

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER FERRON**  
(Mailed September 2, 2011)

**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 REGARDING PUBLIC PURPOSE PROGRAM FUNDS**

**1. Summary**

Today's decision provides guidance to Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) (collectively, the IOUs or utilities) regarding priorities and financing for these utilities' on-going gas Public Purpose Programs (PPP). Guidance is needed because money previously collected from gas ratepayers is subject to transfer to the State's General Fund under legislation enacting the fiscal year 2011-2012 budget. Senate Bill (SB) 87, which, among other things, authorizes the transfer of "up to \$155,000,000 from the Gas Consumption Surcharge Fund" (Fund) to the state's General Fund, was chaptered on June 30, 2011. If the full amount allowed by law is transferred, there will only be approximately \$21.6 million of the fiscal year 2011-2012 collections remaining in the Fund.

This decision addresses and backstops with other unspent Energy Efficiency (EE) funds the potential funding shortage caused by SB 87. The backstop funding consists of funding left over from the IOUs' previous years' gas

and electric EE funds, as well as prior years' Evaluation, Measurement and Verification (EM&V) funds. By our calculation, few, if any, gas PPP program cuts will be required. (See Table A, below.) However, the numbers at issue have changed over time. Thus, if the final calculation reveals that any curtailment of gas PPP programs is required, we explain to the IOUs which programs have priority, and prescribe the necessary steps the IOUs must take to account for those curtailments.

In this decision, we first describe the gas PPP and the related surcharges. Second, we describe the budget legislation affecting the program. Third, we describe the various uncertainties with which we must deal, including (1) the timing and size of any transfer pursuant to the legislation,<sup>1</sup> (2) the amounts already spent by the gas utilities from money previously allocated to their respective programs, and (3) alternative sources of money for the programs if and when the legislated transfer occurs. Fourth, we indicate which alternative sources the utilities may tap and which EE programs the utilities should give priority to if the alternative sources do not fully replace the transferred money. Finally, we allow the IOUs to revise their energy savings goals to take into account our program reductions and priorities, if any program curtailments are required.

## **2. Background**

### **2.1 The Public Purpose Programs**

Assembly Bill (AB) 1002, enacted on September 29, 2000, implemented a gas PPP surcharge to recover California Public Utilities Commission-

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<sup>1</sup> Currently we do not know if, when, or to what extent a transfer of funds consistent with Senate Bill 87 will be made, but because the Legislature has authorized the transfer, we must prepare for it.

(Commission or CPUC) authorized gas funding for, among other things, EE, Low Income EE (now know as Energy Savings Assistance Program, or ESAP), and California Alternate Rates for Energy (CARE) administrative program costs through a separate surcharge. The CPUC adopted the first gas PPP surcharges associated with AB 1002 in Resolution G-3303 on December 21, 2000. The amounts collected by each of the utilities from the surcharge are remitted to the Board of Equalization (BOE) on the last day of the month following a calendar quarter.<sup>2</sup> The total amount remitted is then transmitted to the State Treasurer, to be deposited in the Gas Consumption Surcharge Fund. The utilities' programs are financed through monies appropriated to the utilities from the Gas Consumption Surcharge Fund by the CPUC. Current estimates place the amount to be collected for EE in the Gas Consumption Surcharge Fund this fiscal year at approximately \$176 million.

## **2.2 Budget Provisions for Fiscal Year 2011- 2012**

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 Gas Consumption Surcharge Fund. Specifically, this section provides that:

1. At the discretion of the California Public Utilities Commission, 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

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<sup>2</sup> 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.

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, once enacted, SB 87 took effect immediately, although the transfer of funds has not yet occurred.<sup>3</sup> In addition to authorizing the above transfer, SB 87 authorizes the Commission to suspend or downsize any or all of the IOUs' gas PPP activities and requirements.

### **2.3 Supporting Gas PPPs after SB 87**

On July 7, 2011, the assigned Commissioner issued a Ruling and Scoping Memo (ACR) in this proceeding.<sup>4</sup> After establishing that the impact of SB 87 on gas PPPs is within the scope of the proceeding, the ACR proposed that the remaining amount of approximately \$21.6 million in fiscal year 2011-2012 collections be augmented with unspent gas EE funds from pre-2010 and 2010-2011. The ACR sought comment on whether PG&E's gas PPPs could be funded by the approximately \$21.6 million remaining in the Gas Consumption Surcharge Fund plus the approximately \$7.2 million PG&E has in unspent authorized gas funds from pre-2010 and the \$1.8 million deficit in unspent 2010-2011 gas EE

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<sup>3</sup> As set forth in Section 1.80(a), SB 87 appropriates funds "for the use and support of the State of California for the 2011-12 fiscal year beginning July 1, 2011, and ending June 30, 2012."

<sup>4</sup> An additional Administrative Law Judge (ALJ) ruling was required to clarify the IOUs' estimates of the funds available for programs and obtain additional input about programs that might need to be cut if funds are reduced. This ruling issued on August 4, 2011.

funds; SDG&E's gas PPPs could be funded by \$7.2 million in unspent authorized gas funds from pre-2010 and \$0.7 million in unspent 2010-2011 gas EE funds; and SoCalGas' gas PPPs could be funded by approximately \$25.6 million in unspent authorized gas funds from pre-2010 and \$47.3 million in unspent 2010-2011 gas EE funds.<sup>5</sup>

The motion filed by the IOUs on July 1, 2011 in Application (A.) 08-07-021 *et al.* (IOU Motion), proposed another way to offset the possible reduction in funds available for IOUs' gas PPPs.<sup>6</sup> The IOUs proposed that:

1. PG&E utilize \$13.5 million of 2006-2009 unspent EM&V funds that were previously authorized in Decision (D.) 09-09-047;
2. PG&E utilize an additional \$55,138, 574 in other available prior period unspent gas and electric EE program funds;
3. SDG&E and SoCalGas utilize any remaining natural gas funds from the Demand-Side Management (DSM) Pilot Bidding programs;
4. SDG&E and SoCalGas utilize their natural gas EE uncommitted and unspent funds from previous EE program cycles, including any EM&V funds; and
5. SDG&E be authorized to offset any remaining gas under-collection by sequentially transferring funds from any remaining electric funds from its DSM Pilot Bidding program and from the over-collection of electric funds in SDG&E's Post-1997 Electric EE Balancing Account.

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<sup>5</sup> The IOUs submitted data on these issues in response to data request from the Commission Energy Division, as part of the Joint Motion, in Comments on the ACR, and in response to the Administrative Law Judge's (ALJ's) August 4, 2011 ruling. The numbers in the IOUs' submissions often varied, in part due to revised forecast. The numbers above reflect adjustments and corrections consistent with the IOUs' August 11, 2011 Comments.

<sup>6</sup> By Ruling dated July 11, 2011 the assigned ALJ in A.08-07-021 directed that the IOUs' Motion be filed in this proceeding instead of in A.08-07-021 *et al.*

The IOUs stated that regardless of which of the above proposals is adopted, “some IOUs may still be required to curtail some of the 2010-2012 Energy Efficiency portfolio activities.”<sup>7</sup> The ACR and IOU proposals were addressed by parties in their comments and reply comments on the ACR.

### **3. Discussion**

#### **3.1 Post SB 87 Funds Available for Gas PPPs**

Based on calendar year 2011, the utilities’ normal 12-month Gas Consumption Surcharge Fund collection is approximately \$176.6 million. Monies collected are expected to be allocated to the IOUs approximately as follows: \$89.9 million for PG&E; \$66 million for SoCalGas; and \$20.7 million for SDG&E. If \$155 million is transferred, pursuant to SB 87, there will only be approximately \$21.6 million remaining for gas PPPs. \$21.6 million represents approximately 12% of the previously planned fiscal year 2011-2012 funding; this is not sufficient to support the continued operation of the IOUs’ gas PPPs.

While all parties agree that the Commission can and should direct that unspent funds be used to augment the funds remaining after a transfer pursuant to SB 87, parties disagree about what further actions should be taken to increase the amount of gas PPP funds available. For example, the IOUs argue that the approach presented in their Motion results in substantially more revenue for gas PPPs, and represents the most efficient, timely, and equitable plan for addressing any potential gas PPP budget shortfalls that could result from SB 87.<sup>8</sup> The Natural Resources Defense Council (NRDC) supports the IOUs’ Motion and urges the Commission to focus on providing sufficient funding to carry out the

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<sup>7</sup> IOU Motion at 5.

<sup>8</sup> IOU July 21, 2011 Comments at 9.

gas PPPs. In contrast, both the Marin Energy Authority (MEA) and the Division of Ratepayer Advocates (DRA) conclude that both policy and law argue in favor of the ACR's proposal. The Utility Reform Network (TURN) views the ACR's approach as reasonable and sensible in light of SB 87's language, and takes issue with the contention that the ACR proposal would divert significant resources away from scheduled program implementation activities.<sup>9</sup>

### 3.1.1 Use of Non-surcharge Funds

The IOUs argue that the Commission is obliged to use non-surcharge funds to support gas EE programs. They note that California Public Utilities Code Section 890, which establishes the Natural Gas Surcharge, prohibits inclusion of a number of other categories of charges in the rates of gas utilities, but imposes no specific prohibition on using non-surcharge funding to support gas PPPs.<sup>10</sup> The IOUs also claim that the use of non-surcharge funds to support gas PPPs is consistent with the Commission's practice of treating the EE portfolios as a collection of programs targeting market segments (*e.g.*, residential, commercial, industrial) or delivery mechanisms (*e.g.*, financing, statewide marketing), and not as distinct gas or electric funded programs. The Local Government Sustainable Energy Coalition (LGSEC) supports this idea and argues that since the Commission already exercises its ability to use non surcharge funds (through procurement) to support EE programs, such funds may be used to augment the funds remaining if there is a transfer.<sup>11</sup>

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<sup>9</sup> TURN July 28, 2011 Reply Comments at 3.

<sup>10</sup> All statutory references are to the California Public Utilities Code unless otherwise noted.

<sup>11</sup> LGSEC July 21, 2011 Comments at 5.

Other parties oppose the use of non-surcharge funds to support gas EE programs. For example, DRA argues that “[r]equiring ratepayers to pay higher rates to fund the current portfolios, which may not even be cost-effective when their energy savings are estimated using current metrics, would not serve the public interest.”<sup>12</sup> TURN agrees with DRA that the Commission should not increase rates to fund current portfolios.<sup>13</sup> MEA makes a broader two-fold argument. In addition to asserting that the Commission does not have the statutory authority to use non-surcharge funds to support gas EE programs, MEA asserts that such a rate based approach would not be advisable from a policy perspective.<sup>14</sup>

### **3.1.2 Shifting Funds Among Utilities**

As noted above, each of the IOUs has some amount of unspent pre-2010 and/or 2010-2011 EE funds for their gas programs. These unspent gas funds amount to 6% and 38% of the expected fiscal year 2011-2012 budgets for PG&E and SDG&E (respectively), and 129% of the expected fiscal year 2011-2012 budget for SoCalGas. Given that PG&E had little gas funding left, while the others had more, the ACR asked whether it would be prudent to shift funds among the utilities.

No party asserted that shifting funds among the IOUs was either permissible or desirable, and we agree that such shifting is not an appropriate solution. The IOUs argue that Commission policy does not support transferring PPP funds among the IOUs. In particular, the IOUs note that, in relevant part,

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<sup>12</sup> DRA July 21, 2011 Comments at 8.

<sup>13</sup> TURN Reply Comments at 4.

<sup>14</sup> MEA July 21, 2011 Comments at 4.

the Commission's Energy Efficiency Policy Manual (Policy Manual) provides: "Pursuant to Pub. Util. Code §§ 381, 381.1, 399, and 890-900, public goods charge and gas surcharge funds must be spent to deliver energy efficiency benefits to ratepayers in the service territory from which the funds were collected."<sup>15</sup> Both DRA and MEA agree with the IOUs on this point. MEA additionally notes that while there is a caveat in Paragraph 10 of the Energy Efficiency Policy Objectives and Program Funding Guidelines that allows the IOUs to jointly fund some activities with public goods charges (PGC), surcharges, or other collections, this provision does not allow the IOUs to unilaterally opt to fund such activities.<sup>16</sup>

### **3.1.3 Use of Electric Funds**

#### **3.1.3.1 Introduction**

The IOUs argue that the Commission has the authority to shift electric funds to gas PPPs, has a longstanding practice of authorizing the use of unspent, uncommitted funds from prior program cycles to augment current program funding, and that "virtually all parties to the proceeding ... have acknowledged the Commission's authority to utilize combined gas and electric funds."<sup>17</sup> Despite certain parties' assertions to the contrary, we find, as discussed below, that we may as a matter of policy allow unspent electric EE funds to be used to make up for the loss of gas PPP funds.

#### **3.1.3.2 Parties' Positions**

TURN, DRA, and MEA argue that gas funds must benefit gas programs, electric funds must benefit electric programs, and any transfer of electric funds to

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<sup>15</sup> IOU July 21, 2011 Comments at 11.

<sup>16</sup> MEA July 21, 2011 Comments at 3.

<sup>17</sup> IOU July 21, 2011 Comments at 13, and August 11, 2011 Response to Administrative Law Judge's Ruling at 2.

gas programs should only occur if the gas programs also benefit electric programs. For example, DRA recommends that the Commission adhere to the policy set forth in the Policy Manual that, “gas PGC collections must fund natural gas EE programs and electric PGC collections must fund electric energy efficiency programs.”<sup>18</sup> MEA also cites the Policy Manual as prohibiting the use of PGC electric funds for gas PPPs, and further asserts that section 399(e)(3) only authorizes electricity-based charges to fund electricity-related programs. Thus, these parties argue that the two sources that authorize the collection of electric PPP charges, require those funds be used to fund electricity-related PPPs.

By contrast, the IOUs request authority to support gas programs with electric funds. The IOUs state that “the Commission has authorized utilities to use combined electric and gas funding from prior program cycles for the benefit of the portfolio as a whole,” and that the Commission “has previously allowed PG&E and SCE to use prior energy efficiency portfolio cycle (combined gas and electric) unspent funds to augment their portfolio funding.”

The IOUs cite D.09-09-047 as authorizing a similar transfer of funds.<sup>19</sup> In D.09-09-047<sup>20</sup> we granted authority for SDG&E to draw on \$73.6 million in uncommitted, unspent electric funds and \$6.2 million in uncommitted, unspent natural gas funding for the Residential Incentive, the Multifamily Rebate

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<sup>18</sup> DRA July 21, 2011 Comments at 9, citing Energy Efficiency Policy Manual Version 4.0 at 6.

<sup>19</sup> See IOU Motion at 3, 4, 5, and 6; IOU Comments at 9, 10, 12, 13, and 15; IOU Reply Comments at 4 and 7; and IOU Response at 2 and 4.

<sup>20</sup> In addition to relying on D.09-09-047 to support their claim, the IOUs cite various resolutions. For the most part the resolutions referenced by the IOUs predate the Commission’s Energy Policy Manual and/or involve requests to use gas and electric funds to support gas and electric EE programs.

Program, the Energy Savings Bid Program, the Heating, Ventilation and Air Conditioning (HVAC) Training Installation and Maintenance program, the Upstream HVAC Motors Program, the Healthcare Energy Efficiency Program, and the Lodging/Intergy Energy Efficiency Program.

### **3.1.3.3 Discussion**

The Policy Manual – at least that language directly relevant here – is just that: a statement of Commission "policy," as opposed to a firm legal requirement. Thus, we may, in the unique circumstances presented here, authorize the use of electric EE funds to make up part of the loss of gas PPP funds to prevent hardship. This decision has no precedential value for future decision-making and is limited to the unique and unprecedented issue here, where the Legislature has for the first (and hopefully only) time authorized the transfer of gas PPP funds to help backstop state General Fund deficits.

Assuming, solely for the purpose of argument, that the Policy Manual prohibits transfer of electric EE funds for gas programs, it is correct that in the motion granted in D.09-09-047 the IOUs did not seek, and D.09-09-047 did not authorize, a deviation from the Policy Manual. Rather, assuming the Policy Manual contained the prohibition, it was a policy of the Commission at that time, which does not bind us here.

There are obvious reasons why public policy supports using unspent electric funds to backfill the gas PPP programs. First, the Legislature only was able to authorize the transfer of gas funds because of the state accounting practice that houses those funds outside the IOUs. Were gas program funds treated the same as electric funds, all such funds would have been in IOU or other non-governmental accounts for the benefit of EE programs, and the Legislature would have been unable to authorize transfer of the funds. Thus,

SB 87 is not a judgment that gas programs are somehow less deserving than electric programs; rather, it simply authorized transfer of the gas funds because they were accessible.

Second, as DRA notes, some of the most comprehensive EE programs rely on cuts to both gas and electricity usage on a “whole house” basis:

Gas funding cannot be reduced or eliminated from comprehensive and integrated programs such as whole house, whole building programs without significantly impacting their design, implementation, and overall effectiveness. It is difficult, for example, to provide a comprehensive whole building assessment and solution design through a single lens of only electricity savings.<sup>21</sup>

It is true that DRA does not contend this policy argument justifies use of electricity funds to backstop all gas programs. However, the Commission’s EE Strategic Plan focuses on an increasing ratio of “whole house” retrofits to meet the state’s long-term EE goals.<sup>22</sup> It would be inconsistent with the policy the Commission adopted in support of this goal when it adopted the Strategic Plan, therefore, to go back to a “balkanized” view of gas and electric funding here.

Third, as DRA notes, “nothing in these [Policy Manual] Rules is intended to prohibit or limit the ability of the Commission to direct the IOUs to jointly fund with PGC, gas surcharges, or other collections (*e.g.*, via procurement rates) ... energy-efficiency activities that reach across service territory boundaries.”<sup>23</sup>

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<sup>21</sup> DRA July 21, 2011 Comments at 6.

<sup>22</sup> California Energy Efficiency Strategic Plan at 18-19, available at [http://www.cpuc.ca.gov/NR/ronlyres/A54B59C2-D571-440D-9477-3363726F573A/0/CAEnergyEfficiencyStrategicPlan\\_Jan2011.pdf](http://www.cpuc.ca.gov/NR/ronlyres/A54B59C2-D571-440D-9477-3363726F573A/0/CAEnergyEfficiencyStrategicPlan_Jan2011.pdf).

<sup>23</sup> DRA July 21, 2011 Comments at 7, citing Energy Efficiency Policy Manual Version 4.0 at 5-6, available at <http://www.cpuc.ca.gov/NR/ronlyres/F17E8579-3409-4089-8DE4-799832CF682E/0/PolicyRulesV4Final.doc>.

While it is not entirely clear what the Policy Manual meant by “energy efficiency activities that reach across service territory boundaries,” one possible interpretation is that it would allow electric funding to be shifted to gas statewide programs.<sup>24</sup> These programs are offered by each IOU in their service territory and are consistent across IOUs. Finally, as the IOUs note, D.09-09-047 allowed the IOUs to utilize electric funds to support gas programs that also benefitted electric programs.<sup>25</sup>

For all of the foregoing reasons, we find that prior unspent gas and electric funds may be used to backstop gas PPP programs, under the unique circumstances presented here.

#### **3.1.4 Evaluation Management and Verification Funds**

The IOU motion requests that PG&E be allowed to augment its PPP funds available for gas programs with the estimated \$13.5 million of 2006-2009 unspent EM&V funds that were authorized in D.09-09-047, and that SDG&E and SoCalGas be allowed to their PPP funds for gas programs with their natural gas EE uncommitted and unspent funds from previous EE program cycles, including any EM&V funds.<sup>26</sup> Thus, in addition to the funding sources discussed above, the IOU proposal seeks to offset the potential reduction in gas PPP funding with EM&V funds. No party directly opposed this request, and we therefore approve it, so long as the IOUs can prove that such funding has not already been

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<sup>24</sup> "Statewide programs" are defined as EE programs or activities that are essentially similar in design and available in all Commission regulated utility service areas in California. Energy Efficiency Policy Manual Version 4.0 at 15.

<sup>25</sup> Joint IOU Comments filed August 11, 2011 at 2.

<sup>26</sup> IOU Motion at 5.

committed elsewhere.<sup>27</sup> The IOUs shall file, with the list of gas PPP TRCs we require in ordering paragraph 5 of this decision, an explanation of whether the cited EM&V funds remain available.

### 3.1.5 Funding Conclusion

For the reasons set forth above, we adopt the proposal set forth in the IOU Motion, specifically the dollar amounts in Revised Alternate Proposed Decision Table A filed by the Joint IOUs in their comments September 22.<sup>28</sup> We direct that:

- Each IOU shall utilize the unspent EM&V funds from previous program cycles to augment its gas PPP funds, to the extent they remain available.
- Each IOU shall utilize its uncommitted and unspent natural gas and electric EE funds from previous program cycles, as described in their Motion.
- If under any circumstances all or part of the \$155 million covered by SB 87 is not taken for other purposes, any double funding resulting from the availability of 1) that funding and 2) the funding we allow the IOUs to shift here shall be refunded or otherwise redirected so that ratepayers do not pay twice for the same EE services.
- By our calculations, there will be little, if any, missing funding once the funding we allow them to use here is added up. Virtually all IOUs' gas PPP programs will be funded in full. However, should it result that there is any shortfall in funding once final numbers are tallied, the IOUs shall curtail programs in

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<sup>27</sup> Energy Division staff has advised they do not believe these funds are indeed uncommitted and unspent, and have been incorporated into the three-year EM&V budget and associated evaluation contracts already executed. The utilities in their filing of TRC values shall also confirm any such funds are authorized, unspent, and uncommitted, and will not disrupt EM&V contracts and obligations currently signed or programmed.

<sup>28</sup> Joint IOU Comments filed September 22, 2011 at 7.

the order this decision directs, but if the gas PPP funding lost to SB 87 transfers is fully backstopped, they need not comply with the curtailment provisions herein.

- Consistent with the above directives, the funds available to the IOUs are summarized in Table A below.

**Table A**  
**Estimated Summary of IOU Available Funds**  
**(million \$)**

		PG&E	SDG&E	SCG	Total
1	Forecast Gas PPP Collections and Budget for FY2011/2012	\$89.9	\$20.7	\$66.0	\$176.5
2	Pro Rata Reductions if SB 87 Transfer Occurs	\$63.55	\$15.5	\$75.95	\$155.0
3	Pre-2010 Uncommitted, Unspent, Available Funds:				
	• Gas	\$ 7.2	\$6.9	\$28.1	
	• Electric	\$47.9	\$14.6		
4	Pre-2010 EM&V	\$ 13.5	\$4.3	\$3.2	
5	Estimated June 30, 2011 Underspent Gas EE Funds for 2010-12 Portfolio	\$(1.8)	\$0.7	\$53.9	
6	Total Available (lines 3,4,5)	\$66.8	\$26.5	\$85.2	
7	Net Expected Surplus or (Shortfall) (line 6-line 2)	\$3.25	\$11.0	\$9.25	

### 3.2 Program Prioritization (If Necessary)

The proposal in the IOUs' Motion acknowledges that programs may need to be cut if full SB 87 transfer occurs. The following requirements only apply if such cuts are necessary because an IOU has less than full funding after the SB 87 transfers occur.

The ACR proposed priorities to guide program curtailment if the full SB 87 transfer is made. Specifically, the ACR proposed that the IOUs fully fund the American Recovery and Reinvestment Act programs (ARRA), and in particular, the Energy Upgrade California program.<sup>29</sup> For the most part, parties agreed that these programs should be given priority.

The ACR also proposed that for PG&E and SDG&E, any funds remaining should flow to the gas PPP programs according to their Total Resource Cost (TRC) ranking.<sup>30</sup> However, in response to the ALJ's August 4, 2011 ruling, the IOUs suggest the need for greater latitude than TRC rankings afford. For example, PG&E declined to use TRC ranking to prioritize funding at the sub-program level and noted that:

In order to remove \$61.1 million in gas expenditures from its portfolio, PG&E will need to cut \$34.9 million in gas incentives and \$26.2 million in non-incentive programs costs from both resource and non-resource programs, including administrative and direct implementation costs. To achieve these reductions, PG&E proposes to decrease the authorized budgets for 46 resource subprograms and 18 non-resource subprograms.<sup>31</sup>

Similarly, in Attachment B, Table 2 of the IOU response to the ALJ's August 4, 2011 ruling, SDG&E uses different reduction strategies (*i.e.*, removal of gas-only measures, scaled reductions, and reductions by a forecasted amount).

While the IOUs may be correct that programs with the worst TRCs may not always be the best programs to cut, they are not free to disregard an ALJ or

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<sup>29</sup> In comments on the ACR no party disputes that top priority should be given to programs supplemented with ARRA funding.

<sup>30</sup> Because SoCalGas would be left with 129% for its energy efficiency programs it is expected to fully fund its PPPs. *See* IOU July 21, 2011 Comments at 8.

<sup>31</sup> IOU August 11, 2011 Response to ALJ Ruling at 11.

Commissioner's direction to provide information about programs' TRCs simply because they disagree with that prioritization. Regardless of whether a Senate Bill 87 fund transfer occurs, the IOUs therefore shall, within 30 days of mailing of this decision, file a list of all of their gas PPPs in rank TRC order, as they were previously directed to do by ACR dated July 7, 2011. We also put the IOUs on notice that it is not acceptable to ignore clear requirements spelled out in orders or rulings issued in Commission proceedings. We expect full compliance with all provisions of this decision, and will consider issuing an Order to Show Cause or other sanction if we are not satisfied with the IOUs' compliance filings ordered herein.

We are, however, sympathetic to the IOUs' and other parties' assertion that programs with strong TRC numbers may not always be the programs we should maintain. Because of the way TRCs are calculated, programs with short-term energy savings may score higher than other programs that cost more but have longer, deeper energy savings. This is a topic we plan to address in far more detail in future proceedings, because the deep retrofits the Strategic Plan favors may require a new approach to cost effectiveness. Suffice it to say that we are not convinced that TRC alone should dictate which gas program funds, if any, are cut in response to SB 87.

If the backstop funding we provide here does not fully fund any IOU's gas PPP programs, we direct that IOU to, within 30 days of any SB 87-related transfer of funds, file a Tier 3 advice letter itemizing gas programs to save and those to cut, if any, based on the following ranking criteria:

- (1) ARRA programs;
- (2) Programs with commitments predating July 2011; and

(3) Programs with the best TRC rating, unless the IOU justifies in the Advice Letter inclusion of a program or programs with a less favorable TRC rating.

### **3.3 Revising the IOU's Energy Efficiency Goals (If Necessary)**

The IOUs argue that the Commission is obliged to adjust the gas savings goals for the 2010-2012 program cycle if they are ordered to curtail their gas EE program activities.<sup>32</sup> As noted by the IOUs, in relevant part, SB 87 provides:

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.<sup>33</sup>

We agree that under SB 87 a goal reduction should follow a curtailment of gas PPP programs, and believe the gas goal reduction should come as a percentage of programs curtailed. If any gas programs need to be cut, the affected IOU(s) shall file,, with the foregoing Advice Letter and within 30 days of any SB 87 related fund transfer, a list that follows the ranking criteria set forth in section 3.2 above, and proportionally reduces the IOU(s)' gas goals based on the adjusted budgets and updated energy savings. The updated energy savings shall include the revised *ex ante* values that are to be submitted to Energy Division in September of 2011.<sup>34</sup> The IOUs should identify ARRA programs, programs with committed projects, and the associated TRC level of programs in

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<sup>32</sup> IOU July 21, 2011 Comments at 10-11.

<sup>33</sup> IOU July 21, 2011 Comments at 10.

<sup>34</sup> In D.11-07-030 we directed the IOUs to submit revised *ex ante* energy savings values not in the 2008 Database for Energy Efficient Resources, version 2.05, to Energy Division.

the Advice Letter they file, and justification for any program they propose to retain that has a less favorable TRC ranking than a program they propose to defund.

However, if the backstop funding we provide in this decision provides full funding for the IOUs' gas PPPs, they need not and shall not update their gas savings goals.

#### **4. Comments on the Proposed Decision**

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on September 22, 2011, and reply comments were filed on September, 27, 2011.

The Division of Ratepayer Advocates (DRA) urges the Commission to conduct an audit of the IOUs' EE funds, noting surprise at the amount of unspent EE funds on the IOUs' books. We agree, and order the audit. In this era of declining resources, the presence of unspent funds may indicate they are not needed, and the State and its ratepayers do not have the luxury of such excess. We will not order an annual audit at this time, but a single audit. We direct the Energy Division to supervise an audit of these program funds, upon consultation with the assigned Commissioner's office and the assigned ALJ and notice to the parties about the timing and details.

The other commenters were MEA, NRDC, the IOUs, the California Energy Efficiency Industry Council, the City and County of San Francisco, and the LGSEC. We make no other changes except to Table A in response to comments.

**Assignment of Proceeding**

Mark J. Ferron is the assigned Commissioner in these proceedings and Darwin E. Farrar is the assigned ALJ for this portion of this proceeding.

**Findings of Fact**

1. In June 2011 SB 87 was enacted.
2. AB 1002 implemented a gas public purpose programs surcharge to recover Commission-authorized gas funding for, among other things, EE, Low Income EE (now known as Energy Savings Assistance Program, or ESAP), and California Alternate Rates for Energy administrative program costs through a separate surcharge.
3. Based on calendar year 2011, the utilities' normal 12-month Gas Consumption Surcharge Fund collection is approximately \$176.6 million.
4. If the full amount allowed by SB 87 is transferred, there will only be \$21.6 million remaining in the Gas Consumption Surcharge Fund for fiscal year 2011-2012.
5. The July 7, 2011 ACR proposed ways to augment the possible reduction in funds available for gas public purpose programs.
6. PG&E, SDG&E, and SoCalGas filed a motion on July 1, 2011 in A.08-07-021 *et al.* that proposed ways to augment the possible reduction in funds available for gas public purpose programs.
7. PG&E, SDG&E, and SoCalGas each have some amount of unspent pre-2010 and/or 2010-2011 EE funds.
8. Parties agree that the Commission can and should direct that unspent authorized gas funds from pre-2010 and unspent 2010-2011 EE funds be used to augment the funds remaining if there is a transfer of funds pursuant to SB 87.

9. The IOU Motion requested that PG&E be allowed to use the remaining estimated \$13.5 million of 2006-2009 unspent EM&V funds that were previously authorized in D.09-09-047, and that SDG&E and SoCalGas be allowed to utilize their natural gas EE uncommitted and unspent funds from previous EE program cycles, including any EM&V funds.

10. For the most part, parties agreed that the IOUs should fully fund their ARRA - and in particular Energy Upgrade California - programs.

11. The provisions of the Policy Manual cited herein cite Commission policy.

### **Conclusions of Law**

1. SB 87 authorizes the transfer of up to \$155 million in gas public purpose program funds from the BOE to the state's General Fund.

2. SB 87 authorizes the Commission to, among other things, suspend or downsize any and/or all of the IOUs' gas public purpose program activities and requirements.

3. The Commission may as a policy matter allow electric public purpose funds to be used to fund gas public purpose programs.

4. Consistent with SB 87, an energy savings goal reduction should follow our curtailment of gas public purpose programs.

5. Given the significant amount of unspent funds in the IOUs' budgets, an audit of their EE spending is necessary.

### **ORDER**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company shall use unspent authorized gas and

electric funds from pre-2010 and unspent 2010-2011 Energy Efficiency funds to offset SB 87 related reductions, if any, in gas Public Purpose Program funding.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company shall use their remaining 2006-2009 unspent Evaluation Measurement and Verification funds to augment Senate Bill 87 related reductions in gas Public Purpose Program funding. However, before using the Evaluation Measurement and Verification funds, the utilities shall document with their filing required in Ordering Paragraph 5, below, that such funding remains available and has not been committed to other use.

3. Should it result that there needs to be any cut in gas Public Purpose Program funding once final numbers are tallied for Pacific Gas and Electric Company, San Diego Gas & Electric Company, and/or Southern California Gas Company, that utility shall propose to curtail programs in the order this decision directs. To effect this curtailment, that utility shall file a Tier 3 Advice Letter within 30 days of any Senate Bill 87 related transfer from the Gas Consumption Surcharge Fund, which follows the ranking criteria set forth in section 3.2 above, and proportionally reduces that utility's gas goals based on the proposed adjusted budgets and updated energy savings. The updated energy savings shall include the revised *ex ante* values that are to be submitted to Energy Division in September of 2011.

4. If, after all amounts whose transfer is authorized are calculated, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company have fully backfilled funding losses related to any Senate Bill 87 related program reduction, they need not and shall not comply with the curtailment provisions or energy savings goal reduction adjustments discussed herein.

5. Regardless of whether a Senate Bill 87 fund transfer occurs, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company shall, within 30 days of mailing of this decision, each file a list of all of their gas Public Purpose Programs in rank Total Resource Cost order, as they were previously directed to do by Assigned Commissioner Ruling dated July 7, 2011. We also put the utilities on notice that it is not acceptable to ignore clear requirements spelled out in orders or rulings issued in Commission proceedings. We expect full compliance with all provisions of this decision, and will consider issuing an Order to Show Cause or other sanction if we are not satisfied with the IOUs' compliance filings ordered herein. The utilities shall also document that the Evaluation, Measurement and Verification funding in Table A has been authorized, remains available, and has not been committed for other purposes.

6. If under any circumstances all or part of the \$155 million covered by Senate Bill 87 is not taken for other purposes, any double funding resulting from the availability of 1) that funding and 2) the funding we allow Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company to shift here, shall be refunded or redirected so that ratepayers do not pay twice for the same Energy Efficiency services.

7. Nothing in this decision shall be construed as authorizing an increase in rates or surcharges.

8. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall conduct an audit of the above program funds under the direction and control of the California Public Utilities Commission's Energy Division, upon consultation with the assigned Commissioner's office and the assigned Administrative Law Judge. We delegate

to the assigned Commissioner and the assigned Administrative Law Judge the authority to set the timing and other details of the audit.

Dated \_\_\_\_\_, at Los Angeles, California.