

Decision **DRAFT DECISION OF ALJ MALCOLM AND ALJ WALWYN**
(Mailed 7/16/2004)

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
(Filed August 23, 2001)

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**INTERIM OPINION DENYING PETITION FOR MODIFICATION
OF DECISION 03-12-060 AND DECISION 04-02-059
AND PETITION FOR MODIFICATION OF DECISION 03-12-062
FILED BY PACIFIC GAS AND ELECTRIC COMPANY**

I. Summary

This order denies a petition to modify Decision (D.) 03-12-060 and D.04-02-059 filed on March 25, 2004, by Pacific Gas and Electric Company (PG&E) in the Commission’s energy efficiency docket, Rulemaking (R.) 01-08-028. It also denies a substantively identical petition to modify D.03-12-062 filed on March 25, 2004, by PG&E in the Commission’s electricity procurement rulemaking, R.01-10-024.¹

¹ While addressing substantively identical petitions in R.01-08-028 and R.01-10-024, this decision does not consolidate those dockets.

The petitions ask the Commission to approve a two-way balancing account into which PG&E could account for spending on energy efficiency programs over and above those amounts previously authorized.

II. PG&E's Petitions

PG&E's petitions seek a change to the administration of the Commission's energy efficiency program. Specifically, PG&E would eliminate current policy that sets a ceiling on PG&E's spending for energy efficiency programs. PG&E believes this policy is "at loggerheads" with the Commission's policy to promote effective energy efficiency programs and promote energy conservation. It asks the Commission to authorize PG&E to implement a two-way balancing account, which would permit PG&E to enter all energy efficiency program spending without limit and to recover all associated expenses, as long as they were reasonably incurred.

According to PG&E, the existing limitations on spending require the utility to prematurely close even the most successful energy efficiency programs. A two-way balancing account would free PG&E from these spending limitations and permit PG&E to recover all reasonable costs incurred for energy efficiency programs. PG&E states that the current policy does not permit it to recover program costs if they exceed the authorized levels, even if those costs supported cost-effective energy efficiency programs.

PG&E observes that the Commission has previously granted two-way balancing accounts for energy efficiency programs. It refers to a settlement reached in the early 1990s that incorporated such accounting as part of a broader effort to provide the utilities maximum flexibility to promote energy efficiency. PG&E argues the two-way balancing account is especially critical if the

Commission continues to limit PG&E's ability to shift funds between programs to 25% of program funds.

In support of its request, PG&E states the current accounting conventions have forced it to stop offering rebates to residential customers for its 2003 Single Family Rebate Program and may require it to limit rebates in that program prematurely in 2004.

III. Response of The Utility Reform Network (TURN) and SESCO

TURN and SESCO each filed replies to PG&E's petition in the energy efficiency docket. TURN responded as well to the petition in the procurement docket. All responses from TURN and SESCO express strong objections to PG&E's proposal. TURN believes PG&E is seeking a two-way balancing account to "position itself" in the event the Commission reinstates incentives. In general, TURN argues PG&E is attempting to avoid any oversight of its energy efficiency program spending and to take funds from third-party implementers for its own use.

TURN believes PG&E's reference to a need for additional funding for the 2003 Single Family Rebate Program is misleading. TURN observes that PG&E's Fourth Quarter 2003 report shows that PG&E overspent its budget for the Single Family Rebate Program partly because it voluntarily shifted more than \$2 million to its multi-family program. TURN's review of the report suggests PG&E actually exceeded its 2003 budget by \$1.052 million rather than \$4.8 million as PG&E claims. TURN observes that by including the funds for the San Francisco peaking program, PG&E actually *underspent* its 2003 budget by more than \$10 million. TURN believes PG&E could have covered the amount it overspent with the existing authority it has to shift funds between programs.

With reference to PG&E's allegation that it will run out of funds in 2004 for the Single Family Rebate Program, TURN observes that PG&E has \$25 million in energy efficiency funds in its 2004 procurement budget that it may use for any program. It also points out that for 2004 PG&E has authority to shift up to 25% of funds between programs, an increase from the 10% in previous years.

Sesco makes similar comments, charging that PG&E is effectively seeking the "preferential right" to use funds from future years without prior Commission approval or funding input. SESCO observes that the Commission did not, as PG&E suggests, limit PG&E's rebates for single families to \$6.9 million but \$26.2 million. SESCO also believes PG&E could reallocate up to \$3.2 million or 25% of the budget from the Statewide Residential Retrofit category and up to \$75 million from the energy efficiency procurement funds. In addition, PG&E could seek an Administrative Law Judge (ALJ) ruling to shift other funds to the Single Family Retrofit rebates. SESCO also observes that, on the basis of PG&E's quarterly reports, the program is not even cost-effective, having a benefit-cost ratio of 0.85. According to SESCO, PG&E's desire to allocate more funds to a program PG&E knows is not cost-effective supports SESCO's view that the Commission should deny PG&E's efforts to eliminate Commission supervision of spending. SESCO argues that PG&E's stated desire to maximize cost-effective program efforts is at odds with Commission policy because it could undermine a diverse portfolio of programs and eliminate controls on overheads.

IV. Discussion

The Commission allocates funds to dozens of energy efficiency programs implemented by utilities and third parties using revenues collected by PG&E, Southern California Edison Company, SoCalGas and San Diego Gas & Electric Company. Most recently, the Commission has issued three orders allocating

funds to energy efficiency programs to be implemented in 2004 and 2005.

D.03-12-060 and D.04-02-059 authorized PG&E to spend up to \$116.1 million on energy efficiency programs funded by the “public goods charge” collected from PG&E’s ratepayers pursuant to Pub. Util. Code §§ 381 and 890. D.03-12-062 authorized PG&E to spend an additional \$25 million in 2004 and \$50 million in 2005 for energy efficiency programs as part of PG&E’s procurement portfolio for each of those years.

D.04-02-059 addressed the way energy efficiency funds would be spent and established the policies and practices under which utilities and third parties implement and administer energy efficiency programs for 2004 and 2005. The order permits the utilities to shift up to 25% of funds between programs within the same program category without prior Commission approval and permits the ALJ to authorize reallocations of funds in excess of 25%.

PG&E’s petitions to modify these three orders are unjustified and we herein deny them. We find generally that PG&E’s laudable objective to continue the Single Family Rebate Program does not justify such a dramatic change in the way we fund energy efficiency efforts and would prejudice our inquiry into the structure of our energy efficiency programs.

D.04-02-059 allocated Public Goods Charge (PGC) funds to utilities and third-party energy efficiency program implementers following an elaborate and highly structured process designed to select programs that would maximize energy savings and promote a diverse portfolio of programs. Hundreds of companies competed for the PGC funds and many programs necessarily went unfunded. Authorizing PG&E to spend unlimited funds at its discretion, which its petitions imply, would eliminate the Commission’s discretion and supervision of the energy efficiency program. We have no evidence at this point to support

treating utilities differently from third parties in this regard or that suggests utilities' programs are more effective or cost-effective than those of third-party implementers. PG&E seeks a policy reversal we are not prepared to make in response to a petition to modify, especially while we are considering such broader program issues in the energy efficiency rulemaking, R.01-08-028.

Moreover, PG&E proposes a major program change by suggesting it does not have authority under existing policy to continue funding the Single Family Rebate Program. PG&E's accounts suggest otherwise. Although PG&E may not wish to move funds to the Single Family Rebate Program, it certainly has authority and funds available to continue the rebates. We believe this is an important program and consider here other ways to fund it. PG&E received \$75 million in procurement funds for energy efficiency programs and may use those funds for any energy efficiency program because the Commission granted it 100% flexibility with regard to how it allocates funding between programs funded through the procurement budget. PG&E has not exhausted this authority in the case of the Single Family Rebate Program although we recognize PG&E may have good reasons for not making these transfers. PG&E may move up to 25% of funds within the same program categories to the Single Family Rebate Program. PG&E may seek authority from the assigned ALJ to allocate funds between programs. It has not done so for 2004 Single Family Retrofit rebates. For these reasons, we do not understand the urgency of PG&E's request for unlimited spending authority.

PG&E's petition to modify does not provide adequate information about its alleged funding problems and some of the information it does provide conflicts with official documents submitted to the Commission. In response to TURN's suggestion that PG&E's petition erroneously claimed a budget shortfall

of \$4.47 million, PG&E's reply leaves much to be desired. PG&E neither concurs with TURN's claim that the amount is actually \$2.6 million nor argues that the correct amount is \$4.47 million. Instead, PG&E's reply alleges wrongly that TURN provided "no specifics to support this charge" and suggests in a footnote that the higher amount was included only in a January 30 motion. In fact, page 7 of PG&E's petition in R.01-08-028 refers to a "stranded cost " for the Single Family Retrofit budget of \$4.47 million. This is considerably higher than the \$2.6 million in overspending that PG&E identified in its Fourth Quarter 2003 Energy Efficiency Report, which PG&E published three days before filing its reply to TURN's response.

In its reply comments to the proposed decision, PG&E agrees to provide information to TURN regarding spending in the procurement budget and Single Family Rebate Program budget for 2004. This should clarify funding options. PG&E also states it has moved \$5 million from its procurement budget to the Single Family Rebate Program for rebates on heating and cooling equipment, which are more cost-effective than other program elements, such as washers, dishwashers, and lighting. This shift in funds addresses TURN's concerns that PG&E focus on the most cost-effective elements of the Single Family Rebate Program.

PG&E's agreement to provide spending information and its allocation of an additional \$5 million to the Single Family Rebate Program for heating and cooling equipment are steps in the right direction. We value the Single Family Rebate Program as an important energy savings mechanism and wish to encourage its continuation. Accordingly, we herein grant PG&E flexibility to move funds to this program as required from programs that are either under subscribed or less cost-effective than the Single Family Rebate Program. If PG&E

proposes to move funds from more cost-effective programs and seeks corresponding changes to performance targets, it should file a motion for guidance from the ALJ. As with all program management issues, we encourage PG&E to consult with our Energy Division staff in advance of taking any formal steps. PG&E should use uncommitted and unspent funds from 2003 before moving funds into the Single Family Rebate Program. The additional flexibility granted here, in combination with pre-existing options for transferring funds between programs, should assure program continuity during 2004 and 2005. PG&E should process rebate requests for 2004 installations under the Single Family Rebate Program without delay, so that the program continues to operate without disruption.

V. Comments on Draft Decision

The draft decision of the ALJs in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. PG&E and TURN filed comments on the draft decision on August 5, 2004. Both filed reply comments on August 13, 2004. In response to these comments on the draft decision, this order clarifies certain interpretations of past Commission orders and the options available to PG&E for funding the Single Family Rebate Program.

VI. Procedural Matters

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in R.01-08-028. Michael R. Peevey is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in R.01-10-024.

Findings of Fact

1. PG&E has not provided adequate justification for a two-way balancing account and associated unlimited spending authority for its energy efficiency programs.

2. PG&E has funds it may apply to its Single Family Rebate Program and, if necessary, may seek authority from the ALJ or Assigned Commissioner to transfer funds between programs, consistent with D.04-02-059.

3. The Single Family Rebate Program is an important part of the Commission's energy efficiency programs.

Conclusions of Law

1. PG&E's petition to modify D.03-12-060 and D.04-02-059, filed in R.01-08-028 on March 25, 2004, should be denied.

2. PG&E's petition to modify D.03-12-062, filed in R.01-10-024 on March 25, 2004, should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) petition to modify Decision (D.) 03-12-060 and D.04-02-059, filed in Rulemaking (R.) 01-08-028 on March 25, 2004, is denied.

2. PG&E's petition to modify D.03-12-062, filed in R.01-10-024 on March 25, 2004, is denied except to the extent set forth in Ordering Paragraph 3.

3. D.04-02-059 is modified to permit PG&E to transfer funds to the Single Family Rebate Program, as required to continue the program. These funds may be transferred from programs that are under subscribed or less cost-effective and

without the pre-approval of the administrative law judge. PG&E shall apply uncommitted, unspent funds from 2003 before transferring funds for 2004 and 2005 to the Single Family Rebate Program.

4. PG&E shall process rebate requests for 2004 installations under the Single Family Rebate Program without delay, so that the program continues to operate without disruption.

5. Within fifteen days of the effective date of this order, PG&E shall provide to The Utility Reform Network staff data on spending and energy savings for PG&E's 2004 Single Family Rebate Program and energy efficiency programs funded with procurement dollars. The data shall be consistent with the data submitted to the Energy Division in monthly reports.

This order is effective today.

Dated _____, at San Francisco, California.