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 CONTINUATION OF FUNDING FOR ENERGY EFFICIENCY PROGRAMS

1. Summary

Funding for Commission approved electricity Energy Efficiency (EE) programs comes from two sources. The Public Goods Charge (PGC) and the Procurement Energy Efficiency Balancing Account (PEEBA). The statute authorizing collection of the PGC in utility rates will expire on January 1, 2012. Today's decision ensures that utility EE programs will continue to have adequate funding to fulfill our statutory and policy mandates. Specifically, this decision makes additional PEEBA funds available to backfill the PGC funding so that electric EE programs are funded in 2012 at the currently authorized level, but does not decide whether or which EE programs will require the current level of funding after 2012.

For the reasons set forth below, we adopt the proposal set forth in the September 28, 2011, Assigned Commissioner's Ruling to use a portion of the PEEBA to replace the lost PGC funding and direct the Pacific Gas and Electric

Company, San Diego Gas & Electric Company, and Southern California Edison Company to file Tier 1 advice letters as set forth herein.

2. Background

The Public Goods Charge (PGC) was established in the wake of the 2000-2001 California Energy Crisis. Section 399.8(a) of the California Public Utilities Code,[1] which remains in effect, emphasizes the importance of energy efficiency (EE) to the state's energy customers:[2]

> In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature *that prudent investments in energy efficiency… shall continue to be made.* (Emphasis added.)

Section 399.8(c)(1), which provides for the collection of PGC revenues, provides:[3]

> The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency … authorized pursuant to this section beginning January 1, 2002, and ending January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

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[1] Unless otherwise noted, all statutory references are to the Public Utilities Code.

[2] While Pub. Util. Code § 399.8's authorization to collect the surcharge ends on January 1, 2012, the statute does not sunset, and all if its provisions remain on the books.

[3] Though the legislature did not extend the January 1, 2012 deadline set forth in Pub. Util. Code § 399.8(c)(1), the statute, which has no sunset provisions, remains on the books.

As noted above, in overseeing the procurement of energy resources sufficient to meet customer demand this Commission is required to prioritize cost-effective EE resources. In this regard, section 454.5(b)(9)(C) provides:

> The electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

In Decision (D.) 02-10-062 we identified EE as a priority resource for California and ordered the Investor- Owned Utilities (IOUs) to include all cost effective EE in their energy procurement portfolios "regardless of the limitations of the … PGC mechanism." Thereafter, in D.03-12-062, we established the Procurement Energy Efficiency Balancing Account PEEBA.[4] We then authorized procurement EE budget levels for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E). Unlike the PGC, which is collected "on the basis of usage,"[5] the PEEBA is collected in accordance with the rate design established in each IOU's General Rate Case (GRC).[6]

3. Summary of the Assigned Commissioner Ruling and Proposal

The statute authorizing collection of the PGC in rates allowed collections for a 10-year period, starting January 1, 2002, and ending January 1, 2012.[7] The Legislature did not extend the January 1, 2012, deadline before the close of

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[4] Decision 03-12-062 at 61, quoting D.02-10-062.

[5] Pub. Util. Code § 399.8(c)(1).

[6] GRCs occur every three years, on a staggered basis among the regulated utilities.

[7] Cal. Pub. Util. Code § 399.8(c)(1). All statutory references are to the California Public Utilities Code unless otherwise stated.

the 2011 legislative session. Absent further legislative action, no PGC revenues will be collected after December 31, 2011. Because the current EE program cycle operates from 2010-2012, the 2012 programs are, absent Commission action, underfunded.

On September 28, 2011, the Assigned Commissioner issued a ruling that proposed taking action to augment EE funds for 2012. Specifically, so as to avoid rate increases to any IOU customers related to EE or any cross-subsidization among customers, the Assigned Commissioner's Ruling (ACR) proposed that PEEBA revenues be increased to replace the lost PGC revenues. It proposed further that the portion of the PEEBA used to replace the PGC be recovered just as the PGC would have been – on the basis of usage and not within the individual GRC proceedings. In addition, the ACR asked the IOUs to file comments setting forth the mechanics of the proposed PEEBA backfill mechanism, to show the impact on their PEEBA collections of the PGC backfill, and to provide sample bill impacts for each customer class.

On October 12, 2011, the California Public Utilities Commission's Division of Ratepayer Advocates (DRA), the Natural Resource Defense Council (NRDC), the Consumer Federation of California (CFC), the Southern California Edison Company (SCE), the Pacific Gas and Electric Company (PG&E) along with the San Diego Gas & Electric Company (SDG&E), and the California Energy Efficiency Industry Council (CEEIC) filed comments on the ACR Proposal. The California Large Energy Consumers Association (CLECA) filed comments on October 11, 2011. Each of these parties, along with Women's Energy Matters (WEM), filed reply comments on October 19, 2011.

4. Discussion

For three decades California has been a national leader in the design and delivery of EE programs. EE programs are essential to this Commission's effort to carry out various statutory mandates, including long-term energy resource procurement, where EE is viewed as "first in the loading order,"[8] and greenhouse gas (GHG) amelioration pursuant to Assembly Bill (AB) 32.[9] Losing almost a quarter of the available funding will likely disrupt programs, harm customers, lead to job loss, and have serious adverse impacts on the environment.[10]

For the reasons set forth below, we adopt the ACR proposal to use a portion of the PEEBA to replace the PGC funding. That portion of the PEEBA that is used to replace the PGC funding shall be recovered just as the PGC would have been – on the basis of usage. The PEEBA will be used to replace the PGC funding for programs in the 2010-2012 cycle only. Nothing in this decision should be construed as impeding or influencing the IOUs' upcoming general rate cases, or funding for EE in 2013 and beyond.

4.1. Whether a Commission Decision is Needed

The Joint IOUs (PG&E and SDG&E) and SCE support the ACR proposal to provide a backstop for the PGC funds but express the belief that the Commission previously authorized such a backstop mechanism in D.09-09-047 and no further

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[8] Energy Action Plan I, February 2008.

[9] Stats. 2006, Ch. 488.

[10] The Commission is also considering the loss of PGC funding for programs overseen by the California Energy Commission in Rulemaking 11-10-003.

Commission decision is needed. According to the Joint IOUs, in D.09-09-047 the Commission acknowledged that:

> IOUs recover electric energy efficiency revenue requirements that remain after collection of EE PGC funds, through the [PEEBA] established in D.03-012-062 {*sic*}. In the Joint IOU applications and compliance advice letters, the procurement EE funding was determined residually, by deducting the EE PGC funding from the total authorized electric EE funding levels adopted by the Commission. Therefore, if EE PGC funding is no longer available due to the expiration of the statute, the Joint IOUs already would be authorized to collect the difference through procurement EE funds to ensure the portfolios are funded at authorized levels.[11]

SCE agrees with this conclusion and requests a decision clarifying that a final decision is not necessary in order for the electric IOUs to recover the PGC portion of EE funding through their PEEBA mechanism.[12]

While various parties express an opinion on the above contention, this issue is largely moot. While D.09-09-047 authorizes the IOUs to recover the difference between PGC funding and the PPP costs in the PEEBA, no party has identified anything in D.09-09-047 or elsewhere that authorizes the IOUs to use the PEEBA as a substitute for collecting PGC funds. Thus, the IOUs should consider themselves on notice that they may not use such funds as a substitute for PGC funds, without express Commission approval.[13]

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[11] Joint IOUs' October 12, 2011 Comments, at 3 (citations omitted).

[12] SCE October 12, 2011 Comments, at 3.

[13] See, e.g., CLECA October 12, 2011 Comments at 5.

4.2. Opposition to the ACR Proposal

CFC opposes the ACR proposal. CFC first notes its general concern that approval of the ACR proposal will establish a precedent so that PEEBA funds will be permanently augmented to include the dollar amount that originally would have been collected by the PGC. CFC then argues that the Legislature failed to reenact the PGC for a reason and, absent Legislative approval, the Commission now lacks the authority to continue the PGC, albeit in a different form.[14] Like CFC, The California Large Energy Consumers Association (CLECA) opposes the ACR proposal on procedural grounds. CLECA "questions the procedural propriety of addressing the cost allocation of $250 million in this rulemaking."[15] In particular, CLECA argues that the current PGC allocation methodology is based on an explicit statutory requirement that was adopted and implemented for each IOU in their respective GRC proceedings. Therefore, according to CLECA, the proposed backfill runs counter to the Legislature's intent.[16]

In reply comments NRDC and SCE address the above contentions. The NRDC asserts that the California Constitution and Legislature have delegated broad authority to the Commission, the Commission has clear power to fix rates, establish rules … and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction, and the Commission is required to prioritize energy efficiency in funding the mix of energy resources.[17] Moreover, with

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[14] CFC October 12, 2011 Comments, at 4.

[15] CLECA October 11, 2011 Comments, at 3.

[16] CLECA October 11, 2011 Comments, at 2.

[17] NRDC October 19, 2011 Reply Comments at 2-3.

regard to the effect of the Legislature's failure to pass a PGC funding bill, NRDC notes:

> California courts have consistently held that the failure of the Legislature to pass a particular bill cannot be relied upon as legislative intent.[18]

We agree with NRDC's interpretation of the facts and statement of the law, and conclude that the ACR proposal is not inconsistent with any legislative intent.

SCE notes that the Legislature previously granted the Commission authority to oversee the IOU EE portfolios for purposes of meeting established State goals for EE and climate change, and that the Commission has already authorized EE funding for the IOUs' 2010-2012 portfolio cycle. We agree with SCE's assertion and note that our actions today are entirely consistent with our grant of authority.

CLECA also "cautions against a rush to judgment by the Commission to increase procurement EE funds to replace PGC funds."[19] Specifically, CLECA argues against replacing the PGC funding prior to undertaking the analysis needed to ensure that the money will be spent efficiently and cost effectively. WEM supports CLECA's request for additional analysis, and asserts that "[c]ontrary to NRDC's claims, there's no reason to believe that utilities will meet the [energy efficiency] goals even if they have full funding to complete the cycle."[20]

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[18] NRDC October 19, 2011 Reply Comments at 4, citing *People v. Mendoza*, 23 Cal. 4th 896, 921, (Cal. 2000).

[19] CLECA October 11, 2011 Comments, at 3.

[20] WEM October 19, 2011 Reply Comments, at 1-2.

As an initial matter, whether continued funding will ensure that the IOUs meet their EE goals (which WEM claims they have never met) is not the issue before us today. We will review the IOU's performance in meeting their EE goals for 2010-2012 when that funding cycle concludes. Rather, in adopting the ACR proposal, we give effect to our prior decision granting EE funding for 2010-2012 and fund *already approved programs* at the previously approved rates.

We emphasize that today's decision is limited to the final year of the already approved 2010-2012 program cycle since the Commission has not made any final determinations beyond this period. Nothing in the ACR proposal or today's decision should be construed as prejudging particular programs or whether a portion of the PEEBA should be used to backfill lost PGC revenues beyond the 2010-2012 cycle.

Finally, both CLECA and the CFC disagree with the IOUs' contention that backfilling the PGC will not result in a rate increase. CLECA claims "the very act of backfilling the expired funding will wipe out a rate decrease,"[21] and CFC asserts that augmenting the PEEBA account would be equivalent to raising rates.[22] These arguments are unpersuasive. The Legislature's failure to pass new legislation cannot be construed as calling for a rate decrease and, particularly in light of section 399.8(a), the Commission has ample authority to ensure that there are sufficient funds to support its previously approved programs.

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[21] CLECA October 11, 2011 Comments, at 2.

[22] CFC October 11, 2011 Comments, at 4.

4.3. Support for the Proposal

NRDC "supports the Commission acting on its authority to fund efficiency for the remainder of the program cycle and believes it is essential that the Commission provide adequate funding to implement the authorized programs."[23] Similarly, CEEIC strongly supports the Commission's proposal.[24] DRA expressed more guarded support for the proposal stating, "DRA does not currently disagree with the proposed approach of collecting PGC revenues on the basis of usage, but recommends that the Commission require the utilities to estimate total rate impacts by customer class in Phase III of the proceeding, with the opportunity for other parties to examine the calculations and comment."[25] However, as requested by the September 28, 2011 ACR, the IOUs provided documentation on the mechanics of the ACR proposal. As part of this showing, both PG&E and SDG&E (the Joint IOUs), and SCE indicate that the ACR proposal will not have any rate impacts.[26] We believe these assurances adequately address DRA's concerns.[27]

4.4. The IOU Proposals

We now turn our discussion to the mechanics of these filings as proposed by the utilities. In comments on the ACR proposal, PG&E and SDG&E state "in order to accomplish the intent of the ACR [proposal] to recover the PGC portion of the energy efficiency funding through the procurement mechanism with no

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[23] NRDC October 12, 2011 Comments, at 2.

[24] CEEIC October 12, 2011 Comments, at 3.

[25] DRA October 12, 2011 Comments, at 2-3.

[26] SCE October 12, 2011 Comments, at 3; Joint IOU October 12, 2011 Comments, at 4.

[27] DRA did not file Reply Comments or otherwise dispute this contention.

rate impacts, the Joint IOUs maintain existing cost-recovery mechanisms and propose no changes to electric public purpose program rate design or cost allocation as part of this proceeding."[28]

PG&E states that it will file an advice letter that will "consolidate tracking of the electric portion of energy efficiency expenditures into one balancing account, close the PGC balancing account, and make other revisions, as needed, to implement the expiration of the PGC."[29] PG&E tracks the expenditures against authorized funding levels in the following "one way" balancing accounts: 1) Public Purpose Program Energy Efficiency Balancing Account (PPPEEBA – electric) and 2) the Procurement Energy Efficiency Balancing Account (PEEBA). PG&E also indicates that it has two approved revenue adjustment mechanisms as part of its electric public purpose program cost recovery: 1) Public Purpose Program Revenue Adjustment Mechanism (PPPRAM) and 2) Procurement Energy Efficiency Revenue Adjustment Mechanism (PEERAM). According to PG&E, "no change is needed to the current allocation and rate design for public purpose program rates and no change (is required) to the collection of customer revenues through its revenue adjustment mechanisms."[30] PG&E proposes "to continue to recover the PGC legacy portion of the energy efficiency funding at the 2011 adopted level, along with the Energy Savings Assistance (ESA) program revenue requirement,

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[28] Joint IOU October 12, 2011 Comments, at 4.

[29] Joint IOU October 12, 2011 Comments, Appendix A at 2.

[30] Joint IOU October 12, 2011 Comments, Appendix A at 2.

through the PPPRAM and the remaining electric energy efficiency revenue requirement through the PEERAM."

PG&E proposes to revise its 2012 Annual Electric True-up[31] (AET) in its December supplemental update to reflect the procurement backfill mechanism in the recovery of the public purpose program revenue requirement. According to PG&E, this will allow the EE cost allocation to remain unchanged per the ACR.[32] We agree with PG&E that its proposal will not cause a rate shift or rate increase and that the cost allocation will remain unchanged. While we agree that the supplemental December update to the 2012 AET can be used to make these changes, we prefer to have the IOUs simultaneously make separate filings for the "regular" PEEBA and backfill portion of PEEBA being used to backfill lost PGC revenues. We therefore adopt PG&E's proposal and direct it to file a Tier 1 advice letter on December 22, 2011 that is consistent with its proposal and our requirement that there be no cost allocation shifts or rate impacts to customers due to the PGC backfill.

SDG&E states that it "will continue the PGC balancing account (called PEEBA) in its present form and will address the closing of it and other revisions in a clean-up advice letter filing at a later time."[33] For cost recovery purposes, SDG&E proposes to continue to recover its portion of the authorized EE budget through the Electric Procurement Energy Efficiency Balancing Account (EPEEBA). SDG&E contends that this "will have no impact on 2012 rates."[34]

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[31] Filed in advice letter 3896-E on September 1, 2011

[32] Joint IOU October 12, 2011 Comments, Appendix A at 3.

[33] Joint IOU October 12, 2011 Comments, Appendix B, at 4.

[34] Joint IOU October 12, 2011 Comments, Appendix B, at 2.

SDG&E proposes to reflect the adjustment in its pending Advice Letter 2293-E and states that the adjustment will have no impact on rates. We agree with this proposal. SDG&E shall make the updates necessary to AL 2293-E in order carryout this approach and file a Tier 1 advice letter by December 22, 2011.

SCE also states that no changes are necessary to its current rate design or cost allocation methodology in order to fulfill the ACR proposal of no rate impacts or shifts in cost allocation. SCE proposes to "file a compliance advice letter to revise the preliminary statements of its tariffs to consolidate the tracking of electric energy efficiency expenditures into one balancing account, close the PGC balancing account, and make other revisions as needed."[35] SCE also indicates that it "historically allocated the PGC revenues to each rate group based on the 'percent of revenue basis.' After this revenue is determined, it is then collected from each customer within each rate group on an equal cents/kWh basis."[36] While its basis of collection is different from that of PG&E and SDG&E, SCE indicates that a viable alternative exists to avoid any rate impact. SCE proposes to transfer the balance recorded in its Energy Efficiency Program Adjustment Mechanism (EEPAM) as of December 31, 2011, to the PEEBA on January 1, 2012 and then eliminate the EEPAM. In 2012, SCE will balance the total authorized EE funding of $402 million with actual EE expenses incurred in 2012 in the PEEBA. According to SCE, "because SCE's over-all Public Purpose Programs revenue requirement will not change as a result of the expiration of the PGC EE funding, there will not be any rate impact to

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[35] SCE October 12, 2011 Comments, at 3.

[36] SCE October 12, 2011 Comments, Appendix A, at 2.

customers."[37] Thus, although slightly different from what was suggested in the ACR, SCE's proposal satisfies the directive that there be no rate impacts and no cost shifting. We agree that this approach is reasonable and direct SCE to file a Tier 1 advice letter on or before December 22, 2011 detailing this approach.

5. Comments on the 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 December 5, 2011 by The Consumer Federation of California, The California Energy Efficiency Industry Council, Southern California Edison Company, Portland Energy Conservation Incorporated, Pacific Gas and Electric Company, and The California Large Energy Consumers Association, and reply comments were filed on December 12, 2011 by Pacific Gas and Electric Company, Women's Energy Matters, and Southern California Edison Company. We make no changes to the decision.

Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Darwin E. Farrar is the assigned Administrative Law Judge for this portion of this proceeding

Findings of Fact

1. The PGC funds a portion of the state's electric energy efficiency programs this Commission oversees; a charge known as the PEEBA funds the remainder.

[37] SCE October 12, 2011 Comments, Attachment A, at A-2.

2. The statute authorizing collection in rates of the PGC, only allowed collections for a 10-year period, starting January 1, 2002, and ending January 1, 2012.

3. The Legislature did not extend the January 1, 2012, deadline for collection of PGC before the close of the 2011 legislative session.

4. No party has identified anything in D.09-09-047 or elsewhere that authorizes the IOUs to use the PEEBA as a substitute for PGC funds.

Conclusions of Law

1. The California Public Utilities Commission is required to prioritize energy efficiency in funding the mix of energy resources.

2. The failure of the Legislature to pass a particular bill cannot be relied upon as legislative intent.

3. The proposal in the September 28, 2011, Assigned Commissioner's Ruling is not inconsistent with any identified legislative intent.

4. Nothing in today's decision should be construed as prejudging particular programs.

5. Nothing in today's decision should be construed as allowing a portion of the PEEBA to be used to backfill PGC program beyond the 2010-2012 cycle.

O R D E R

IT IS ORDERED that:

1. The proposal to use a portion of the Procurement Energy Efficiency Balancing Account to replace the Public Goods Charge set forth in the September 28, 2011, Assigned Commissioner's Ruling is adopted.

2. That portion of the Procurement Energy Efficiency Balancing Account that is used to replace the Public Goods Charge (PGC) shall be recovered on the basis of usage, just as the PGC.

3. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall use their Procurement Energy Efficiency Balancing Accounts to replace the Public Goods Charge funding for their energy efficiency programs in the 2010-2012 cycle only.

4. Nothing in this decision should impede or influence the Investor Owned Utilities' upcoming general rate cases.

5. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall adopt the backfill mechanics set forth in their October 12, 2011, Comments.

6. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall file new Tier 1 advice letters on or before December 22, 2011 detailing the mechanics of their proposals.

This order is effective today.

Dated _____, at San Francisco, California.