers the ability of the PA to establish the same TRC as an IOU, which has a portfolio spread across a much larger region of the state.” Petition, at 3.

¹⁴ D.14-01-033 at 32.

What we said in response to MCE's arguments in D.14-01-033 remains true today: "The ultimate solution is for CCAs to engage in a mix of programs such that their portfolios are cost effective." And, indeed, MCE appears to be doing just that for 2015, where it has proposed a cost-effective EE portfolio.¹⁵ MCE innovating in order to have a cost-effective portfolio is a win for both MCE and for ratepayers; we see no reason in MCE's "new facts" to depart from our prior decision on this point.

3.3. Using Money from Electricity Customers to Pay for Gas Savings

Many programs, including several of those that MCE administers, have both gas and electric savings associated with them. For instance, a residential retrofit program may involve sealing of ducts that are common to both a *gas* heater and an *electric* air conditioner. Whether and how to ensure that such a program is fully funded by an appropriate mix of gas and electric ratepayer funds is an issue that arose in the course of our deliberations.

In D.14-01-033, we limited:

funding under section 381.1 for CCA-administered programs to electricity, and not gas programs. We do so because the funding source for CCA-administered programs under Section 381.1 is a non-bypassable charge on electricity, not gas, and because CCAs provide only electricity, and not gas, to their customers.

In other words, an electricity aggregator could use funds from electricity customers to pay for electricity savings; it could not use electricity customer

¹⁵ See D.14-10-046, where we approved MCE's 2015 EE portfolio.

funds to pay for gas savings. We deferred consideration of how to fund gas savings for CCAs to Rulemaking (R.) 13-11-005.¹⁶

In R.13-11-005, we established a funding mechanism for MCE programs with a gas savings component. We directed PG&E to enter into a contract with MCE for gas funding. The contract was to be modeled after the contracts that the IOUs have with regional energy networks.¹⁷ Having addressed funding for MCE's gas savings there, we need not take the issue up here.

4. Conclusion

We conclude that MCE has failed to show cause for modification of D.14-01-033.

5. Categorization and Need for Hearing

We reaffirm the categorization of the proceeding as ratesetting, and the determination that hearings are not necessary.

6. 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 comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 3, 2015 by MCE, SDG&E, and Southern California Gas Company, and reply comments were filed on August 10, 2015 by MCE and PG&E.

SDG&E's comments supported the proposed decision.

¹⁶ D.14-01-033 at 18-19, n. 26.

¹⁷ D.14-10-046 at 119.

MCE also “supports the denial of the PFM”¹⁸ MCE requests, however, that the Commission direct certain issues be placed within the scope of R.13-11-005. The first of those is a “Reasonable On-Ramp for MCE’s Expanded Programs.” MCE contends that a “lower cost-effectiveness threshold TRC ratio of 1.0 should apply to the first three years of MCE’s newly expanded programs.” We understand MCE to be asking for an extension of the time to meet cost-effectiveness requirements for its portfolio as a whole. That is, MCE proposes that we consider automatically “restarting the clock” for when CCA portfolios must meet a cost-effectiveness requirement greater than 1.0.

In D.14-10-046, we already gave MCE “another year at 1.0 [TRC] to find their footing.” We decline MCE’s request to direct a revisiting of CCA cost-effectiveness rules in R.13-11-005.

Second, MCE asks that we direct consideration in R.13-11-005 of a “first choice of programs” where a CCA wants to run energy efficiency programs that overlap with IOU programs in the CCA’s service territory. MCE indicates that it intends to offer such overlapping programs shortly.¹⁹

In D.14-01-033, we observed that:

If CCAs want to undertake regional or statewide programs for their customers, or for customers within their footprint (reserving to a later day the question of customers outside the CCA’s footprint), we see no prohibition on their doing so in Section 381.1. There are obvious practical implications to allowing CCAs to administer

¹⁸ August 3, 2015 Comments of Marin Clean Energy on Proposed Decision (MCE August 3 Comments), at 7.

¹⁹ “The Commission has indicate it would not address overlapping programs until a factual scenario arose. A factually scenario is imminent with MCE preparing to submit its proposal for expanded energy efficiency funding.” MCE August 3, 2015 Comments, at 3.

regional and statewide programs, including whether and how to deal with overlap between an IOU and CCA offering. We will address these issues when and if they arise in the context of particular programs and applications/advice letters rather than attempting to address them in the abstract now.

MCE's comments provide no substantive information on its anticipated new offerings. Until MCE provides such information, we are essentially still where we were when we issued D.14-01-033, dealing with abstractions. Moreover, it is unclear whether R.13-11-005 is or will be the proper proceeding in which to consider issues of program overlap. These issues may be better addressed in a proceeding devoted to a particularized MCE request for funding.

Third, MCE contends that “, the mechanism [the Commission adopted in D.14-10-046 to provide gas funding in connection with CCA gas-saving programs] does not allow CCAs to propose a budget and it is not clear if it is intended as a long term solution for all CCA PAs or just a temporary solution for MCE's portfolio.” MCE states that “Once a CCA PA's budget is approved by a Commission decision there are only two processes to adjust the budget: (1) prepare an updated budget for the next scheduled application filing or (2) file a PFM of the original budget decision. Waiting for the next scheduled application filing creates an inefficient delay because it may result in years of underfunded programs.” Relatedly, MCE asks for guidance on accounting rules.

Revised portfolio and budget processes are already within the scope of the current phase of R.13-11-005.²⁰ We need not provide further direction here.

²⁰ Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memorandum Regarding Implementation of Energy Efficiency “Rolling Portfolios” (Phase II of Rulemaking 13-11-005), February 24, 2015, at 5-6.

7. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Todd O. Edmister is the assigned ALJ in this proceeding.

Findings of Fact

1. Section 381.1 requires that we approve “cost-effective” energy and conservation programs.
2. In D.14-01-033, we applied to CCAs a more liberal cost-effectiveness standard than we apply to the IOUs.
3. The EE programs that MCE opted to administer prior to 2015 were not very cost-effective.
4. In D.14-01-033, we approved an MCE 2015 EE portfolio that we expect will be cost-effective.
5. MCE administers programs that save both electricity and gas.
6. In D.14-01-033, we established a mechanism for funding with gas public purpose funds, MCE programs that save gas.

Conclusions of Law

1. CCA energy efficiency programs must be cost-effective.
2. MCE has failed to show cause for changing D.14-01-033.

O R D E R

IT IS ORDERED that:

1. Marin Clean Energy’s Petition for Modification is denied.
2. Rulemaking 09-11-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.