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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)

**ASSIGNED COMMISSIONER RULING
AND SCOPING MEMO, PHASE II**

1. Introduction

Assembly Bill (AB) 117 directed the Commission to establish policies and procedures by which any party, including a Community Choice Aggregator (CCA), may apply to administer cost-effective energy efficiency and conservation programs. The Commission complied with AB117 through Decision (D.) 03-07-034 which added procedures for the allocation of energy efficiency program funds to the Commission's Energy Efficiency Policy Manual.¹ Through this ruling the Commission seeks input on whether its existing policies and procedures require updates or clarification. Furthermore, the Commission seeks input on whether additional safeguards are needed to protect against the misuse of energy efficiency funds.

¹ D.03-07-034, Findings of Fact (FOF) 2 and Ordering Paragraph (OP) 1.

2. Background

Assembly Bill (AB) 117 directed the Commission to establish policies and procedures by which any party, including a CCA, may apply to administer cost-effective energy efficiency and conservation programs. The Commission complied with AB117 through Decision (D.) 03-07-034 which added procedures for the allocation of energy efficiency program funds to the Commission's Energy Efficiency Policy Manual.² An Application for Rehearing of D.03-07-034 was denied by the Commission in D.04-01-032. Today the Commission's policies and procedures adopted by D.03-07-034 remain unchanged. No party has sought to administer energy efficiency or conservation programs through the procedures adopted in D.03-07-034.

In Rulemaking (R.) 09-11-014, issued November 20, 2009,³ the Commission provided a Preliminary Scoping Memo that included a "review of issues related to implementation of energy efficiency programs by Community Choice Aggregators."⁴ In a March 3, 2010 ruling setting a Prehearing Conference (PHC) for March 18, 2010 the assigned Administrative Law Judge stated that "we will identify and prioritize issues related to the implementation of energy efficiency programs by Community Choice Aggregators at the PHC," and directed interested Parties to provide, through their PHC statements, "an analysis that

² D.03-07-034, FOF 2 and OP 1.

³ See R.09-11-014, "Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues."

⁴ See R.09-11-014, at 4.

identifies and prioritizes issues related to the implementation of energy efficiency programs by Community Choice Aggregators.”⁵

As directed in the March 3, 2010 ruling, parties’ proposals were served on or before March 11, 2010, following the PHC, parties served reply comments on these proposals on or before March 25, 2010. The opening proposals and reply comments address two primary issues. First, whether the Commission’s existing policies and procedures adequately and clearly provide third-parties, including CCAs, the opportunity to apply to administer cost-effective energy efficiency or conservation programs. Second, whether adequate safeguards exist to protect against misuse of energy efficiency fund by IOUs.

Addressing the first issue, whether the Commission’s existing policies and procedures adequately and clearly provide third-parties, including CCAs, the opportunity to apply to administer cost-effective energy efficiency or conservation programs, PG&E says:

The Commission’s Decision Nos. 03-07-034 and 04-01-032 provide specific procedures and criteria for the review of applications by CCAs to administer EE programs, as well as for ensuring that utilities allocate a proportional share of energy efficiency funding within the territory of a CCA where the utility is administering the funding.⁶

PG&E further suggested that “If any CCAs are interested in the calculation of the proportional share of energy efficiency funding allocable within their service territory, they can request that the relevant utility provide that calculation and

⁵ March 3, 2010 ruling at 3.

⁶ PG&E’s March 15, 2010 “Response To Administrative Law Judge’s Ruling Setting Prehearing Conference” at 6.

proposed allocation, also in accordance with the requirements of D.03-07-034 and D.04-01-032.” SCE agrees with PG&E’s position, adding “after vetting this issue with stakeholders, and in compliance with state law, the Commission has set forth the manner and means by which CCAs may administer/implement energy efficiency programs. This process should be maintained for the 2010-2012 program cycle.”⁷

CCSF reflects the position of parties whose comments suggested that the Commission ought to reaffirm and/or revisit the existing rules:

[I]t is time for the Commission to clarify and detail the process by which CCAs may be allocated the public goods charge (PGC) funds associated with their customer base in order to offer an aggressive portfolio of energy efficiency programs and to comply with the other requirements of Public Utilities Code section 381.1 as to energy efficiency and CCAs.⁸

CCSF also notes that the Assigned Commissioner queried parties at the PHC as to whether procedures set forth in D.03-07-034 were adequate or whether other changes needed to be made. CCSF responds that:

Those procedures, which appear to allow CCA programs to apply directly to the Commission to administer energy efficiency programs, may be workable for CCA programs as a starting point. Certainly, there are many additional details that remain to be resolved.⁹

⁷ SCE’s March 15, 2010 “Proposal In Response To Administrative Law Judge's Ruling Setting Prehearing Conference” at 5.

⁸ CCSF’s March 25, 2010 “Reply Comments Of The City And County Of San Francisco Regarding Administrative Law Judge’s Ruling Setting Prehearing Conference” at 3.

⁹ *Ibid*, at 3.

On the second issue, whether adequate safeguards exist to protect against misuse of energy efficiency fund by IOUs, the March 11, 2010 proposals and the March 25, 2010 replies again reveal a fundamental difference of opinion. While PG&E states that existing safeguards are sufficient, others state that additional clarity is needed regarding potential utility abuses and safeguards to prevent such abuses.

PG&E cites OP 39 of D.09-09-047¹⁰ and concludes that,

In terms of 'safeguards,' any utility misuse of EE funds for CCA-related competitive purposes would constitute a direct violation of a Commission order. Given the existence of this Commission Order, it is not necessary to devote this OIR to attempting to define every hypothetical course of conduct that could constitute a violation of the Commission Order, and implementing a corresponding safeguard to address it.¹¹

PG&E further notes that additional current practices (such as energy efficiency allowable cost definitions and monthly/quarterly/annual reporting requirements) function as additional safeguards against a utility's misuse of energy efficiency funds.¹²

¹⁰ *"the proposed energy efficiency Local Government Partnership programs of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company are approved, subject to the following modifications:*

[...]

Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall not use energy efficiency funds in any way which would discourage or interfere with a local government's efforts to consider becoming, or to become, a Community Choice Aggregator.

¹¹ PG&E's March 25, 2010 "Reply Comments Of PG&E To Parties' Written Proposals In Response To Administrative Law Judge's Ruling Setting Prehearing Conference" at 7.

¹² *Ibid*, at 8.

CCSF's March 25, 2010 comments make the case for the Commission addressing the "safeguards" issue, observing that while OP 39 of D.09-09-047 does establish the principle that utilities should not use energy efficiency funds in any way which would discourage or interfere with a local government's efforts to consider or to become a CCA,

[T]he fact remains that the Commission has not yet afforded parties an opportunity in a formal proceeding to develop a record regarding potential utility abuses and safeguards to prevent such abuses. Accordingly, CCSF urges the Commission to allow parties to develop such a record in this docket.

3. Discussion

A useful framework for this phase of the proceeding is suggested by CCSF in its March 25, 2010 Comments, which propose that this docket at least address the following two issues with respect to CCA programs:

- (1) What should be the rules by which CCA programs gain access to energy efficiency funds, including, but not limited to, allowing CCA programs to independently administer such funds?
- (2) What safeguards are appropriate to ensure that utilities administer energy efficiency funds fairly and not in a way that adversely affects CCA programs?

CCSF refers to the first issue as the "access" issue and the second as the "safeguards" issue.

3.1. Access

While it is true that D.03-07-034 addressed the energy efficiency-related requirements of AB 117, and while the procedures adopted by that decision remain in place, it is also correct that much of the energy efficiency policy-making landscape has changed since 2003. Therefore it makes sense to conduct a workshop, as PG&E suggested in its March 11 proposal, for parties to:

... walk through the requirements of D. 03-07-034 and D. 04-01-032 so that parties are familiar with the requirements, including how any CCAs that are interested in filing applications to administer energy efficiency programs pursuant to those decisions could file those formal applications in accordance with the requirements and the Commission's Rules of Practice and Procedure.¹³

Energy Division staff is directed to conduct a workshop to explain the requirements of D. 03-07-034, as further articulated in the energy efficiency policy manual,¹⁴ and to solicit input on whether those requirements could be better suited to the mandates of AB117.¹⁵

Following the workshop, attendees shall jointly prepare and file a workshop report that summarizes the outcome of the workshop and includes a response to the question of whether the procedures set forth in D.03-07-034 by which any party, including a Community Choice Aggregator (CCA), may apply to administer cost-effective energy efficiency and conservation programs, are adequate or whether changes need to be made. The Workshop report shall be served on the service list by October 15.

3.2 Safeguards

As noted above, CCSF summarizes the safeguards issue as "what safeguards are appropriate to ensure that utilities administer energy efficiency

¹³ PG&E March 15, 2010, OP. Cit., at 6.

¹⁴ The Energy Efficiency Policy Manual (2008) can be found at: <http://www.cpuc.ca.gov/NR/rdonlyres/F17E8579-3409-4089-8DE4-799832CF682E/0/PolicyRulesV4Final.doc>.

¹⁵ Notice of this workshop was previously published in the Commission's daily calendar; a proposed agenda for this workshop is affixed hereto as Attachment A.

funds fairly and not in a way that adversely affects CCA programs?” CCSF makes a valid point regarding the absence, to date, of a formal record on this question. Therefore, we invite parties to provide comments and reply comments to Commission addressing the following questions:

1. How might utilities use energy efficiency funds in a way that would discourage or interfere with a local government’s efforts to consider or to become a CCA? Responses to this question should focus on structural aspects of program rules, rather than offering anecdotal instances of alleged abuses.
2. Please identify each specific safeguard in existing Commission Decisions that protects against possible utility misuse of energy efficiency funds to discourage or interfere with a local government’s efforts to consider or to become a CCA.
3. Why, or why not, are the existing safeguards adequate? Please be specific in responding to this question.
4. What specific additional safeguards, if any, are needed to protect against misuse of energy efficiency funds to discourage or interfere with a local government’s efforts to consider or to become a CCA?
5. How should the Commission, or its staff, enforce any applicable safeguards?
6. Parties’ reply comments shall explain how any safeguard proposed in opening comments is either unnecessary or duplicative of those that already exist.

The Commission will use the record developed through these comments to determine the necessity of additional safeguards. In the event the Commission determines that additional safeguards are necessary, the Commission may solicit additional input on what specific safeguards should be adopted.

4. Schedule

Date	Milestone
September 27	"Access" Workshop
October 8	Opening Comments on "safeguards" issue
October 15	Reply Comments on "safeguards" issue; Jointly Prepared Workshop Report

IT IS RULED that:

1. Energy Division shall conduct a workshop to explain the policies and procedures adopted in D.03-07-034 and solicit input on possible improvements to the adopted policies and procedures.
2. Parties may file comments on the need for additional safeguards to prevent program administrator misuse of energy efficiency funds by October 8. Reply comments will be accepted until October 15.
3. All comments, reply comments, and other submittals made pursuant to this ruling shall be served on the service list in this proceeding pursuant to Rules 1.9 and 1.10.

Dated September 22, 2010, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

ATTACHMENT A

Workshop Agenda

10:00-10:15 **Welcome, Introductions and Ground Rules**

10:15-11:00 **Session #1: “How Big Is The Pie”?**

Brief overview and tutorial covering EE funding sources (Public Goods Charge and Procurement Charge), followed by Q&A

11:00-12:00 **Session #2: “How Do CCAs Apply To Administer a Share Of The Pie?”**

Staff will review AB117, D.03-07-034, and the Commission’s “application process”, which IOUs maintain is already in place and adequate, followed by Q&A

12:00-1:00 **LUNCH**

1:00-2:30 **Session #3: Documentation of rules and “deep dive” into the multitude of “what-ifs” raised in parties’ comments**

2:30-2:45 **BREAK**

2:45-4:00 **Continue Session #3**

4:00-5:00 **Next Steps and Adjourn:**

“Following the workshop, attendees shall jointly prepare and file a workshop report that summarizes the outcome of the workshop and includes a response to the question of *whether the procedures set forth in D.03-07-034 by which any party, including a Community Choice Aggregator (CCA), may apply to administer cost-effective energy efficiency and conservation programs*, are adequate or whether changes need to be made.

The Workshop report shall be served on the service list by October 15.”

(END OF ATTACHMENT A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated September 22, 2010, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan

N O T I C E

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.