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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southwest Gas Corporation (U 905 G) for Approval of Program Years 2009 through 2011 Low-Income Assistance Program Budgets.	Application 08-06-031
In the Matter of the Application of PACIFICORP (U 901 E) for Approval of Program Years 2009 through 2011 Low-Income Assistance Program Budgets.	Application 08-07-019
In the Matter of the Application of West Coast Gas Company (U 910 G) for Approval of Program Years 2009 through 2011 Low-Income Assistance Program Budgets.	Application 08-07-015
In the Matter of the Application of Sierra Pacific Power Company (U 903 E) for Approval of Program Years 2009 through 2011 Low Income Energy Efficiency and California Alternate Rates for Energy Plans and Budgets.	Application 08-07-005
In the Matter of the Application of Alpine Natural Gas Company Operating Company No. 1 LLC (U 909 G) for Approval of Program Years 2009 through 2011 Low Income Assistance Program Budgets.	Application 08-07-027
In the Matter of the Application of Golden State Water Company for an Order Approving Its Low Income Energy Efficiency and California Alternate Rates for Energy Plans and Budgets for Program Years 2009 through 2011.	Application 08-07-007

OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF THE ADMINISTRATIVE LAW JUDGE ON THE APPLICATIONS OF THE SMALL AND MULTI-JURISDICTIONAL UTILITIES FOR APPROVAL OF THEIR 2009-2011 CALIFORNIA ALTERNATIVE RATES FOR ENERGY AND LOW INCOME ENERGY EFFICIENCY PROGRAMS

I. INTRODUCTION

Pursuant to Rule 14 *et seq.* of the California Public Utility Commission's ("Commission") Rules of Practice and Procedure the Division of Ratepayer Advocates ("DRA") files these Opening Comments to the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Thomas to the applications of Southwest Gas Corporation ("Southwest"), Sierra Pacific Power Company ("Sierra"), PacifiCorp, Golden State Water Company as Bear Valley Electric Service ("Bear Valley"), Alpine Natural Gas ("Alpine"), and West Coast Gas, collectively referred to as the Small and Multi-Jurisdictional Utilities ("SMJUs") for authorization for California Alternative Rates for Energy ("CARE") and Low-Income Energy Efficiency ("LIEE") programs and budgets for the years 2009-2011.

DRA generally supports the PD, but in accordance to Rule 14.3(c), these Opening Comments focus on the "factual, legal or technical errors in the proposed or alternate decision." DRA recommends the Commission to adopt the PD, subject to the revisions contained in these comments.

II. DISCUSSION

A. LIEE

1. The PD should clarify the role of Workforce Education and Training

The PD appropriately recognizes that some SMJUs "are having trouble finding qualified LIEE measure installation contractors.[1]" Indeed, this problem will grow as the PD expands the SMJUs' LIEE programs to reach 25% of all eligible customers by 2011. DRA's Opening Brief recommended that the most reasonable solution to this problem is for contractors to take advantage of the California Energy Efficiency Strategic Plan's (the "*Plan*") Workforce, Education, and Training ("WE&T").[2] While the PD recognizes that WE&T would train contractors in the SMJUs' service territories to be more qualified in

[1] PD, p.23.

[2] DRA Brief (Filed October 7, 2008), pp. 10-11.

LIEE measure installations, the PD does not direct the SMJUs to participate in WE&T, but instead gives an option for the SMJUs to have contractors participate.[3]

DRA recognizes that the WE&T program has not yet been developed. However, when the programs are developed, SMJU contractors or potential contractors need training and should take advantage of WE&T. Despite the fact that the WE&T has not been developed, the Commission still specifically expanded the LIEE training for the large IOU contractors.[4] Therefore, the PD should order the SMJUs to partake in WE&T, to the extent possible.

2. DRA supports the PD's LIEE penetration goal but the PD's calculations of 25% of eligible households is incorrect

DRA supports the PD's order that SMJUs should offer 25% of qualifying customers LIEE treatment by 2011, which is in line with the programmatic initiative of the Commission's *Plan*. However, the PD errs by assuming a blanket average of 1/3 of the SMJUs customer base is low-income. The SMJUs indicate in their applications that the percentage of low-income households among their customers varies widely depending on the size of the territory and the geographic location of each SMJU. Additionally, the PD's assumption is based on a statewide 1/3 average of California households which fall at or below 200% of the Federal Poverty Level ("FPL"). Only two SMJUs currently utilize the 200% FPL threshold, and the remaining four SMJUs utilize the 175% FPL threshold.[5] The PD should therefore utilize low-income eligibility estimates specific to each SMJU territory.

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[3] PD, pp. 23-24.

[4] D. 08-11-031, Conclusion of Law ("COL") # 30.

[5] DRA notes and supports Bear Valley's request to increase its income limit to 200% of the FPL beginning in 2009.

a) DRA supports the PD's treatment of SMJU eligibility limits

In its Protest, DRA recommended reviewing the effects on non low-income ratepayers before authorizing Bear Valley to raise its CARE and LIEE eligibility limit to 200% of the FPL. Bear Valley submitted several filings, ultimately reporting that the effect on non-participating ratepayers for CARE would be 14 cents/month in 2009 and 27 cents/month in 2011. Bear Valley reports there would be no effect for LIEE because it calculated the LIEE customers it planned to serve based on a 200% FPL authorization.[6] DRA supports the PD's determination to authorize Bear Valley's request to utilize a 200% FPL eligibility limit for its low-income programs. As Bear Valley explains, it will be consistent with its overlapping gas utility's income limit, making it easier for customers to benefit from both programs simultaneously.

DRA also requested the other SMJUs with a 175% eligibility limit (Alpine, West Coast Gas, and PacifiCorp) provide data demonstrating the effect on non-participating ratepayers of raising eligibility to 200% of the FPL.[7] PacifiCorp and West Coast Gas responded to DRA's data request. PacifiCorp's data demonstrates that raising its eligibility would be burdensome for the non-participating ratepayers. DRA also reviewed the Commission's past consideration of raising PacifiCorp's eligibility and concurs with the decision to retain a 175% eligibility limit based on the unique aspects of PacifiCorp's service territory.

West Coast Gas summarized the impact of raising its eligibility limit as "minor."[8] Alpine did not respond to DRA's data request.

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[6] Bear Valley amendment to Opening Brief filed October 16, 2008.

[7] DRA Data Request of August 28, 2008 issued to West Coast Gas, Alpine, PacifiCorp and (erroneously) Sierra.

[8] West Coast Gas response of September 8, 2008 to DRA SMJU Data Request 001.

b) The PD's estimate of 25% for Sierra is incorrect

Sierra in its application states 3,000 customers qualify as low-income in its service territory. The PD incorrectly assumes 15,000 Sierra customers qualify as low-income. While DRA cannot recommend a precise number of low-income households, DRA recommends that the Commission inform its estimates with data provided in the Sierra application and Sierra's annual CARE reports. Sierra claims in its application and annual reports that 3,000 customers, or 7.4%, of customers are CARE eligible at 200% of the FPL.[9] Sierra also states that 80% of its customers are in the Lake Tahoe basin.[10] In comparison, Southwest serves customers in Lake Tahoe and surrounding areas as well, and estimates in its 2007 Annual CARE report that 14.65% of its customers in this region qualify as low-income at 200% of the FPL. While DRA does not recommend the exact percentage that the PD adopt as low-income in Sierra's service area, DRA believes the 1/3 estimate assumed by the Commission is unlikely based on the evidence.

c) The PD's estimate of 25% for Alpine is incorrect

The PD incorrectly applies the 25% LIEE penetration requirement to Alpine's entire customer base, rather than to only the customers qualifying as low-income at 175% of the FPL. Utilities are not required to offer LIEE service to 25% of their total customer base, but only to those customers qualifying as low-income. The PD should apply the 25% LIEE penetration requirement to the portion of Alpine's customer base that qualifies as low-income.

d) The PD should utilize PacifiCorp's estimate of eligibility

The PD incorrectly applies the blanket 1/3 eligibility estimate to PacifiCorp's service territory as well. Particularly because PacifiCorp has a 175% FPL income limit

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[9] Sierra A.08-07-005 Table A-1 and Sierra 2007 Annual CARE report p.2.

[10] Sierra A.08-07-005 p.2

for CARE and LIEE enrollment, the PD should utilize PacifiCorp's estimate of eligible households to avoid distorting the facts.

e) The PD should clarify and correct the number of homes Bear Valley is ordered to serve to be in accordance with the 25% requirement

The PD directs Bear Valley to "increase the number of LIEE customers it serves by at least 150 new LIEE customers in each year 2009-2011." The PD should clarify the total number of homes it expects Bear Valley to serve, as the PD does not clearly indicate what number the increase is over. Presumably the increase is over Bear Valley's number of homes in its application (163 or 165), but this would mean the PD requires Bear Valley to exceed the LIEE 25% penetration requirement by 2011. Bear Valley's filing on October 3, 2008 states that at 200% of the FPL, 2,100 Bear Valley customers qualify for LIEE and have yet to be treated. Bear Valley states that treating 165 homes with LIEE per year in 2009, 2010, and 2011 is 23.6% of homes.[11] The PD should recognize the data that Bear Valley provides and adjust Bear Valley's penetration requirement accordingly.

B. CARE

1. The PD should apply its 90% CARE enrollment goal only to Southwest because all other SMJUs already exceed this goal

DRA appreciates the PD's Ordering Paragraph ("OP") 18 that sets the CARE penetration levels to 90%. However, as DRA stated in its Brief, "all SMJUs with the exception of Southwest predict they will enroll around 95% or more of eligible customers in the program by 2011. Alpine and West Coast Gas currently report nearly 100% enrollment of CARE eligible customers and do not anticipate this will change through 2011. PacifiCorp, Sierra Pacific, and Bear Valley project enrolling 94%, 96%, and 100% respectively, of eligible customer in CARE by 2011."[12]

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[11] Bear Valley Response of October 3, 2008, p.4.

[12] DRA Brief, pp.3-4.

Cleary, the Commission does not intend to decrease CARE enrollment and it is possible that the PD conclusion that "we should set a uniform 90% CARE penetration goal across all SMJUs"[13] is based on a mistaken fact. As such, the PD should be modified to only require Southwest to increase its enrollment.

C. Leveraging

The PD should include DRA's recommendations for leveraging. In the recent decision adopting the Large Investor Owned Utilities' ("IOUs") 2009-2011 budget applications, the Commission stated that "… leveraging must increase energy savings, result in new customer enrollments, or save program costs.[14]" The Commission also recognized the need to:

> *leverage* resources by looking beyond the boundaries of utility territories, Commission jurisdiction, and existing energy efficiency programs. . . the Commission [] required the utilities to broaden the scope of their efforts, and coordinate with other agencies and businesses in designing, delivering and implementing LIEE programs.[15]

The PD, on page 21 and in Appendix A, merely implies that the SMJUs should leverage, but the PD does not specifically find or conclude that the SMJUs leverage with outside entities. Leveraging would be consistent with the PD's objective to "not. . . impose additional burdens on the SMJUs with small customer bases and limited economies of scale in California.[16]" The burden on the SMJUs would decrease and therefore, the SMJUs would significantly benefit from leveraging resources with other entities such as the large IOUs.[17] Moreover, the SMJUs are already leveraging resources with the large IOUs.

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[13] Conclusion of Law #24, PD p. 42

[14] D. 08-11-031, p.127.

[15] *Id.*, p. 129.

[16] *Id.* at 21.

[17] *See* Appendix A of PD.

The PD should adopt DRA's recommendation to "require the SMJUs to positively demonstrate in their annual reports that leveraging is saving costs, increasing enrollment, and generally delivering greater value to low-income customers and all the ratepayers that support the low-income programs.[18]"

D. Categorical Enrollment

DRA recommended that the PD order the SMJUs to offer customers the option of proving qualification for LIEE via categorical enrollment.[19] Categorical enrollment allows customers an alternative to providing income documentation. Instead, customers can provide evidence of current participation in various other approved low-income programs. Categorical enrollment has been a key strategy to reduce barriers to participation in the IOU LIEE programs.

However, the PD fails to resolve the issue of categorical enrollment for the SMJUs. Similar to leveraging, the SMJUs would benefit from categorical enrollment because it would overcome a barrier noted by several SMJUs that customers are reluctant to expose their income to contractors. Additionally, in the scenario in which SMJUs partner with IOU contractors for LIEE program delivery, it makes no sense that a home served by an IOU for one fuel would be able to qualify via categorical enrollment, but that the same home would also have to produce income documentation in order to receive LIEE services for the fuel provided by the SMJU. Therefore, the PD should require the SMJUs to offer categorical enrollment for CARE and LIEE consistent with D.08-11-031.[20]

E. DRA and the SMJUs have resolved surcharge issues identified in the PD

There are a few issues where the PD relies on DRA's initial protest to support its findings and conclusions. However, due to discussions between DRA and the SMJUs

[18] DRA Brief, p. 7.

[19] DRA Brief, p.5.

[20] D. 08-11-031, FOF # 29.

after the protest period and before briefing, some of these issues were resolved. The PD should be modified to adopt the following resolved issues:

1. Bear Valley surcharge should be authorized via Advice Letter

The PD does not accurately represent DRA's recommendation with regard to Bear Valley request to establish a surcharge for LIEE. Specifically, the PD incorrectly states "DRA opposes an LIEE surcharge because of irregularities the Commission's Division of Water and Audits found in its April 2008 audit of Bear Valley's LIEE spending."[21] DRA opposed the creation of an LIEE surcharge in its Protest of August 15, 2008. However, DRA later dropped opposition to this request in its Brief of October 7, 2008 and instead recommended, "that the Commission work to establish a PPP surcharge which will provide Bear Valley the means to recover its CARE and LIEE expenditures."[22]

2. The PD should grant Southwest's surcharge request

DRA supports Southwest's request in its application and Brief, to apply LIEE funds to its Northern and Southern California service territories depending on need. No other California utility is restricted to use LIEE surcharge funds only in the county or local area from which the funds are collected. Southwest correctly states in its Brief[23] that DRA's opposition in the Protest was based on a misinterpretation of Southwest' request.

After receiving clarification from Southwest, DRA's Brief supported Southwest's recommendation to retain a buffer in the LIEE balancing account but nevertheless recommended the Commission require SMJUs to annually recalibrate their CARE and LIEE PPP surcharges, and implement the new surcharges to the extent it will be meaningful to ratepayers.[24]

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[21] PD p.33

[22] DRA Brief, p.9

[23] Southwest Opening Brief of October 7, 2008, p.7

[24] DRA Brief, p.9.

F. Minor Technical and Factual Errors

1. Bear Valley income eligibility level

DRA recommends that the PD be corrected to accurately represent Bear Valley's request to increase the LIEE/CARE income eligibility level from *175%* to 200% of the FPL. The PD mistakenly states on pages 11, 12, 18, and 19 that Bear Valley's request is to raise its eligibility limit from 150% of the FPL.

2. PacifiCorp's partnership with Community Based Organizations

DRA recommends that the PD be corrected to reflect the fact that PacifiCorp partners with the Del Norte Senior Center to deliver the LIEE program, as well as with the Energy Demonstration Center. Page 10 of the PD inaccurately states that PacifiCorp partners with just one Community Based Organization.

3. CARE recertification does not require proof of qualification

Finding of Fact 35 should be revised to reflect that CARE recertification does not require proof of qualification. Only CARE verification requires proof of qualification.

III. CONCLUSION

DRA is pleased to participate in this vital proceeding. For the foregoing reasons, DRA recommends specific modifications to this decision. DRA proposes revisions to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in Appendix A[25].

[25] The PD should be modified to incorporate all items contained in these Opening Comments, whether or not they are included the Appendix A.

Respectfully submitted,

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November 20, 2008

<u>**CERTIFICATE OF SERVICE**</u>

I hereby certify that I have this day served a copy of "**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF THE ADMINISTRATIVE LAW JUDGE ON THE APPLICATIONS OF THE SMALL AND MULTI-JURISDICTIONAL UTILITIES FOR APPROVAL OF THEIR 2009-2011 CALIFORNIA ALTERNATIVE RATES FOR ENERGY AND LOW INCOME ENERGY EFFICIENCY PROGRAMS**" in **A.08-06-031, et al.** by using the following service:

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Executed on **November 20, 2008**, at San Francisco, California.

/s/ REBECCA ROJO
Rebecca Rojo

N O T I C E

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