Decision **PROPOSED DECISION OF ALJ KIM (Mailed 9/14/2010)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of the 2009-2011 Low Income Energy Efficiency and California Alternate Rates for Energy Programs and Budget (U39M).	Application 08-05-022 (Filed May 15, 2008)
And Related Matters.	Application 08-05-024 Application 08-05-025 Application 08-05-026

DECISION GRANTING, IN PART, PETITION OF SOUTHERN CALIFORNIA EDISON TO MODIFY DECISION 08-11-031

1. Summary

This decision grants, in part, a petition to modify Decision (D.) 08-11-031 filed by Southern California Edison Company (SCE), dated November 6, 2009 (Petition). The Petition raised two major issues regarding D.08-11-031 and proposed related modifications to and clarifications of D.08-11-031. This decision resolves the second of the two issues raised in the Petition by modifying and clarifying the text of D.08-11-031 and Ordering Paragraph 85 concerning fund shifting rules.[1]

[1] The first of the two issues SCE raised in the Petition was that D.08-11-031 should be "modified to show that cooling measures are permitted in Climate Zone 13." Petition at 2. On November 20, 2009, the Commission issued D.09-11-009 which resolved or otherwise made that issue moot.

2. Background

In Decision (D.) 08-11-031, the Commission approved the budgets for California's Large Investor Owned Utilities' (IOUs) Low Income Energy Efficiency (LIEE) and California Alternative Rates for Energy (CARE) programs for 2009 through 2011.

On November 6, 2009, Southern California Edison Company (SCE) filed a Petition to Modify D.08-11-031 (Petition) and requested that the Commission modify D.08-11-031, inter alia, to clarify the fund shifting guidelines set forth in Ordering Paragraph (OP) 85 therein.

On December 7, 2009, the Division of Ratepayer Advocates (DRA) filed its response to the Petition. In relevant part, DRA agreed with and therefore supported SCE's request that the Commission clarify the fund shifting language contained in D.08-11-031.

3. Discussion

SCE contends that "there are several areas in D.08-11-031 that ambiguously discuss fund shifting and need clarification." The Petition describes two such concerns.

The first is that D.08-11-031 incorrectly or otherwise inaccurately refers to the commitment of funds from the next program cycle to finance programs that will not yield savings in the current cycle, as "carry forward" fund shifting.[2] As stated in D.08-11-031, "[W]e will allow the utilities to commit funds from the next program cycle to fund programs that will not yield savings in the current cycle."

---

[2] Petition at 7 and OP 85.

SCE explains that because funds, in certain instances, involving long term projects may need to be anticipatorily committed during the current budget cycle but for expenditure in the next budget program cycle to finance projects that will be carried out and yield savings in that next budget program cycle, there is not a "carry forward" or shifting of any actual funds to or from the current cycle. Instead, SCE requests the Commission modify D.08-11-031 and OP 85 to reflect that committing funds from future cycles to deliver results in the future cycle is not fund shifting and perhaps should not be discussed as a fund shifting concept at all. Therefore, SCE requests that the Commission modify D.08-11-031 and OP 85 therein to address this issue.

SCE's second concern relating to D.08-11-031's fund shifting language is that it contains conflicting or otherwise inconsistent directives, as follows:

> … within Ordering Paragraph 85, there is a conflict among adjoining paragraphs that describe shifting funds among program categories. The first paragraph (LIEE: Fund Shifting among program categories) describes a series of conditions where in some cases a Tier 2 Advice Letter is required. Moreover, that paragraph first states that fund shifting to administrative overhead costs, compliance costs, measurement and evaluation, or the costs of pilots and studies is not allowed. Then it states that such fund shifting may be done with an Advice Letter. The second paragraph (LIEE Limitation) also requires written approval from the ALJ under the same circumstances.[3]

On December 7, 2009, DRA filed its response to the Petition. In relevant part, DRA agreed with and therefore supported SCE's request that the Commission clarify the fund shifting language contained in D.08-11-031 and

[3] Petition at 8.

echoed that D.08-11-031 and OP 85 contain language and directives that are unclear, inaccurate, inconsistent and/or otherwise conflicting.

We agree with SCE and DRA that the fund shifting provisions of D.08-11-031 are ambiguous, and at times are inconsistent and conflicting. We therefore conclude that the fund shifting provisions in OP 85 of D.08-11-031 should be modified, as follows:

> 85. We grant and deny the IOUs' requests for commitment of funding for long term projects in future budget program cycles and for fund shifting in the CARE and LIEE programs as follows:
>
> a. **COMMITMENT OF FUTURE FUNDING FOR LONG-TERM PROJECTS**: For those long-term projects that require funding beyond the current budget program cycle and that will not yield savings in the current cycle, if applicable, the IOUs may anticipatorily commit funds for such projects for expenditure during the next program cycle, under strict limitations as follows:
>
> (1) The IOUs shall seek authorization for such long-term projects and current and future cycle funding commitment by itemization of each long-term project in the utility portfolio plan, including an estimate of the total costs broken down by year and an estimate of associated energy savings, if any;
>
> (2) The IOUs shall seek authorization and commitment of all funding for long-term projects in the current program cycle and actually encumber such funds in the current program cycle;
>
> (3) All contracts with any and all types of implementing agencies and businesses must explicitly allow completion of long-term project related work beyond the current budget program cycle;

(4) The amount of next cycle funds encumbered for long-term projects may not exceed 20% of the current program cycle budget;

(5) The IOUs shall separately track and report all long-term projects and obligations, including all information regarding funds encumbered and estimated date of project completion until such project is completed; and

(6) Energy savings for projects with long lead times shall be calculated by defining the baseline as the codes and standards applicable at the time the building permit for the project is issued.

b. **LIEE FUND SHIFTING AND LIMITATIONS**: IOUs are permitted to shift funds under the following conditions in the LIEE program.

(1) Within 2009-2011 Budget Cycle: Except for the shifting of funds described in subsection b(3) below, IOUs are permitted to shift funds from one year to another within the 2009-11 cycle without prior approval.

(2) Fund Shifting Between 2009-2011 Budget Cycle and Future Budget Cycle:

i. "Carry back" Funding: Except for the shifting of funds described in subsection b(3) below, IOUs are permitted to shift and borrow from the next budget cycle, without prior approval of such fund shifting, if (a) the next cycle budget portfolio has been approved by the Commission; and (b) such fund shifting is necessary to avoid interruptions of those programs continuing into the next cycle and for start-up costs of new programs; and

ii. "Carry forward" Funding: IOUs are permitted to carry over all remaining, unspent funds from program year to program year or budget cycle to budget cycle and shall include all anticipated carry over funds in the upcoming budget applications.

(3) Administrative Law Judge's Prior Approval: For any shifting of funds, within or out of cycle, except for "carry

forward" funding considered by the Commission through budget applications, the Administrative Law Judge's prior written approval is required if any of the following applies:

i. Shifting of funds into or out of different program categories including, but not limited to: (a) administrative overhead costs, (b) regulatory compliance costs, (c) measurement and evaluation, and (d) the costs of pilots and studies;

ii. Shifting of funds into or out of Education subcategory;

iii. Shifting of funds between gas/electric programs; and/or

iv. Shifting of funds totaling 15% or more of the total current annual LIEE program budget.

(4) The IOUs shall secure prior written approval of the fund shift from the Administrative Law Judge when required by subsection b(3) above, of this ordering paragraph, by filing a motion pursuant to Article 11 of the Commission's Rules of Practice and Procedure. Upon showing of good cause, the Administrative Law Judge may issue a ruling approving the requested fund shift. IOUs, in the motion, must show good cause by setting forth the following:

i. The reason(s) why such fund shifting is necessary;

ii. The reason(s) why such motion could not have been brought sooner; and

iii. Justification supporting why the proposed shifting of funds would promote efficient, cost effective and effective implementation of the LIEE program.

(5) IOUs shall track and maintain a clear and concise record of all fund shifting transactions and submit a well-documented record of such transactions in their monthly and annual reports relevant to the period in which they took place.

c. **CARE FUND SHIFTING AND LIMITATIONS**: The IOUs are permitted to shift CARE funds in the same manner as

> they did in the 2006-08 budget cycle, but shall report all such shifting.

The foregoing modified OP 85 addresses and resolves the two concerns raised in the Petition regarding fund shifting.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Kim 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 October 4, 2010 by SCE and San Diego Gas & Electric Company and Southern California Gas Company and no reply comments were filed.

SCE contends that the Commission should employ its Advice Letter Process for fund-shifting. The process set forth in OP 85 will clearly establish a record of how those funds are shifted and the basis justifying any proposed shifts. We therefore decline SCE's proposed modification in that regard.

San Diego Gas & Electric Company and Southern California Gas Company (Joint Utilities) propose to modify OP 85 b (3) as follows:

> *Shifting of funds into or out of ~~different~~ the following program categories ~~including, but not limited to~~: (a) administrative overhead costs, (b) regulatory compliance costs, (c) measurement and evaluation, and (d) the costs of pilots and studies;*

We decline the above proposed modification by Joint Utilities. Instead, we confirm that the ALJ's prior approval is required for fund-shifting from any category to a different category.

Lastly, both SCE and Joint Utilities pointed out a minor typographical error which is incorporated herein.

5. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Kimberly Kim is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE filed a petition to modify D.08-11-031 on November 6, 2009, in part, seeking to modify and clarify the text of D.08-11-031 and OP 85 concerning fund shifting.

2. The fund shifting language contained in D.08-11-031 is ambiguous and inconsistent.

Conclusions of Law

1. The petition for modification should be granted, in part, to clarify the fund shifting language in D.08-11-031.

2. It is reasonable to modify D.08-11-031 to clarify the fund shifting language therein.

O R D E R

IT IS ORDERED that:

1. Decision 08-11-031, the decision approving budgets for California's Large Investor-Owned Utilities (IOUs), Low Income Energy Efficiency (LIEE), and California Alternative Rates for Energy (CARE) programs for 2009 through 2011, Section 1, page 6, the fifth bullet is revised as follows:

- *We Give the IOUs Limited Authority to Shift LIEE and CARE Program Funds During the 2009-11 Period. Generally, we allow certain shifting up to 15% of budgets, with express limitations ~~except where it affects administrative budget categories~~.*

2. Decision 08-11-031, Section 1, page 6, is revised to add the below new bullet following the above revised bullet:

- *We Give the IOUs Limited Authority to Commit Funds During the 2009-2011 Period for Long-term Projects, with express limitations.*

3. Decision 08-11-031 Section 20, starting at page 158, the fund shifting section, is hereby deleted and superseded by new Section 20, attached as Attachment A to this Decision.

4. Decision 08-11-031 is modified and the former Ordering Paragraph 85 is superseded with the below text:

85. We grant and deny the IOUs' requests for commitment of funding for long term projects in future budget program cycles and for fund shifting in the CARE and LIEE programs as follows:

a. **COMMITMENT OF FUTURE FUNDING FOR LONG-TERM PROJECTS**: For those long-term projects that require funding beyond the current budget program cycle and that will not yield savings in the current cycle, if applicable, the IOUs may anticipatorily commit funds for such projects for expenditure during the next program cycle, under strict limitations as follows:

(1) The IOUs shall seek authorization for such long-term projects and current and future cycle funding commitment by itemization of each long-term project in the utility portfolio plan, including an estimate of the total costs broken down by year and an estimate of associated energy savings, if any;

(2) The IOUs shall seek authorization and commitment of all funding for long-term projects in the current program cycle and actually encumber such funds in the current program cycle;

(3) All contracts with any and all types of implementing agencies and businesses must explicitly allow completion of

long-term project related work beyond the current budget program cycle;

(4) The amount of next cycle funds encumbered for long-term projects may not exceed 20% of the current program cycle budget;

(5) The IOUs shall separately track and report all long-term projects and obligations, including all information regarding funds encumbered and estimated date of project completion until such project is completed; and

(6) Energy savings for projects with long lead times shall be calculated by defining the baseline as the codes and standards applicable at the time the building permit for the project is issued.

b. **LIEE FUND SHIFTING AND LIMITATIONS**: IOUs are permitted to shift funds under the following conditions in the LIEE program.

(1) Within 2009-2011 Budget Cycle: Except for the shifting of funds described in subsection b(3) below, IOUs are permitted to shift funds from one year to another within the 2009-11 cycle without prior approval.

(2) Fund Shifting Between 2009-2011 Budget Cycle and Future Budget Cycle:

i. "Carry back" Funding: Except for the shifting of funds described in subsection b(3) below, IOUs are permitted to shift and borrow from the next budget cycle, without prior approval of such fund shifting, if (a) the next cycle budget portfolio has been approved by the Commission; and (b) such fund shifting is necessary to avoid interruptions of those programs continuing into the next cycle and for start-up costs of new programs; and

ii. "Carry forward" Funding: IOUs are permitted to carry over all remaining, unspent funds from program year to program year or budget cycle to budget cycle and

shall include all anticipated carry over funds in the upcoming budget applications.

(3) Administrative Law Judge's Prior Approval: For any shifting of funds, within or out of cycle, except for "carry forward" funding considered by the Commission through budget applications, the Administrative Law Judge's prior written approval is required if any of the following applies:

i. Shifting of funds into or out of different program categories including, but not limited to: (a) administrative overhead costs, (b) regulatory compliance costs, (c) measurement and evaluation, and (d) the costs of pilots and studies;

ii. Shifting of funds into or out of Education subcategory;

iii. Shifting of funds between gas/electric programs; and/or

iv. Shifting of funds totaling 15% or more of the total current annual LIEE program budget.

(4) The IOUs shall secure prior written approval of the fund shift from the Administrative Law Judge when required by subsection b(3) above, of this ordering paragraph, by filing a motion pursuant to Article 11 of the Commission's Rules of Practice and Procedure. Upon showing of good cause, the Administrative Law Judge may issue a ruling approving the requested fund shift. IOUs, in the motion, must show good cause by setting forth the following:

i. The reason(s) why such fund shifting is necessary;

ii. The reason(s) why such motion could not have been brought sooner; and

iii. Justification supporting why the proposed shifting of funds would promote efficient, cost effective and effective implementation of the LIEE program.

(5) IOUs shall track and maintain a clear and concise record of all fund shifting transactions and submit a well-documented record of such transactions in their monthly

and annual reports relevant to the period in which they took place.

c. **CARE FUND SHIFTING AND LIMITATIONS**: The IOUs are permitted to shift CARE funds in the same manner as they did in the 2006-08 budget cycle, but shall report all such shifting.

5. The petition to modify Decision 08-11-031 filed by Southern California Edison Company is granted, in part, as set forth in this order, and is otherwise denied.

6. Applications (A.) 08-05-022, A.08-05-024, A.08-05-025, and A.08-05-026, remain open.

This order is effective today.

Dated _____, at San Francisco, California.