ALJ/SRT/tcg *

**DRAFT**

H-9
5/16/02
Agenda ID #470

Decision **DRAFT DECISION OF ALJ THOMAS** (Mailed 4/5/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

| | |
|---|---|
| Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs. | Rulemaking 01-08-028<br>(Filed August 23, 2001) |

# INTERIM OPINION SELECTING 2002-03 LOCAL ENERGY EFFICIENCY PROGRAMS

## TABLE OF CONTENTS

**Title** **Page**

**INTERIM OPINION SELECTING 2002-03 LOCAL ENERGY EFFICIENCY PROGRAMS……..……2**
**I. Summary……2**
**II. Background…….…. 10**
**III. Selection Criteria……..……11**
A. Importance of Local Programs ..... 11
B. Proposal Scoring ..... 12
1. Long-Term Annual Energy (Gas and Electric) Savings..... 13
2. Cost Effectiveness ..... 13
3. Addressing Market Failures or Barriers ..... 13
4. Equity Considerations..... 14
5. Electric Peak Demand Savings..... 14
6. Innovation ..... 15
7. Synergies and Coordination With Programs Run by Other Entities..... 15
C. Local Program Mix..... 15
D. Funding Limitations..... 16
E. Coordinating Statewide and Local Programs ..... 19
**IV. Programs Selected…….. 19**
**V. Other Issues……...…20**
A. IOU Contracts with Third Parties ..... 20
B. Program Implementation Plans..... 22
C. Budgets ..... 24
D. Program Payments ..... 28
E. Statewide Market Assessment and Evaluation Activities ..... 30
F. Local Program Evaluation, Measurement and Verification (EM&V) ..... 34
G. Total Resource Cost (TRC) Recalculation ..... 34
H. Hard-to-Reach Program Targets ..... 35
I. No Double-Dipping ..... 35
J. IOU Administration Expenses..... 35
K. Programs That Provide Limited Services With Energy Efficiency Funding But Offer Additional Full Fee Programs..... 36
L. Approval of IOU Local Programs ..... 37
**VI. Conclusion…….….. 37**
**VII. Comments on Draft Decision……... 37**
**Findings of Fact……..... 39**
**Conclusions of Law……..……40**
**ORDER……..…. 41**

Attachment 1 – Selected Local Programs and Energy Reduction Targets
Attachment 2 – Summary of Important Dates and Deadlines
Attachment 3 – Program Descriptions
Attachment 4 – Data Requests/Responses
Attachment 5 – Energy Division letter template sent to program sponsors

# INTERIM OPINION SELECTING 2002-03 LOCAL ENERGY EFFICIENCY PROGRAMS

## I. Summary

In this interim decision, we select the local energy efficiency programs for 2002-03. We award $102,030,037[1] in local energy efficiency funds to a combination of governmental entities, non-profits and community based organizations, small businesses, consulting firms, investor owned utilities (IOUs) and other entities dedicated to providing energy efficiency measures at the local level. All of these programs will be funded by Public Goods Charge (PGC) funds collected in 2002 and 2003. We fund the following programs:

| Energy Division Proposal Reference Number | Proposal Sponsor | Program Title | Approved Budget | IOU Service Territory | Contracting IOU |
|---|---|---|---|---|---|
| 118B-02 | ADM Associates, Inc | Mobile Energy Clinic Program | $726,069 | SCE | SCE |
| 119A-02 | ADM Associates, Inc | Upstream High Efficiency Gas Water Heater Program | $827,116 | PGE | PGE |
| 171AB-02 | American Synergy Corporation | Comprehensive Hard-to-Reach Residential and Small Commercial Energy Savings Program<br>*Program Budget Per IOU Area* | $2,980,952<br>*$1,985,314*<br>*$995,638* | *SCE*<br>*SCG* | *SCE* |
| 201-02 | American Synergy Corporation | Comprehensive Hard-to-Reach Mobile Home Energy Savings | $2,277,632 | PGE | PGE |
| 244-02 | ASW Engineering | The Energy Savers Program | $2,642,270 | SCE | SCE |
| 172-02 | California Building Performance Contractors Association | Comprehensive Whole-House Residential Retrofit Program | $1,613,225 | PGE | PGE |

[1] There is additional local funding that requires further consideration. We will address this funding separately.

| Energy Division Proposal Reference Number | Proposal Sponsor | Program Title | Approved Budget | IOU Service Territory | Contracting IOU |
|---|---|---|---|---|---|
| 311BC-02 | California State University Chancellor's Office | California State University Energy Efficiency Program Proposal<br>*Program Budget Per IOU Area* | $536,766<br>*$366,309*<br>*$170,457* | <br>*SCE*<br>*SDGE* | SCE |
| 230ABCD-02 | California State University Fresno | Agriculture Pumping Efficiency Program<br>*Program Budget Per IOU Area* | $4,929,655<br>*$3,333,333*<br>*$679,793*<br>*$593,483*<br>*$323,046* | <br>*PGE*<br>*SCE*<br>*SCG*<br>*SDGE* | PGE |
| 162ABC-02 | California Urban Water Conservation Council | Pre-Rinse Spray Head Installation Program for the Food Service Industry Proposal<br>*Program Budget Per IOU Area* | $2,217,513<br>*$562,806*<br>*$1,299,648*<br>*$355,059* | <br>*PGE*<br>*SCG*<br>*SDGE* | SCG |
| 234A-02 | CHEERS | Building Department and Small Builder Title 24 Standards Training | $631,881 | PGE | PGE |
| 116-02 | City of Davis | Davis Comprehensive Energy Efficiency Program (DCEEP) | $1,905,968 | PGE | PGE |
| 284-02 | City of San Diego | Whole House Energy Retrofit Incentive Program | $1,448,946 | SDGE | SDGE |
| 203-02 | City of Stockton / InSync | Stockton Area Comprehensive Local Proposal | $956,938 | PGE | PGE |
| 156-02 | County of Los Angeles | The County of Los Angeles Internal Services Division Energy Efficiency Program | $3,333,333 | SCE | SCE |
| 292-02 | D&R International | Appliance and Lighting Products in Residential New Construction | $778,727 | SDGE | SDGE |
| 99-02 | Ecology Action of Santa Cruz | Small Business Energy Efficiency Program | $1,904,762 | PGE | PGE |
| 245C-02 | Ecos Consulting | LiteVend Program | $481,331 | SDGE | SDGE |
| 258BC-02 | Ecos Consulting | Energy Star CFL Program for Small Hardware and Grocery Retailers<br>*Program Budget Per IOU Area* | $5,504,182<br>*$4,051,416*<br>*$1,452,766* | <br>*SCE*<br>*SDGE* | SCE |

| Energy Division Proposal Reference Number | Proposal Sponsor | Program Title | Approved Budget | IOU Service Territory | Contracting IOU |
|---|---|---|---|---|---|
| 141ABC-02 | Electric & Gas Industries Association | A Proposal to Develop & Administer an Interest Rate Buy-Down for the Installation of High Efficiency HVAC Equipment<br>*Program Budget Per IOU Area* | $5,380,983<br>*$3,269,151*<br>*$1,524,728*<br>*$587,105* | <br>*PGE*<br>*SCE*<br>*SCG* | PGE |
| 98AB-02 | Energy Analysis Technologies | Residential Duct Services Program<br>*Program Budget Per IOU Area* | $1,095,238<br>*$547,619*<br>*$547,619* | <br>*SCE*<br>*SCG* | SCG |
| 232A-02 | Energy Coalition | The Energy District Approach for Sustainable Energy Efficiency in California | $3,047,619 | SCE | SCE |
| 148ABC-02 | Energy Solutions | LightWash<br>*Program Budget Per IOU Area* | $2,559,905<br>*$1,407,930*<br>*$837,800*<br>*$314,175* | <br>*PGE*<br>*SCG*<br>*SDGE* | PGE |
| 113-02 | Fisher-Nickel Inc | Energy Efficiency in Commercial Food Service | $3,183,796 | PGE | PGE |
| 126-02 | Frontier Associates | Green Building Technical Support Services | $565,396 | PGE | PGE |
| 180-02 | GeoPraxis | Time-of-Sale Home Inspection Proposal | $875,931 | PGE | PGE |
| 248B-02 | Global Energy Partners, LLC | Energy Efficiency Services for Electricity Consumption and Demand Reduction in Oil Production in the State of California | $1,730,250 | SCE | SCE |
| 278BC-02 | Global Energy Services | Chinese Language Efficiency Outreach (CLEO)<br>*Program Budget Per IOU Area* | $358,087<br>*$279,913*<br>*$78,173* | <br>*SCE*<br>*SCG* | SCE |

| Energy Division Proposal Reference Number | Proposal Sponsor | Program Title | Approved Budget | IOU Service Territory | Contracting IOU |
|---|---|---|---|---|---|
| 255CD-02 | Heschong Mahone Group | Efficient Affordable Housing Program<br>*Program Budget Per IOU Area* | $483,697<br>*$241,849*<br>*$241,849* | <br>*SCE*<br>*SCG* | SCG |
| 134-02 | ICF Associates Inc | Partnership for Energy Affordability in Multi-Family Housing | $1,826,305 | PGE | PGE |
| 218AB-02 | ICF Associates Inc | Demand Control Ventilation Pilot Program<br>*Program Budget Per IOU Area* | $589,153<br>*$394,733*<br>*$194,421* | <br>*SCE*<br>*SCG* | SCG |
| 184AB-02 | Local Government Commission | Regional Energy Authority Pilot Projects<br>*Program Budget Per IOU Area* | $939,903<br>*$454,002*<br>*$485,901* | <br>*PGE*<br>*SCE* | PGE |
| 11-02 | PGE | School Resources Program | $600,000 | PGE | |
| 15-02 | PGE | Energenius | $300,000 | PGE | |
| 19-02 | PGE | Pacific Energy Center (PEC) | $2,340,000 | PGE | |
| 290-02 | Proctor Engineering Group Ltd. | Check Me | $2,852,381 | SCE | SCE |
| 106-02 | Quantum Consulting Inc | Municipal Wastewater Retro-Commissioning (PG&E Territory) | $952,381 | PGE | PGE |
| 107-02 | Quantum Consulting Inc | Municipal Wastewater Retro-Commissioning (SCE Territory) | $1,528,714 | SCE | SCE |
| 174-02 | Quantum Consulting Inc | The Oakland Energy Partnership Program | $6,052,498 | PGE | PGE |
| 179-02 | Richard Heath & Associates, Inc. | Proposal to Provide A Small Nonresidential Energy Fitness Program | $1,904,762 | PGE | PGE |
| 287-02 | Richard Heath & Associates, Inc. | Mobile Home Energy Efficiency & Education Program | $1,514,616 | SDGE | SDGE |
| 182AB-02 | Rita Norton & Associates | South Bay Communities & Affiliates Energy Efficiency Program<br>*Program Budget Per IOU Area* | $1,904,762<br>*$1,276,190*<br>*$628,571* | <br>*SCE*<br>*SCG* | SCE |
| 125-02 | RLW Analytics Inc | The Energy Savers Program | $1,904,762 | PGE | PGE |
| 300-02 | San Diego Regional Energy Office | San Diego Public Agency Information and Technical Support Program | $910,402 | SDGE | SDGE |
| 301-02 | San Diego Regional Energy Office | San Diego Region Energy Resource & Education Center | $1,805,107 | SDGE | SDGE |
| 303-02 | San Diego Regional Energy Office | San Diego Region Cool Communities Shade Tree Program Proposal | $744,941 | SDGE | SDGE |

| Energy Division Proposal Reference Number | Proposal Sponsor | Program Title | Approved Budget | IOU Service Territory | Contracting IOU |
|---|---|---|---|---|---|
| 304-02 | San Diego Regional Energy Office | San Diego Region Agriculture, Water and Energy Program | $524,097 | SDGE | SDGE |
| 305-02 | San Diego Regional Energy Office | San Diego Region Direct Install Small Commercial Program | $1,724,367 | SDGE | SDGE |
| 306-02 | San Diego Regional Energy Office | San Diego K-12 Energy Education Program | $429,676 | SDGE | SDGE |
| 37-02 | SCE | Residential In-Home Energy Survey Program | $700,000 | SCE | |
| 40-02 | SCE | Small Nonresidential Hard to Reach Program | $1,000,000 | SCE | |
| 42-02 | SCE | Pump Tests & Hydraulic Services Program | $1,930,000 | SCE | |
| 43-02 | SCE | Demonstration & Information Transfer | $450,000 | SCE | |
| 44-02 | SCE | Local Government Initiative | $850,000 | SCE | |
| 45-02 | SCE | Codes & Standards Program | $50,000 | SCE | |
| 83-02 | SCG | Nonresidential Financial Incentives Program | $990,000 | SCG | |
| 84-02 | SCG | Diverse Markets Outreach Programs | $1,079,000 | SCG | |
| | SCG | To supplement SCG Statewide Programs* | 400,000 | SCG | |
| 63-02 | SDGE | Hard to Reach Lighting Turn In Program | $433,000 | SDGE | |
| 64-02 | SDGE | In-Home Audits Program | $150,000 | SDGE | |
| 65-02 | SDGE | Small Business Energy Assessments | $417,000 | SDGE | |
| 66-02 | SDGE | EZ Turnkey Program | $900,000 | SDGE | |
| 70-02 | SDGE | Codes and Standards | $200,000 | SDGE | |
| 177-02 | State & Consumer Services Agency | Proposal for a Local K-12 Schools Energy-Efficiency Program | $2,965,476 | PGE | PGE |

* To supplement SoCalGas' statewide Emerging Technologies program ($100,000) and Education and Training program, specifically its Energy Resource Center ($300,000), per SoCalGas' December 14, 2001, proposal.

| Energy Division Proposal Reference Number | Proposal Sponsor | Program Title | Approved Budget | IOU Service Territory | Contracting IOU |
|---|---|---|---|---|---|
| 144AB-02 | Xenergy | Energy Efficient Local Government Partners Program<br>*Program Budget Per IOU Area* | $1,664,565<br>*$619,048*<br>*$1,045,517* | <br>*PGE*<br>*SCE* | PGE |
| 202AB-02 | Xenergy | Comprehensive Compressed Air Program<br>*Program Budget Per IOU Area* | $1,524,000<br>*$1,142,857*<br>*$381,143* | <br>*SCE*<br>*SDGE* | SCE |
| **Total Funds Awarded** | | | **$102,030,037** | | |

In Decision (D.) 01-11-066, we established the rules for IOUs and third parties to follow in seeking local funding. We made third parties eligible for $100 million in funding available in 2002 and 2003 for local programs. We made IOUs Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison or SCE), and Southern California Gas Company (SoCalGas or SCG) eligible for $25 million in local program funding.

While we authorized third parties to seek funding for 2002 and 2003 in D.01-11-066, we limited the potential IOU funding to 2002 so that the Commission might examine the appropriateness of expanding the amount of local funding available to third parties in 2003. We also found on review of all local program proposals that the appropriate allocation of IOU and third party local funding differed somewhat from our original estimate. Based on the strength of individual proposals, we believe that our funding decision today results in the best mix of local energy efficiency programs for California.

We note, however, that we used certain IOU local program funds from the $25 million to "bridge fund" the IOUs' existing programs through May 2002, so the IOUs have received more of the $25 million than this decision would

indicate.[2] We also set aside a portion of the total funding available to cover the administrative fee that IOUs may collect for administering the third party contracts and authorize supplemental funding for two of SoCalGas' statewide programs. The following table summarizes the allocation of the total funding available across the IOU service areas that we approve in this decision.

| **Local Program Funding by IOU Service Area** | | | | | |
|---|---|---|---|---|---|
| | **PG&E** | **SCE** | **SDG&E** | **SoCalGas** | **Total** |
| Local Program Funding to IOUs (1) | $3,240,000 | $4,980,000 | $2,100,000 | $2,469,000 | $12,789,000 |
| Local Program Funding to Non-IOUs (2) | $39,995,099 | $29,882,775 | $13,358,856 | $6,004,307 | $89,241,037 |
| **Sub-total** | **$43,235,099** | **$34,862,775** | **$15,458,856** | **$8,473,307** | **$102,030,037** |
| Bridge Funding for IOU Programs (3) | $1,195,920 | $905,300 | $377,190 | $271,590 | $2,750,000 |
| IOU Administrative Reserve Funds (4) | $1,999,755 | $1,494,139 | $667,943 | $300,215 | $4,462,052 |
| | | | | | |
| **Total** | **$46,430,774** | **$37,262,214** | **$16,503,989** | **$9,045,112** | **$109,242,089** |

(1) To fund local program from June 1 to Dec 31, 2002.
(2) To fund local programs from June 1 to Dec 31, 2003.
(3) To fund local programs through May 31, 2002 per D02-03-056, Attachment 8.
(4) Total IOU Administrative Reserve Funds are equal to 5% of the total funds awarded to non-IOU program providers (see discussion in Section V.J. below). Because some IOUs will be administering contracts for programs outside of their respective service area, the segregation of the total IOU Administrative Reserve by IOU service area is approximate and may not reflect the actual fees collected by each individual IOU for administrative services.

We have evaluated the proposals submitted by the IOUs and the non-utilities according to the criteria and point system established in D.01-11-066:

(1) Long-term annual energy savings ***25 points***
(2) Cost effectiveness ***20 points***
(3) Addressing market failures or barriers ***17 points***
(4) Equity considerations ***15 points***

[2] *See* D.02-03-056, Attachment 9.

| | |
|---|---|
| (5) Electric peak demand savings | ***10 points*** |
| (6) Innovation | ***8 points*** |
| (7) Synergies and coordination with programs run by other entities | ***5 points*** |

We have modified the IOU and third party proposals where needed to establish more robust energy savings targets or more economical spending targets. Where appropriate, we have limited program focus to smaller geographic areas, customer segments, and/or activities; and have reduced budgets for certain programs to meet funding constraints, achieve a more balanced program portfolio and enhance synergies with other programs. With these modifications, we estimate that the portfolio of local programs selected in this decision is cost effective, with a Total Resource Cost (TRC) ratio greater than 1.3.[3]

We also provide for submission of Program Implementation Plans for local programs and specify how the third parties will be eligible for quarterly and final payments based on set program performance targets/goals and deliverables. We clarify the IOUs' responsibilities as contract administrators for the third party programs and state that we will not hold the IOUs responsible for failure of these programs to meet their performance goals. We expect the IOUs, however, to exercise due diligence in monitoring the performance of these third party programs and their compliance with contract provisions.

[3] The draft decision instructed program sponsors whose programs were selected to resubmit their TRC calculations on April 22, 2002, based on the revisions the draft decision made to their program budgets. For programs that did not resubmit TRC calculations as instructed, we reduced their originally submitted TRC benefits and costs in proportion to their budget reductions, in calculating the program portfolio TRC ratio.

Finally, upon further consideration, we authorize the IOUs to utilize the $10.5 million funding for statewide Market Assessment and Evaluation (MA&E) activities subject to the conditions set forth in this decision. We also provide additional guidance for independent evaluation, measurement and verification (EM&V) of individual program results.

## II. Background

In D.01-11-066, we adopted rules for energy efficiency programs to allow non-utilities to compete with utilities for energy efficiency funding. We initially allocated $100 million of the energy efficiency funding available in 2002-03 for local programs run by non-IOUs and $25 million in IOU funding for local programs. We made clear these amounts were initial targets that might change once we reviewed the local proposals.

Because they have the advantage of incumbency, we had the IOUs submit their local programs first, on December 14, 2001. Third parties' proposals were due no later than January 15, 2002,[4] and we held a workshop on December 19, 2001 to help proposers – many of them new to Commission proceedings – through the process. We also allowed comments and reply comments on the local program proposals themselves.

We received nearly 300 proposals, from a huge array of providers, representing many sectors of the economy: governments, non-profits, public-private partnerships, government associations, private consultants, think tanks, community based organizations, small businesses, large corporations and the

[4] Perhaps because of their unfamiliarity with the Commission process, many parties only filed or served their proposals on the due date. The Administrative Law Judge (ALJ) ruled that any such proposal would be considered timely, and gave the parties on the service list leave to object. No party did so.

IOUs. Many of the proposers have worked with the IOUs in the past on energy efficiency programs; others have been active at the local or national level in energy efficiency programs; some were new organizations spurred by the Commission's solicitation in D.01-11-066.

## III. Selection Criteria

### A. Importance of Local Programs

As we stated in D.01-11-066,

> Local program options have the advantage of being able to respond flexibly to energy end-users' needs. Local programs also utilize local relationships and networks to increase participation and reach. Individual consumers depend heavily on local infrastructure in making energy efficiency decisions.[5]

In some instance, where local programs were too broad in geographic scope to ensure this flexibility and accessibility, we scaled back the proposals. We were also mindful of the need to create a balanced portfolio of programs that serve, as much as possible, all areas of the state and different groups of hard-to-reach utility customers. We made clear in D.01-11-066 that our decision would not only reflect the scores described below, but also the extent to which the proposers conformed their proposals to the policies and rules in that decision and offered programs that help the Commission meet its desired mix of programs for 2002-03:

> Parties seeking 2002 funding should both conform their proposals to the policies and rules set forth in this section (and expanded upon in the accompanying Policy Manual), and ensure that their proposals fall within the mix of desired

[5] D.01-11-066, *mimeo.*, at 15.

> programs set forth in Section III(C) below. Thus, for example, even if a 2002-03 program proposal for local services scores higher in points than another proposal for local services, such score does not guarantee funding for the former program. The Commission will consider point scores and the extent to which proposals help it meet its desired mix of programs for 2002-03 in selecting proposals.[6]

### B. Proposal Scoring

In D.01-11-066, we established a points system to use in evaluating statewide proposals. We rated each program according to the criteria described below. In summary, the best proposals/proposers: offer comprehensive service; provide a local presence; have a demonstrated history of success; are innovative; reach the hard-to-serve or niche markets not already served; reach a market that the IOUs did not propose to serve this year; serve a geographic area needing programs; advance emerging technologies; provide persistent, long-term energy savings; deliver services to small business; present the program honestly and credibly; propose reasonable budgets; leave lasting change or infrastructure at the local level; provide maximum benefits to program participants rather than being heavy on overhead; help solve transmission constraints[7]; and work closely with or represent existing city and county governments and institutions.[8]

We quote from D.01-11-066, our selection criteria as follows:

---

[6] *Id.* at 4.

[7] *See* D.01-03-077.

[8] Attachment 5 to this decision contains the letter template that the Energy Division sent to program sponsors describing the review process in developing its recommended portfolio of local programs.

### 1. Long-Term Annual Energy (Gas and Electric) Savings

***Points: 25***

The most important goal of any Commission energy efficiency program is to create permanent and verifiable energy savings over the life-cycle of the relevant energy efficiency measures. Programs are not required to create immediate short-term energy savings, so long as there is a clear, logical, and verifiable link between program activities and eventual energy savings. In other words, the Commission will strive for sustainability in the consumption behaviors and investment choices its programs are designed to stimulate. In general, long-term energy savings are those that continue over at least a three-year period.

### 2. Cost Effectiveness

***Points: 20***

All proposals for energy efficiency programs will be required to provide an estimate of life-cycle benefits and costs from various points of view, using the assumptions detailed in the [Energy Efficiency Policy Manual]**,** Chapter 4, [Attachment 1 to D.01-11-066]. The Commission will use this information to compare and rank program proposals designed for similar uses, markets, or customer segments.

### 3. Addressing Market Failures or Barriers

***Points: 17***

Any program proposed for Commission approval should include a description of the type of barrier it is designed to address or overcome. The following examples of barriers are listed in order of importance; programs may also address other barriers not listed below:

- Higher start-up expense for high-efficiency measures relative to standard-efficiency measures

- Lack of consumer information about energy efficiency benefits
- Lack of financing for energy efficiency improvements
- Split incentives (between owners/landlords and tenants)
- Lack of a viable and competitive set of providers of energy efficiency services in the market
- Barriers to the entry of new energy efficiency service providers
- Lack of availability of high-efficiency products

### 4. Equity Considerations

***Points: 15***

The Commission will generally prioritize programs that provide access to energy efficiency alternatives for underserved or hard-to-reach markets. Although those customers contribute equally to the funds collected to support program activities, in the past, they have had access to fewer program alternatives than other customers. [The Energy Efficiency Policy Manual] provides a more detailed definition of underserved and hard-to-reach markets, either from the point of view of customer class (*e.g.*, multifamily building residents, small businesses) or geography (*e.g.*, rural customers).

### 5. Electric Peak Demand Savings

***Points: 10***

Programs paid for by electric PGC funds should emphasize long-term and permanent peak demand savings. Such programs may include, for example, installation of permanent measures to reduce peak demand, such as variable-speed drives on motors, but should not include programs that create peak demand savings only through temporary behavioral change, such as air conditioner cycling or programs that encourage consumers to turn off lighting or air conditioning.

#### 6. Innovation

***Points: 8***

The Commission will prioritize programs that present new ideas, new delivery mechanisms, new providers of energy efficiency services, or new and emerging technologies to address new program areas, to overcome existing shortcomings, or to improve the effectiveness of existing programs.

#### 7. Synergies and Coordination With Programs Run by Other Entities

***Points: 5***

To minimize confusion and overlap for consumers, the Commission desires program proposals that take advantage of synergies or coordination with other existing programs, including those run by other state agencies, private entities, municipal utilities, or the federal government.

### C. Local Program Mix

In D.01-11-066, we provided that the program mix for 2002 should consist of local residential programs, local nonresidential programs, and local cross-cutting programs. Historically, the single and multi-family residential sectors have been hard to reach and slow to utilize new energy efficiency programs. We have chosen a portfolio of local residential programs that increases the penetration in this sector. We will continue to focus on increasing penetration in this area in the future.

In connection with local nonresidential programs, we stressed small- and medium-sized businesses, another hard-to-reach sector that has been particularly hard-hit by rising energy costs. We carry this focus forward to the portfolio of local nonresidential programs we select in this decision.

Cross-cutting programs target multiple customer types (residential and nonresidential) and/or multiple building types (retrofit, remodeling, and/or new construction), or simply support other programs.[9] We found that the majority of cross-cutting program proposals fell into the information and training category. This category is essential to get the word out about energy efficiency programs, but also presents some of the greatest challenges for the selection process since the programs themselves do not deliver energy savings and can be high on administrative costs.[10] We rejected many such proposals for reasons including lack of specificity, planning and staffing, or familiarity or access to the target market. We selected programs demonstrating the greatest ability to connect customers with energy efficiency programs and train industry to enhance energy efficiency in their businesses.

### D. Funding Limitations

There are several classes of proposals not eligible for Public Goods Charge (PGC) funding or for which we have limited funding due to policy considerations:

- *Programs that serve municipal utility customers.* As we made clear in D.01-11-066, because the PGC funds all energy efficiency programs we select here, we cannot channel such funding to Californians who do not

[9] D.01-11-066, *mimeo.*, at 14, and Policy Manual, at 41.

[10] While some proponents of information/training programs claimed energy savings, such programs themselves do not directly deliver the savings. Rather, if a consumer is informed about a particular energy efficiency program and uses the program, it is the latter program, and not the program that informed the consumer of its existence, that may claim credit for the energy savings. If information programs claim energy savings along with the program actually delivering the energy efficiency measures, savings will be overstated.

contribute to the PGC. Municipal utility customers who do not pay any PGC are not eligible for program participation. However, in geographic areas where electric service is provided by a municipal utility but gas service is provided by an IOU (or vice versa), affected customers may participate in programs offered by their IOU provider or by a third party provider chosen in this decision.

- *Programs that promote proprietary products.* We prefer not to fund programs in which a product's manufacturer is attempting to use ratepayer PGC funds to market its product. This is not an appropriate use of public funds. Thus, for example, we do not fund the proposals of General Electric or Maytag for one-brand-name-only appliance rebates.[11]

- *Programs that duplicate existing IOU programs.* We have avoided duplication by eliminating from consideration those programs that significantly or completely duplicate efforts that the IOUs will amply cover in their statewide programs. There are limited funds available for energy efficiency, and we cannot afford to channel such funds to unnecessarily duplicative programs. However, we have funded several programs that complement existing IOU programs, making clear where the IOU and third party should coordinate efforts to enhance synergies between the two types of programs.

- *Programs that over-fund a particular proposer.* The process we have developed in this proceeding to allow third parties to compete with the IOUs is a new one. We are concerned that over-funding one proponent increases the risk of overall program failure. Therefore, we have been careful to select not only a diverse portfolio of programs, but also programs offered by a large variety of providers.

[11] See TURN Comments at 4.

We have not concentrated an excessive level of funding in any particular third party.

- *Programs solely designed to serve the low income.* The Commission has approved separate free programs for low-income customers as part of its Low Income Energy Efficiency (LIEE) programs.[12] We are concerned that if we fund energy efficiency programs targeted specifically to low income customers in this decision, customers eligible for free LIEE programs will instead be steered toward programs with associated cost. Similarly, LIEE-eligible households might actually jeopardize their eligibility by taking non-LIEE measures. One requirement of the LIEE programs is that a household needs a certain number of a certain type of measures before it can qualify for participation. If another non-LIEE program installs just a few of the measures, it could jeopardize that home for participation in the LIEE program. By the same token, those just above the LIEE income levels could benefit significantly from energy efficiency measures, and we have approved a number of programs that target such consumers.

  It is important that there be coordination between the LIEE and non-LIEE energy efficiency programs. In Rulemaking (R.) 01-08-027, the Commission ordered such coordination from LIEE providers.[13] We require the same here. Where a third party provider is aware of a competing LIEE program, it shall make LIEE-eligible consumers aware of the free program before attempting to sell a program with an associated cost. The IOUs supervising third party contracts shall build in a mechanism to encourage such program coordination. In addition, IOUs with local (and statewide) programs shall

---

[12] *See, e.g.*, D.01-12-020, mailed Dec. 12, 2001.

[13] *See* D.01-12-020, Ordering Paragraph 2; D.00-07-017, Ordering Paragraph 18; D.01-05-033 at 36 n.28.

file the reports required of them in D.01-12-020 in this proceeding as well. In all cases, IOUs and third parties shall coordinate the delivery of LIEE and non-LIEE energy efficiency programs targeted at hard-to-reach customers so that the interests of low-income customers are best served and their out-of-pocket expenses minimized.

### E. Coordinating Statewide and Local Programs

Where possible, we have directed local program providers to coordinate with other existing or selected programs to enhance consistency in rebates and other program details; minimize duplicative administrative costs; and enhance the possibility that programs can be marketed together to avoid duplicate marketing budgets. We expect program providers to work together and coordinate their efforts rather than competing with one another for the same customers. The IOUs administering the contracts will be on the front lines ensuring that these coordinated efforts occur, but the Commission will also be vigilant in enforcing this requirement.

## IV. Programs Selected

The programs selected are shown in the chart in Attachment 1 to this decision. We attach the Energy Division's description of each selected program, required program modifications, budget and other information in Attachment 3 hereto.[14]

As noted above, single and multi-family dwellings historically have been difficult to reach with energy efficiency programs. With this past difficulty in mind, we have selected a range of high quality local residential programs. We

[14] The respective program budgets for third parties shown in Attachment 3 do not include the IOU administrative fees as discussed in Section V.J.

have also chosen a diverse portfolio of local nonresidential programs, focusing on such hard-to-reach sectors as very small commercial customers (*e.g.*, independent grocery stores and restaurants) in rural counties outside the Bay Area; agricultural customers; and small wastewater facilities in the Central Valley and other parts of the state. Finally, we have selectively funded information and training programs. While we believe our overall energy efficiency portfolio must contain such programs, too many information programs may confuse consumers and other users of energy efficiency programs. By the same token, the large number of proposals we received in this category gave us the luxury of selecting among many well-targeted proposals.

## V. Other Issues

### A. IOU Contracts with Third Parties

This decision identifies which of the IOUs will be responsible for executing contracts with each of the third party programs receiving funds. That IOU will be responsible for carrying out day-to-day contract administration, including reviewing the third parties' quarterly and final program reports, ensuring compliance with contract terms, making payments to third party contractors, and notifying the Commission of any serious concerns with a program.

The IOUs commenced the process of developing a standard contract during Winter 2002. The effort was unsatisfactory, due partly to the fact that at the time the IOUs were contesting the Commission's right to require them to administer the contracts. The Commission has now ruled on rehearing of this issue and has established that it has such a right. (D.02-04-063, April 22, 2002 at 5, *et.seq.*) We delegate to the Energy Division the responsibility to meet and confer with the IOUs to develop, and to the assigned ALJ to approve, within 8

days of the issuance of this decision, a set of standard terms that the IOUs shall use in their contracts with third parties.

The standard contract terms should address, but not necessarily be limited to, the following issues:

- Scheduled payment process
- Established stop work procedures
- Standards of performance and remedies for substandard performance or non-performance
- Provisions for cancellation for cause
- Provision to allow the CPUC and/or IOU to require, at any time, an accounting of expenditures with supporting documentation.

Each IOU shall use a consistent contract template statewide, and shall ensure that contracts are signed once the Program Implementation Plans are approved (see Section V.B. below), to ensure that programs can begin on June 1 2002.

Where we have funded one program in more than one IOU's territory, we have appointed a single IOU to oversee the program in all areas. We were concerned that it would be burdensome to third parties to have more than one IOU responsible for day-to-day contract administration. While having the IOU close to the provider is an important countervailing argument, it probably is no less convenient for an IOU in San Francisco to administer a program in southern California than to administer one in the far northern reaches of the state.

In addition, in response to comments, we clarify that we will not hold IOUs responsible for the failure of a third party program to meet its performance goals. We will not penalize IOUs if a third party program design is ultimately unsuccessful. We do expect, however, that IOUs will exercise due diligence in overseeing third party programs, and at a minimum do the following:

- Draft and execute standard contracts with third parties in good faith
- Distribute PGC funding to third parties

- Ensure that third parties are complying with contract terms in the delivery of a program
- Facilitate third party submission of required report
- Monitor the performance of the program in meeting its performance targets
- Alert the Commission if a program is not performing to expectations and/or a third party is out of compliance with contract provisions.

The IOUs may, in contracting with third parties, agree to assume other responsibilities such as inspections or verification, as mutually agreed upon by the IOU and third party. The IOUs shall have the authority to make all contract payments, after conducting appropriate due diligence, except the final program payment. That payment shall be authorized by the assigned ALJ, in consultation with the Energy Division and as described further in Section D below.

The IOUs identified the following as their contacts for third party contracts in their April 22, 2002, comments on the draft decision:

| Utility | Contact Person | Phone | E-mail Address |
|---|---|---|---|
| SCE | Don Arambula | 626-302-8179 | Don.Arambula@sce.com |
| SDG&E | Joy Yamagata | 858-654-1755 | Jyamagata@sempra.com |
| SoCalGas | Joy Yamagata | 858-654-1755 | Jyamagata@sempra.com |
| PG&E | Annette Beitel | 415-973-6792 or 415-517-3301 | asb5@pge.com |

We encourage the third parties awarded funding in this decision and the IOU contact persons to begin the contracting process immediately.

### B. Program Implementation Plans

We expect each IOU and third party whose programs we have chosen to file and serve Program Implementation Plans (Plans) no more than 8 days

after the Commission approves this decision.[15] Parties are encouraged to file their Plans earlier. Each party shall post its Plans on its website (if it maintains one) in a prominent and easy-to-find location, in their original word processing and spreadsheet languages (*i.e.*, not only as PDF files). The Energy Division will also post the Plans in a separate directory on the Commission website.

Each Plan shall contain at least the following information for each funded program (IOUs and third parties with more than one funded program may either submit one document containing separate Plans for each individual program, or submit separate documents for each program. Programs that are serving more than one IOU territory must also be submitted as separate Plans.

- Title of individual program
- Plans to implement this decision's changes to original proposals
- Revised energy and peak demand savings targets, as well as per-unit energy savings and unit-count projections, as applicable, detailed on a quarterly basis
- Revised cost-effectiveness calculations, as applicable
- For information-only programs with no energy savings targets, other objective measures for evaluating program progress
- Hard-to-reach targets and goals. Where this decision does not specify such targets and goals, the program implementer should

[15] The draft version of this decision allowed IOUs and third parties 60 days to submit their Plans, and after the contracting deadline. In response to comments to the draft decision, we eliminated the bonding requirement and adopt an approach that links program payments to performance targets as set forth in the Plans and the IOU-third party contracts. It becomes imperative that the Plans be submitted as soon as possible to have programs start immediately in time for this summer.

define them in its Plan. Where this decision specifies such targets, they should appear in the Plan

- Budget (see Section C below)
- Defined quarterly performance targets or other performance measures and deliverables to be met in order to qualify for quarterly progress payments. These should be very specific and reflect concrete action – meetings alone do not qualify as concrete action.
- Procedures for responding to consumer questions and complaints regarding the program and for resolving program/performance disputes with customers.

To expedite preparation and submission of the Plans, following adoption of this decision, the Energy Division will provide to program implementers, via e-mail, further instructions and the format that they should follow when submitting their Plans.

The Commission will monitor the local programs using the Plans as a benchmark. We delegate to the assigned ALJ, in consultation with the Energy Division, the authority to review and approve the Plans. The assigned ALJ may also consult with the IOU contract administrators in reviewing and approving the Plans for their respective third party programs. Plans should then be attached or incorporated into the contract between the IOU and the third party. Expected payment provisions, on the basis of the performance targets and deliverables identified in the Plans, are described in more detail in Section D below. All parties are encouraged to begin programs at the earliest possible date.

### C. Budgets

The Energy Efficiency Policy Manual accompanying D.01-11-066 required program proposers to submit budgets according the following guidelines:

Any program proposal submitted for Commission consideration should include an itemized budget including the following elements . . . , as applicable:

Administrative Costs

- Labor
- Benefits
- Overhead
- Travel Costs
- Reporting Costs
- Materials and Handling
- General and Administrative costs
- Subcontractor costs
- IOU Administrative Fee (only for non-IOU programs)

Marketing, Advertising, and Outreach Costs

- Itemized (*e.g.*, 6 brochures, 1000 copies @ $10 each)

Direct Implementation Costs

- Itemized financial incentives (e.g., 100 water heaters @ $75 each)
- Itemized installation costs (*e.g.*, 100-14 SEER Central AC units @ $2000 each, installed)
- Itemized activity costs (*e.g.*, 100 walk-through audits @ $500 each)

Evaluation, Measurement and Verification Costs

- Itemized, including subcontractor costs

Other Costs

- Financing costs
- Other

The manual also contained a sample budget format.

We sent data requests to several local program proposers seeking better budgetary information than that originally provided.[16] In order for us adequately to monitor and evaluate the programs, all providers shall submit more uniform and clearly delineated budget information with its Program Implementation Plans.

We seek a higher degree of budget detail than that already provided. Many of the budgets submitted, both by the IOUs and other proposers, did not provide the level of itemization that was called for by the Policy Manual, especially in the area of subcontractor costs. Such costs are not always "administrative"; rather, their character depends on the type of work subcontractors are doing. Subcontractor work that provides direct energy efficiency services, for example, is not "administrative" expense. In addition to providing itemization where it is required, we need explanatory material either within the budget table or in footnotes. For instance, formulas for allocating costs to overhead should be explained. If a party uses historical or experiential information to allocate certain costs, it should explain the basis for its allocation. All parties should clarify their budgets in straightforward and easily understood language.

Moreover, IOUs and third parties often apportioned like costs under different categories in their local program proposals. In connection with D.02-03-056, our decision approving statewide energy efficiency programs for 2002, we required the IOUs and third party funding recipients to meet and confer and then file a uniform plan for the allocation of costs within categories. After D.02-03-056 was issued, the IOUs and the Energy Division developed a uniform

[16] The data requests and responses for the programs we select in this decision appear collectively as Attachment 4 hereto.

allocation of costs and set of definitions for use in the preparation of the budgets to be included in the Program Implementation Plans. The Energy Division will include this information when it issues further instructions relating to the Plans as noted above.

In many cases, we have adjusted the proposer's budgets downward to reflect the fact that we must balance out the energy efficiency portfolio. Where we have done so, we have made a straight-line reduction in the savings goals for the program. In addition, because many proposers assumed we would be awarding local program funding in time for programs to be up and running on April 1, 2002, we have attempted to adjust budgets of those programs to reflect a more realistic start date. Third party local programs will be required to "commit" all funds to specific purposes no later than December 31, 2003 despite this later program commencement. Funds will be considered "committed" if the program implementer has executed a written agreement and/or reserved funds, including administrative costs, but has not yet made the payment. Third parties will then have until March 31, 2004 to complete all program activities, including final installations; evaluation, measurement and verification; and preparation of final reports.

Some proposers noted that certain program costs would be paid by sources other than public purpose funds – *e.g.*, local water departments, other funders, etc. Where this is the case, the proposer shall include the costs it expects to recover from another source as a line item so that each budget is comparable.

Finally, we have, in separate data requests, also asked program sponsors to provide us with the amount of profit, if any, they expect to earn on each program. The amount of budget dedicated to profit will impact the payment terms described in Section D below. This must be delineated as a line item in all program budgets.

### D. Program Payments

All quarterly and final payments to third party providers shall be contingent upon achievement of performance targets/goals and deliverables as set forth in the Program Implementation Plans and included in the IOU-third party contracts. The IOU contract administrator shall have authority to make all contract payments, except the final payment as indicated in Section A above.

The final program payment for third party local programs will be contingent on program performance, with the risk of proportionate reductions in the final payment amounts for programs that do not meet their goals. The final program payment amount will be set for each program individually, based on the amount of profit embedded in each program budget. For example, if a program implementer has built in a profit of 8% for a program, 8% of that program's budget will be paid out after Commission approval of the final report and authorization of payment. For programs where no profit is built into the budget, the final payment amount will be set at 20% of the program's administrative budget. We adopt this approach to maximize dollars spent on energy efficiency programs and provide third parties the funds necessary to fully achieve their program targets.

We delegate to the assigned ALJ, in consultation with the Energy Division, the authority to approve final program payments to third parties and to direct the IOUs to release the funds to the third parties. In determining the appropriate final payment, the ALJ and Energy Division may take into account the program's final report and any evaluation or measurement and verification reports completed with respect to the program. The ALJ and the Energy Division will apply an objective reasonableness standard to the determination of whether each program meets its goals, based on the performance targets and criteria set forth in the Program Implementation Plans. If a program meets only a portion of its

goal, the program implementer will receive a proportional amount of its final payment.[17]

The provisions described above replace requirements for bonding that were contained in the draft version of this decision. Based on comments from numerous parties, we have determined that requiring a performance bond or similar form of security from third parties would be impractical and costly, and reduce the amount of funds available for explicit energy efficiency purposes.

For utility local programs, the final payment will be treated in the same manner as the final payments for the utility statewide programs as described in D.02-03-056. The IOUs will receive all program payments as they come due, subject to refund if program evaluation finds program results unreasonably miss targets or expenditures are unreasonably high.

Third party program providers shall also provide evidence that they have the requisite California licensing, bonding and insurance to perform work for the State of California pertinent to the programs they are implementing and consistent with customary government and industry practice.[18] If they have not already done so, the third parties should provide such evidence when they submit their Program Implementation Plans.

---

[17] *See* D.01-11-016, Policy Manual, Chapter 5, at 28-30.

[18] Examples of licenses and insurance cited in some of the comments on the draft decision include local business licenses, permits for controlled substances, standard professional certifications for design and construction activities, standard general liability insurance, automobile liability insurance, workers' compensation and employer's liability insurance.

### E. Statewide Market Assessment and Evaluation Activities

In D.01-11-066, we set aside $10.5 million in funds for statewide market assessment and evaluation (MA&E) activities to be carried out by the IOUs. The utilities provided a breakdown of this amount for various studies when they submitted their program proposals in December 2001. The utilities allocated $4.55 million to the four MA&E studies[19] that the Commission specified in D.01-11-016 and $5.95 million for evaluation, measurement and verification activities (EM&V) for utility statewide programs.[20]

We deferred approval of the IOU's MA&E/EM&V proposal in D.02-03-056 to consider the alternative of having the Commission arrange for contractor(s) to carry out these projects. We are persuaded, based on parties' comments on the draft decision, to authorize the IOUs to carry out the MA&E and EM&V studies for statewide programs for 2002, albeit in close coordination with the Energy Division and subject to our further approval of their detailed plans. We emphasize that this is an interim arrangement pending our consideration of the broader issues related to long-term program administration and evaluation in this rulemaking.

---

[19] We identified the following four programs in D.01-11-066: an Evaluation, Measurement and Verification master contract; a Statewide Energy Efficiency Potential and Current Saturation Study; development of a Best Practices database; and development of new Deemed Savings Values. D.01-11-066, *mimeo.*, at 18-21.

[20] EM&V, as we have defined the term in D.01-11-011 (Policy Manual, pp. 31-32 and 42) and in D.02-03-056 (footnote 2, p. 3), refers to the performance of studies and activities aimed at determining the effects of a particular program, including program-induced changes in energy efficiency markets, energy savings, and program cost-effectiveness. MA&E activities are broader in scope. They include "market assessment," which are analyses of how well a specific market segment is functioning with respect to the definition of well-functioning markets or other policy objectives. *See* Policy Manual at 43. MA&E activities also include EM&V activities.

Since the IOUs did not flesh out their proposals for the MA&E/EM&V studies in their December 14, 2001, submission, we will require that they do so in a supplemental MA&E/EM&V filing for our future consideration. The supplemental filing should include a revision of their proposed budgets for their MA&E and EM&V activities, taking into consideration the changes we make in this decision.

In relation to the four Commission-required studies, we will require the utilities to include in their supplemental MA&E/EM&V filing a comprehensive work plan that the utilities expect to follow for each study. The work plan for each study should include a draft Request for Proposal (RFP) and, if it is not already included in the draft RFP, a Statement of Work for the selected contractor to carry out, as well as a timetable for fulfilling the requirements. The assigned ALJ, in consultation with the Energy Division, shall review and approve the IOUs' work plans. The IOUs can then select the contractor(s) to undertake the work outlined in the RFP and Statement of Work, subject to approval by the assigned ALJ. The IOUs should apprise the Commission of the progress in each study through their quarterly reports.

Because we require the local program providers to contract the EM&V activities associated with their programs to independent third parties (see Section F below), we clarify in this decision what we seek from the Evaluation, Measurement and Verification Master Contract Study that we specified in D.01-11-066. In that study, the IOUs should hire a team of EM&V experts to coordinate with all utilities and third parties on a statewide basis to:

- Consolidate EM&V activities between similar programs to minimize costs and overlaps associated with these activities. The group of experts should become familiar with the scope of programs being offered on a statewide and local basis, and develop a comprehensive approach for coordinating all

EM&V activities associated with local and statewide programs, to be circulated to the service list in this proceeding.

- Help develop the next generation framework for evaluation of program activities. This development should include a thorough analysis of past EM&V practices and recommendations for future, more effective, practices.

We also note that the IOUs have contributed a small portion of their PGC funds to the CPUC Energy Division's operating budget in past years.[21] The IOUs have shown this amount as a separate budget line item in their previous applications for energy efficiency program funding. We direct the IOUs to segregate this amount from the budget allocated for CPUC-required studies when they submit their supplemental MA&E filing. We leave it up to the IOUs' discretion to reallocate the budgets among the four studies accordingly.

The utilities included brief descriptions of their EM&V plans within each of the program proposals they submitted in December 2001. The budget for these statewide program EM&V studies should come from the $10.5 million available for Statewide MA&E studies, as the IOUs proposed. In order to maintain uniformity in EM&V plans across each energy efficiency program, we will require the utilities to:

(a) submit to the Commission, as part of their supplemental MA&E/EM&V filing, a comprehensive work plan for evaluation, measurement and verification specific to each statewide energy efficiency program. The utilities should coordinate these plans among themselves to the extent possible, and describe their coordination

[21] The IOUs reimburse the Commission up to $292,000 per year for Energy Division operating costs related to energy efficiency activities as per the Budget Act, Stats. 1999, Ch. 50.

activities in the filing. The work plan should address how the IOUs will verify installations, calculate *ex-post* energy savings estimates[22] for measures installed, conduct customer behavior and program response analysis, and analyze program process efficiency.

(b) submit, for assigned ALJ approval (in consultation with the Energy Division), an RFP(s) for the EM&V activities to be performed on the statewide programs. The IOUs can then select the contractor(s) to undertake the work outlined in the RFP(s), subject to approval by the assigned ALJ. The IOUs should apprise the Commission of progress in EM&V activities for statewide programs in their quarterly reports.

We expect these evaluation studies, in large part, to form the basis for our scrutiny of program results, as well as our oversight of final program payments. Therefore, we clarify our preference for *ex-post* verification of program impacts, as well as *ex-post* measurement of energy and peak demand savings, to the extent feasible and cost-effective. While the *ex-post* energy and peak demand savings estimates that result from these studies will be used in future planning, final payments for the programs, as determined by overall energy, peak demand, and therm savings achieved, will be based on verified measure installations in combination with the individual measure *ex-ante* savings assumptions as filed in the Program Implementation Plans.

The utilities are free to use California Measurement Advisory Committee (CALMAC) as the forum for public input into the design for these MA&E/EM&V studies. All interested parties should be invited to attend

---

[22] *Ex-post* refers to any program impacts that are measured after program implementation, whereas *ex-ante* refers to any assumptions regarding program impacts prior to program implementation. With respect to the *ex-post* energy savings estimates measured under these programs, measures that are covered in identical fashion in more than one program do not necessarily need *ex-post* savings measurement and verification for both programs. Moreover, these *ex-post* energy savings results may be developed in coordination with the Commission's required Deemed Savings Database Study.

CALMAC meetings to provide their input on these studies, but the final decision on the scope and approach of the study will require the Commission's approval, as delegated to the assigned ALJ.

We also request assistance from the Commission's Office of Ratepayer Advocates (ORA), in reviewing the energy savings and other program impact claims presented to the Commission as a result of the funding decisions we make herein.

We require the utilities to file and serve their supplemental MA&E and EM&V plans within 30 days of the effective date of this decision.

### F. Local Program Evaluation, Measurement and Verification (EM&V)

We require that independent third parties not affiliated with the program provider evaluate local programs and measure and verify local programs' claimed energy savings and measures installations. Parties shall report their plans in this regard in their Program Implementation Plans.

The Commission through the assigned ALJ will select entities that can provide EM&V services for local programs. The ALJ will clarify the process for selection of these EM&V contractors for local programs in a future ruling.

### G. Total Resource Cost (TRC) Recalculation

We required all program proponents to calculate the Total Resource Cost (TRC) of their programs. This figure measures the overall cost-effectiveness of energy efficiency programs from a societal perspective, taking into account benefits and costs from more than just an individual perspective. Because of changes we have made to individual programs, some proponents will have to recalculate TRC. We instruct all providers whose programs we select in this decision to include their TRC calculations – with all supporting workpapers, spreadsheets, or other detail – in their Program Implementation Plans.

### H. Hard-to-Reach Program Targets

We have established certain hard-to-reach targets for some of the local programs we select, as reflected in the program summaries accompanying this decision. All programs with such targets – either suggested by the provider or by the Commission – shall include such targets in their Program Implementation Plans.

### I. No Double-Dipping

With the large number of providers receiving local funding, we are concerned that there may be more opportunities for customers to double-dip – *i.e.*, receive rebates, discounts, incentives and services from more than one program for similar measures installed by the same customer. The IOUs overseeing the third party programs are the most centralized resource to see to it that double-dipping is minimized. They shall include a provision in their third party contracts requiring third party providers to ascertain whether customers have received other energy efficiency program benefits and to minimize or eliminate double-dipping. The IOUs shall also propose a mechanism for minimizing double-dipping in their Program Implementation Plans.

### J. IOU Administration Expenses

In D.01-11-066, we stated that IOUs would be eligible to receive up to 5% of program budgets in compensation for their reasonable costs of administration. Only the IOU contract administrator for a particular program should be entitled to receive the administrative fee for that program. Because we do not yet know which programs will involve the greatest (and the least) amount of oversight, we will not set those percentages at this time. To ensure that funds are available for such IOU reimbursement (up to 5%), we will hold back approximately 5% of total local program funding for this purpose.

IOUs shall assume that the 5% figure will be paid only when circumstances of a particular contract warrant greater than average support and scrutiny. In rare cases, with the approval of the Energy Division, administrative expenses in excess of 5% for a particular contract may be justified. Based on their past experience, including what occurred with the Summer Initiative programs (A.99-09-049 *et al.*), the IOUs shall present estimates of the appropriate percentage they anticipate for each program after the third parties submit their Program Implementation Plans and contracts are finalized, and in any event no later than June 17, 2002. The IOUs will be eligible for actual expenses in contract administration, up to no more than 5% of the contracted amount. The IOUs shall retain proof of these expenditures, which the Commission may inspect as the need arises.

### K. Programs That Provide Limited Services With Energy Efficiency Funding But Offer Additional Full Fee Programs

We do not wish energy efficiency providers to use their energy efficiency funding to market full fee products and services to consumers. Therefore, all providers must prominently disclose to customers, orally and in writing, that such customers are not obligated to purchase any full fee service or other service beyond that which we fund here. For example, if this decision funds a lighting program, the provider shall not make the customer believe that to get the lighting rebate, he/she must also purchase other services that we do not fund here. All providers shall provide the text of their disclosure in English and Spanish with their Program Implementation Plans. They may work together to devise such language.

Moreover, all funded providers shall disclose the source of funding by stating prominently that their programs are "funded by California ratepayers under the auspices of the California Public Utilities Commission."

### L. Approval of IOU Local Programs

In their comments on the draft decision, the IOUs argued that all their local programs should be awarded funding for various reasons. We have considered the IOUs' arguments and are not persuaded that we should change the local program mix that we approve in this decision.

## VI. Conclusion

The number, quality and diversity of the program proposals we received from third parties make us optimistic about the chances for success from our selected portfolio of energy efficiency programs. We will carefully monitor this year's programs to ensure that customers receive maximum program benefits at minimum program expense. We urge all parties to work together to achieve the goals we set forth for this proceeding and in this decision.

## VII. Comments on Draft Decision

Pursuant to Pub. Util. Code § 311(g)(3), and Rule 77.7(f)(9), we reduced the 30-day period for comments on the draft decision due to public necessity. Here the public necessity provision was implicated by the need to get local programs up and running in time for the summer 2002.

Comments were due on April 22, 2002, and reply comments were due on April 26, 2002. Almost all parties and program sponsors on the service list for this proceeding filed comments. Due to the volume of comments received, we will not discuss the comments of particular parties. In response to comments, changes were made in the body of the decision to clarify the following issues or eliminate certain requirements. We have:

- Deleted the bonding requirement, but imposed a holdback of final payment for third party local programs based on the profit embedded in the program budget or 20% of administrative costs for entities not claiming profits.

- Based quarterly and final payments on achievement of performance targets/goals and deliverables as set forth in the Program Implementation Plans and included in the IOU-third party contracts.
- Required Program Implementation Plans to be submitted 8 days after this Commission decision for approval by the ALJ, in consultation with the Energy Division
- Provided that IOUs as contract administrators will have authority to make all contract payments, except final payments, which will be decided by the Commission, through the assigned ALJ in consultation with the Energy Division
- Clarified IOU role as contract administrator; IOUs will not be held responsible for failure of third party programs, but are expected to exercise due diligence in monitoring program performance and ensuring compliance with contract provisions.
- Required the IOUs and the Energy Division to work on a standard contract template to be submitted 8 days after this decision.
- Adopted an accelerated schedule for Program Implementation Plans and contract templates in order to enable programs to start at least on June 1, 2002.
- Clarified that third party local programs will be required to commit all funds to specific purposes by December 31, 2003, but that they will have until March 31, 2004 to complete all program activities, including final installations and preparation of final reports.
- Authorized $10.5 million set aside in D.01-11-066 for the IOUs to carry out the four statewide market assessments and evaluation (MA&E) studies required by the CPUC and the evaluation, measurement and verification (EM&V) activities for the IOU statewide programs; but required ALJ approval of plans, RFPs, and contractors.
- Clarified definitions and distinction between MA&E and EM&V.
- Deleted the section that prohibits profits for third party program implementers.
- Clarified that the requirement for licensing, bonding, and insurance should be as carried out in customary government and industry practice.

- Required resubmission of TRC calculations in Program Implementation Plans, and inserted TRC value (>1.3) for the entire local program portfolio selected based on updated information submitted on April 22, 2002.
- Inserted other clarifying language regarding eligibility of customers of municipal utilities to obtain benefits from PGC funded programs, double-dipping and hard-to-reach targets.

As to certain programs recommended in the draft decision, we will hold off on making a decision until we have time further to consider them. We have backed those programs out of the funding tables so that all other programs may go forward without delay. We will address the remaining $15,757,911 million in programs after this decision issues.

We have also made revisions to Attachment 3 of this decision (program descriptions) in response to program-specific comments raised by some parties. To the extent this decision does not reflect additional changes as requested by the parties, it is because we have considered and rejected such changes.

## Findings of Fact

1. We used certain IOU local program funds from the $25 million to "bridge fund" the IOUs' existing programs through May 2002.

2. It is necessary to create a balanced portfolio of programs that serve, as much as possible, all areas of the state and different groups of hard-to-reach utility customers.

3. The best proposals/proposers: offer comprehensive service; provide a local presence; have a demonstrated history of success; are innovative; reach the hard-to-serve or niche markets not already served; reach a market that the IOUs did not propose to serve this year; serve a geographic area needing programs; advance emerging technologies; provide persistent, long-term energy savings; deliver services to small business; present the program honestly and credibly; propose reasonable budgets; leave lasting change or infrastructure at the local level; provide maximum benefits to program participants rather than being

heavy on overhead; help solve transmission constraints; and work closely with or represent existing city and county governments and institutions.

4. Historically, the single and multi-family residential sectors have been hard to reach and slow to utilize new energy efficiency programs.

5. Small- and medium-sized businesses are another hard-to-reach sector that has been particularly hard-hit by rising energy costs.

6. Information and training programs do not directly deliver energy savings. Rather, if a consumer is informed about a particular energy efficiency program and uses the program, it is the latter program, and not the program that informed the consumer of its existence, that may claim credit for the energy savings.

7. Customers just above the LIEE income levels could benefit significantly from energy efficiency measures.

8. Many of the budgets submitted, both by the IOUs and other proposers, did not provide the level of itemization that was called for by the Policy Manual, especially in the area of subcontractor costs.

## Conclusions of Law

1. The Commission is not required to award the full $25 million available in IOU local funding to the IOUs if third parties propose programs we believe better serve the range of energy efficiency needs.

2. In making our decision on local programs, the Commission may consider not only the scores described in the body of this decision, but also the extent to which the proposers conformed their proposals to the policies and rules in D.01-11-066, and offer programs that help the Commission meet its desired mix of programs for 2002-03.

3. Energy efficiency programs that serve municipal utility customers that do not pay the PGC are ineligible for PGC funding. In geographic areas where

electric service is provided by a municipal utility, but gas service is provided by an IOU (or vice versa), affected customers may participate in programs offered by their IOU provider or by a third party provider chosen in this decision.

4. Programs that promote a proponent's proprietary products are inappropriate candidates for PGC funding.

5. Programs that significantly or completely duplicate existing IOU programs should not receive funding.

6. It is not appropriate in selecting program providers to over-fund a particular proposer.

7. Programs solely designed to serve the low income are not eligible for non-LIEE program funding.

## O R D E R

**IT IS ORDERED** that:

1. We allocate $109,661,021 of the $125 million total local program funding we made available in D.01-11-066 as follows:

   a. $102,030,037 for the local programs set forth in Attachment 1. For third party programs (programs not sponsored by Investor Owned Utilities (IOUs)), program funding will run during 2002-03 unless changed by order of the Commission, the assigned Commissioner, or the assigned Administrative Law Judge (ALJ). For IOUs, funding will expire on December 31, 2002 unless changed by order of the Commission, the assigned Commissioner, or the assigned ALJ. In addition, we used $2,750,000 to "bridge fund" the IOUs' existing local programs through May 2002 in D.02-03-056.

b. $4,880,984 to cover the administrative fees that IOUs may collect for administering contracts for the third party local programs we approve in this decision.

2. No more than 8 days after the Commission approves this decision, all parties granted funding shall file and serve Program Implementation Plans (Plans). Each party shall also post its Plan on its website (if it maintains one) in a prominent and easy-to-find location and in their original word processing and spreadsheet languages (*i.e.*, not only as PDF files). Each Plan shall contain at least the following information for each program funded (IOUs and third parties with more than one funded program may either submit one document containing separate Plans for each individual program, or submit separate documents for each program. Programs that are serving more than one IOU territory must also be submitted as separate plans):

- Title of individual program
- Plans to implement this decision's changes to original proposals
- Revised energy and peak demand savings targets, as well as per-unit energy savings and unit-count projections, as applicable, detailed on a quarterly basis
- Revised cost-effectiveness calculations, as applicable
- For information-only programs with no energy savings targets, other objective measures for evaluating program progress
- Hard-to-reach targets and goals. Where this decision does not specify such targets and goals, the program implementer should define them in its Plan. Where this decision specifies such targets, they should appear in the Plan
- Budget (in the format and following the guidelines to be issued by the Energy Division following adoption of this decision)

The Commission will monitor the local programs using the Plans as a benchmark. We delegate to the assigned ALJ, in consultation with the Energy Division, the authority to review and approve the Plans. The assigned ALJ may also consult with the IOU contract administrators in reviewing and approving the Plans for their respective third party programs.

3. Based on their past experience, including what occurred with the Summer Initiative programs (A.99-09-049 *et al.*), the IOUs shall present estimates of the appropriate percentage they anticipate for administrative expenses for each third party program after the third parties submit their Program Implementation Plans and contracts are finalized, and in no event after June 17, 2002. The IOUs will be eligible for actual expenses in contract administration up to no more than 5% of the contracted amount. The IOUs shall retain proof of these administrative expenses, which the Commission may inspect as the need arises.

4. Local program providers shall coordinate with other existing or selected programs to enhance consistency in rebates and other program details; minimize duplicative administrative costs; and enhance the possibility that programs can be marketed together to avoid duplicate marketing budgets. The IOUs shall ensure that these coordinated efforts occur.

5. Where a third party provider is aware of a competing Low Income Energy Efficiency (LIEE) program, it shall make LIEE-eligible consumers aware of the free program before attempting to sell a program with an associated cost. The IOUs supervising third party contracts shall build in a mechanism to encourage such program coordination. In addition, IOUs with local (and statewide) programs shall file the reports required of them in Decision (D.) 01-12-020 in this proceeding as well. In all cases, IOUs and third parties shall coordinate the delivery of LIEE and non-LIEE energy efficiency programs targeted at hard-to-

reach customers so that the interests of low-income customers are best served and their out-of-pocket expenses minimized.

6. With their Program Implementation Plans, all providers shall submit new budget materials to better match the requirements of the Energy Efficiency Policy Manual approved in D.01-11-066. These parties shall follow the budget format and instructions that the Energy Division will issue following adoption of this decision. The budgets shall contain a higher degree of detail than those already provided. In addition to providing itemization where it is required, we need explanatory material either within the budget table or in footnotes. For instance, formulas for allocating costs to overhead should be explained. If a party uses historical or experiential information to allocate certain costs, it should explain the basis for its allocation. These parties should explain their budgets in straightforward and easily understood language. Parties shall use extra care in properly characterizing "administrative" costs. Subcontractor costs, for example, are not all "administrative," but rather depend on the nature of work performed.

7. In connection with D.02-03-056, our decision approving statewide energy efficiency programs for 2002, we required the IOUs and third party funding recipients to meet and confer and then file a uniform plan for the allocation of costs within categories. The Energy Division will send this information to program implementers via e-mail following adoption of this decision.

8. Third party local programs shall "commit" all funds to specific purposes no later than December 31, 2003. Funds will be considered "committed" if the program implementer has executed a written agreement and/or reserved funds, including any administrative costs, but has not yet made the payment. Third parties will then have until March 31, 2004 to complete all program activities, including final installations; evaluation, measurement and verification; and preparation of final reports.

9. All quarterly and final payments to third party providers shall be contingent upon achievement of performance targets/goals and deliverables as set forth in the Program Implementation Plans and included in the IOU-third party contracts.

10. The final program payment for third party local programs will be contingent on program performance, with the risk of proportionate reductions in the final payment amounts for programs that do not meet their goals. The final program payment amount will be set for each program individually, based on the amount of profit embedded in each program budget. For programs where no profit is built into the budget, the final payment will be set at 20% of administrative costs.

11. We delegate to the assigned ALJ, in consultation with the Energy Division, the authority to approve final program payments to third parties and to direct the IOUs to release the funds to the third parties. In determining the appropriate final payment, the ALJ and Energy Division may take into account the program's final report and any evaluation or measurement and verification reports completed with respect to the program.

12. The ALJ and the Energy Division should apply an objective reasonableness standard to the determination of whether each program meets its goals based on the performance targets and criteria set forth in the Program Implementation Plans. If a program meets only a portion of its goal, the program implementer will receive a proportional amount of its final payment. Final payments will be based on verified measure installation in combination with the individual measures ex-ante savings assumptions contained in the Program Implementation Plans.

13. All third party contractors shall provide evidence that they have the requisite California licensing, bonding and insurance to perform work for the

State of California pertinent to the programs they are implementing and consistent with customary government and industry practice. If they have not already done so, the third parties shall provide such evidence when they submit their Program Implementation Plans.

14. Independent third parties not affiliated with the program provider shall evaluate local programs and measure and verify local programs' claimed energy savings and measures installations. Parties shall report their plans in this regard in their Program Implementation Plans. The Commission, through the assigned ALJ will select entities that can provide evaluation, measurement and verification (EM&V) services for local programs. The Commission will clarify the process for selection of these EM&V contractors for local programs in a future ruling.

15. All proponents of programs with hard-to-reach targets – either suggested by the provider or by the Commission – shall include such targets in their Program Implementation Plans.

16. For each third party program, we have identified the IOU responsible for carrying out day-to-day contract administration, including reviewing the third parties' quarterly and final program reports, ensuring compliance with contract terms, making payments to third party contractors, and notifying the Commission of any serious concerns with a program.

17. We delegate to the Energy Division the responsibility to meet and confer with the IOUs to develop, and to the assigned ALJ to approve, within 8 days of issuance of this decision, a set of standard terms that the IOUs shall use in their contracts with third parties. The standard contract terms will include, but not necessarily be limited to the following:

- Scheduled payment process
- Established stop work procedures

- Standards of performance and remedies for substandard performance or non-performance
- Provisions for cancellation for cause
- Provision to allow the CPUC and/or IOU to require, at any time, an accounting of expenditures with supporting documentation.

Each IOU shall use a consistent contract template statewide, and shall ensure that contracts are signed once the Program Implementation Plans are approved so that programs can begin on June 1, 2002, or shortly thereafter.

18. We will not hold IOUs responsible for the failure of a third party program to meet its performance goals. We will not penalize IOUs if a third party program design is ultimately unsuccessful. We do expect, however, that IOUs will exercise due diligence in overseeing third party programs, and at a minimum do the following:

- Draft and execute standard contracts with third parties in good faith
- Distribute PGC funding to third parties
- Ensure that third parties are complying with contract terms in the delivery of a program
- Facilitate third party submission of required reports
- Monitor the performance of the program in meeting its performance targets
- Alert the Commission if a program is not performing to expectations and/or a third party is out of compliance with contract provisions.

19. The IOUs may, in contracting with third parties, agree to assume other responsibilities such as inspections or verification, as mutually agreed upon by the IOU and third party, and as described further in subsequent sections of this decision.

20. The IOUs shall have the authority to make all contract payments, after conducting appropriate due diligence, except the final program payment. That

payment shall be authorized by the assigned ALJ, in consultation with the Energy Division.

21. The IOUs overseeing the third party programs shall include a provision in their third party contracts requiring third parties to ascertain whether customers have received other energy efficiency program benefits for similar measures installed by the same customer, and to minimize or eliminate double-dipping. The IOUs shall also propose a mechanism for minimizing double-dipping in their Program Implementation Plans.

22. All providers awarded funding in this decision must prominently disclose to customers, orally and in writing, that such customers are not obligated to purchase any full fee service or other service beyond that which we fund here. All providers shall provide the text of their disclosure in English and Spanish with their Program Implementation Plans. They may work together to devise such language. Moreover, all funded providers shall disclose the source of funding by stating prominently that their programs are "funded by California ratepayers under the auspices of the California Public Utilities Commission."

23. In all cases, consistent with D.01-11-066, the Commission retains the right to withdraw, withhold or require refund of program funds in the event of complete or partial program failure, malfeasance and/or bankruptcy.

24. We authorize the IOUs to utilize the $10.5 million set aside in D.01-11-066 to carry out the four Market Assessment and Evaluation (MA&E) studies identified in that decision, and the evaluation, measurement and verification (EM&V) studies for statewide programs for 2002 in close coordination with the Energy Division and subject to our further approval of their detailed plans. This is an interim arrangement pending consideration of the broader issues related to long-term program administration and evaluation in this rulemaking. The IOUs shall provide more detailed description of the MA&E/EM&V work in a

supplemental filing due no later than 30 days of the effective date of this decision. The supplemental filing should include an allocation of the $10.5 million for MA&E/EM&V activities, taking into consideration the changes we make in this decision.

25. The work plan for the four CPUC-required MA&E studies shall include a draft Request for Proposal (RFP) and, if it is not already included in the draft RFP, a Statement of Work for the selected contractor to carry out, as well as a timetable for fulfilling the requirements. The IOUs shall prepare the work plan for the Evaluation, Measurement and Verification Master Contract, which is one of the four CPUC-required studies, in accordance with the guidelines set forth in this decision. The assigned ALJ, in consultation with the Energy Division, will review and approve the IOUs' work plans. The IOUs can then select the contractor(s) to undertake the work outlined in the RFP and Statement of Work, subject to approval by the assigned ALJ. The IOUs shall apprise the Commission of the progress in each study through their quarterly reports.

26. In order to maintain uniformity in EM&V plans across each energy efficiency programs, we will require the utilities to the Commission, as part of their supplemental MA&E/EM&V filing, a comprehensive work plan for EM&V specific to each statewide energy efficiency program. The utilities shall coordinate these plans among themselves to the extent possible, and describe their coordination activities in the filing. The work plan shall address how the IOUs will verify installations, calculate *ex-post* energy savings estimates for measures installed, conduct customer behavior and program response analysis, and analyze program process efficiency. The IOUs shall also submit, for assigned ALJ approval (in consultation with the Energy Division), an RFP(s) for the EM&V activities to be performed on the statewide programs. The IOUs can then select the contractor(s) to undertake the work outlined in the RFP(s), subject

to approval by the assigned ALJ. The IOUs shall apprise the Commission of progress in EM&V activities for statewide programs in their quarterly reports.

27. The IOUs shall include a separate line item showing the PGC funds allocated to the CPUC Energy Division's operating budget in their supplemental MA&E/EM&V filing described in the foregoing ordering paragraphs.

28. For the benefit of all concerned, we summarize in Attachment 2 to this decision the important dates and deadlines related to the matters addressed in this decision.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment 1 to R0108028 - Selected Local Programs and Energy Reduction

Attachment 2 to R0108028 - Summary of Important Dates and Deadlines

Attachment 3 to R0108028 - Program Descriptions

Attachment 4 to R0108028 - Data Requests and Responses

Attachment 5 to R0108028 - Energy Division Letter Template Sent to Program Sponsors