

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY**
(Mailed 4/21/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) for Authority to Continue Funding of Low Emission Vehicle Programs.

Application 02-03-047
(Filed March 25, 2002)

Application of Southern California Edison Company (U 338-E) to Extend the Operation of its Electric Vehicle Adjustment Clause Mechanism and Related Accounts Until the Date of the Commission's Final Decision in Southern California Edison's Test Year 2003 General Rate Case Proceeding.

Application 02-03-048
(Filed March 25, 2002)

Application of Pacific Gas and Electric Company for Review of and Authorization for Recovery of Costs Relating to Its Low Emission Vehicle Program for 2002 through 2005. (U 39 E)

Application 02-03-049
(Filed March 25, 2002)

**OPINION ON CONTENTS OF UTILITY
LOW EMISSION VEHICLE PROGRAM APPLICATIONS**

I. Summary

This decision addresses the Low Emission Vehicle (LEV) programs of the Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and Southern California

Gas Company (SoCalGas) that these utilities provide, which are not mandated by federal law. While not specifically addressed, this decision is consistent with recent California Public Utilities Commission's (CPUC's) air quality efforts; the CPUC and the California Energy Commission's (CEC's) Energy Action Plan; the California Air Resources Board's (CARB's) recently approved rules to reduce greenhouse gas emissions (GHGs) from cars and light trucks statewide during this decade; and efforts surrounding the CPUC's Climate Change En Banc of February 23, 2005.

Specifically, this decision specifies the contents of the applications that PG&E, SDG&E, SCE and SoCalGas should file in seeking future funding for their LEV programs. Decision (D.) 03-10-086 approved prior requests for LEV funding, but ordered all interested parties to engage in a collaborative workshop process to refine the contents of the foregoing utilities' (IOUs) applications. As a result of this process, thirteen parties submitted a joint recommendation on June 22, 2004 to the CPUC. This joint recommendation was a near universal proposal from the thirteen parties on issues such as reporting requirements, funding cycles, and the showing necessary to approve future rounds of funding for these programs. The adoption of this joint recommendation is also consistent with Public Utilities Code Section 740.3(a), which requires the CPUC to work cooperatively on LEV matters with other state agencies to achieve air quality improvements by advancing adoption of LEVs in California. Finally, this decision removes the "discretionary" connotation to these programs and places review of these programs in each of the utilities' general rate cases or cost of service applications. As LEVs become more common in California, it is becoming abundantly clear that many of these programs are a natural extension of utility service.

II. Background

A. History of LEV Programs

The utilities' LEV programs are designed to develop and support motor vehicles powered by electricity and natural gas. We approved IOU ratepayer funding for LEVs in 1993 in D.93-07-054, after the Legislature enacted Pub. Util. Code § 740.3 *et seq.* The statute provides that the Commission should work with other state agencies, air quality management districts, the motor vehicle industry and the IOUs to facilitate the use of electric power and natural gas to fuel LEVs. The statute prohibits the Commission from passing funding for such programs through to ratepayers unless the programs are in the ratepayers' interest. In 1999, the Legislature amended Pub. Util. Code § 740.8 to provide that "interests of ratepayers, short- or long-term, mean direct benefits that are specific to ratepayers in the form of *safer, more reliable, or less costly gas or electrical service.*"¹

As described in D.03-10-086, the IOUs' LEV programs have three facets. First, the IOUs share information they have gained as operators of their own LEV fleets with other actual or potential fleet owners. This information sharing is the key focus of the IOUs' "customer education" activities. Second, they evaluate new LEV products to determine their impact on the energy grids they operate. This appears to be their principal activity aimed at enhancing system reliability. Third, they provide information on safe fueling and charging techniques to third parties who use IOU-owned fueling stations and charge electric vehicles.

B. D.03-10-086 Requirements

D.03-10-086 allowed IOUs to use the current LEV application process until the end of 2005. The decision set up a process to develop criteria for judging

¹ Emphasis added.

whether the Commission would authorize funding for LEV programs in the future:

We would like the parties, and any other interested stakeholders, to work together to come up with specific criteria that will be used to judge whether LEV programs should receive continued funding in the future, while also addressing whether or not these programs should be included in the utility cost-of-service proceedings or whether they should be discontinued because they have been duplicated by market efforts. The forum for this shall be a workshop, hosted by the Energy Division, to be held no later than April 2004. The parties will then jointly file in this Docket any proposals resulting from this workshop (or workshops if necessary). The assigned ALJ should then establish, through ruling, a schedule for comments and reply comments and any other record development, as needed.

. . . .

The workshops are required because there seems to be a lack of clarity on behalf of the parties with respect to what they need to prove in order to have funding extended in future applications. We anticipate responding to the workshop proposal by developing guidelines that would apply when the utilities apply for funding for the next round of discretionary LEV programs. This procedure will help facilitate the coordination envisioned in PU Code § 740.3(a).²

We set up workshops because, in the words of Resolution G-3322,

[W]e never intended ratepayer-funded LEV programs to be permanent or become part of the IOUs' entrenched operations:

[O]ur intent at the time we issued the current authorization was to fund the utilities' programs for a set period of time with the expectation that at some point further subsidization of the LEV market by utility ratepayers would not be warranted. As stated in Findings of Fact No. 3 in D.93-07-054,

² D.03-10-086, *mimeo.*, pp. 33-34 (footnotes supplied).

“It is not clear how long a utility presence is needed to provide a bridge to a sustainable competitive market for LEVs.³

C. Workshop and Report

In accordance with the Commission’s direction, the Energy Division held a workshop on April 29, 2004, and on June 22, 2004, several parties to this proceeding submitted a *Joint Report on Low Emission Vehicle Program Workshop* (Report). PG&E supplemented that submission on August 11, 2004. The signatories who supported the Report in its entirety were PG&E, Bay Area Clean Air Task Force, California Air Resources Board, California Electric Transportation Coalition, California Energy Commission, CALSTART, Clean Energy, INFORM, Sacramento Municipal Utility District, SDG&E, South Coast Air Quality Management District, SCE and SoCalGas. Western States Petroleum Association (WSPA) declined to sign on to a portion of the Report, and the remaining workshop participants – Southern California Generating Coalition (SCGC) and TIAX (a fuel cell company) did not sign on to the Report at all.

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³ Resolution G-3322, Jan. 23, 2002, at 9, available at <http://www.cpuc.ca.gov/PUBLISHED/FINAL RESOLUTION/12757.htm>

The Report took the following positions:

1. The proposed LEV application appended to D.03-10-086 requires too much detail and would burden the IOUs. The Commission should adopt a simplified format.
2. The IOUs should be able to make future LEV funding requests as part of their general rate cases (GRCs) or cost of service (COS) proceedings, rather than as a separate application.
3. The Commission need not develop new guidelines for determining whether ratepayer funding of LEV-related research, development and demonstration (RD&D) work is appropriate.
4. Only when there are no longer any LEVs in the hands of utilities may the IOUs' LEV programs be terminated.
5. Compliance with existing law is adequate to assure fair competition between IOUs and third parties operating in the LEV market.
6. IOU participation in a broad range of industry organizations will ensure IOU efforts in the LEV market do not duplicate other available products and services.
7. Future LEV funding should be continued as long as the IOUs and their customers use LEVs and customers receive direct benefits from such programs.

D. Comments on Workshop Report

1. WSPA

On September 16, 2004, WSPA filed comments on the Report. WSPA makes the following points:

1. The IOUs' citation to "a new, stronger emphasis in California on the need to encourage LEVs"⁴ is irrelevant to whether utility ratepayers should pay for LEV activities. General state policy does not justify imposing such costs on ratepayers.

⁴ Report at 9.

2. IOU participation in LEV-related advocacy groups should be limited to communicating utility experience with LEVs and should not include activities to promote LEV use or influence public policy.
3. The Report's criteria for determining whether LEV programs should receive continued funding are too broad:
 - The IOUs' customer education should be limited to utility vehicles and refueling stations, and not include general information on the operation of LEVs that should be provided by manufacturers or dealers.
 - IOU efforts to inform customers about the environmental and societal benefits of LEVs should not be funded by ratepayers unless they are focused on utility LEV use and infrastructure.
 - IOUs should not be allowed to "inform customers about the economic operation of LEVs and related infrastructure"⁵ unless such information is limited to training in the use of utility infrastructure and in the economic operation of vehicles as it impacts the utility and the efficient use of energy.

2. SCGC

SCGC filed comments on the report on September 20, 2004. SCGC is concerned that the Report addresses matters beyond the scope of and in conflict with D.03-10-086. SCGC notes that it is irrelevant whether LEVs are a good thing for California; rather, the issue is whether ratepayers should fund utility LEV programs: "the workshop was not to be on whether the utilities' discretionary LEV programs should continue. It was to be on specific criteria for determining whether *ratepayer funding* should continue and on the appropriate forum for deciding ratepayer funding issues."⁶ SCGC's specific comments are as follows:

⁵ *Id.* at 25.

⁶ [SCGC] *Comment on Workshop Report*, filed Sept. 20, 2004, at 2 (emphasis in original).

1. The Report's conclusion that funding for LEVs may terminate only when there are no longer any LEVs in the hands of utilities or their customers contradicts Commission decisions on the subject. Decision 03-10-086, D.98-12-028, D.95-11-035 and D.93-07-054 all make clear that ratepayer funded LEV programs are not supposed to be permanent.
2. The Report conflicts with D.03-10-086 by recommending that funding requests for LEV programs should be considered in GRCs. Electric generators bear a substantial portion of gas utility LEV costs. Because the Commission has viewed gas utility LEV costs as being atypical costs that require special treatment, the costs should be examined in separate stand-alone proceedings, and not in GRCs.⁷

III. Discussion

A. Content of Applications for Discretionary LEV Funding

1. Discretionary vs. Mandatory Funding

This decision only addresses the IOUs' LEV programs that are not the subject of statutory clean air requirements (which have been known as "mandatory.") The Commission has previously titled these programs, "discretionary". While called discretionary programs, the utilities do not carry these programs out at their own discretion. In fact, the utilities play a unique and vital role by engaging in these programs. For example, growing volumes of customer calls to utilities on such LEV matters as tariff explanation, hook up concerns and fueling safety issues are to be expected and will increase as the adoption of these technologies increases. LEV technology assessment and applications research included in these programs are needed to evaluate new options for meeting *utilities'* fleet mandates. These are just some examples from

⁷ TIAX did not provide input on the Report.

the record in A.02-03-047 that demonstrate why gas and electric utilities must inherently remain involved with LEV-related research and development, technology assessment, standards development and customer education and training. Since it is obvious that these efforts are inextricably linked to the utilities' "mandatory" programs, we will adopt the recommendation from that joint parties that, "the IOUs should be able to make future LEV funding requests as part of their GRCs or COS proceedings, rather than as a separate application." This will not only increase administrative efficiencies, but it will allow the Commission to review these programs in their full context so that a better understanding of the relationship of these programs can be achieved.

2. Annual Report Template Appropriate as Template for Applications

In setting up the workshop, the Energy Division proposed that the template D.03-10-086 adopted for IOU reporting on their LEV programs also serve as the form IOUs would use to submit their applications. In response, the IOUs argue that the template actually reduces the efficiency of the utilities' LEV program delivery and is simply not necessary for assessing program benefits. They state that the template adopted in D.03-10-086, includes creating and maintaining additional accounting and reporting processes such as the cost of each and every project, event, and piece of material. Furthermore, accounting and reporting processes have to be subdivided into separate ratepayer benefit categories, and the labor associated with each has to be allocated accordingly. Instead, the twelve parties in this proceeding have proposed a streamlined reporting template allows for a cost-effective way for the CPUC to obtain the information it needs in order to evaluate these modest programs.

We therefore agree that the template the IOUs and the other parties to this proceeding have proposed is a much more efficient way to track the ratepayer

benefit associated with the utility LEV programs that are associated with this decision. It would be overly burdensome for the IOUs to provide all the information in the form set forth in the report template attached to D.03-10-086. The somewhat streamlined template recommended in the Joint Report, by bringing the required disclosures into line with utility accounting conventions, would cut compliance costs yet still provide the CPUC with adequate information with which to evaluate and oversee the utility's LEV programs.

The streamlined report template recommended in the June 22, 2004 Joint Report as well as set forth in the April 19, 2004 Joint Recommendations is straightforward and adequately tracks P.U. Code Section 740.3. We have recognized in the past that LEV programs provide health benefits through improved air quality, thus satisfying utilities' obligations under P.U. Code Section 451. Therefore, it is not necessary for each and every subprogram to artificially disaggregate and report the percentage of that subprogram that goes toward each of the other three benefits of "safety, reliability, and cost reduction," mentioned in P.U. Code Section 740.3. A somewhat more aggregated showing of those three ratepayer benefits, in addition to the air quality benefits of these LEV subprograms is sufficient and is more cost-effective means for CPUC oversight of these programs.

3. Objections to Certain Aspects of LEV Programs

(1) LEVs in IOU's Possession

We reject the Report's proposition (item 4 on the list above) that "Only when there are no longer any LEVs in the hands of utilities may the IOUs' LEV programs be terminated." Similarly, we reject the notion that IOUs should continue to receive ratepayer funding for discretionary LEV programs "as long as the IOU and its customers use LEVs and customers receive direct benefits from such programs." (Item 7 above.) IOUs are free to offer LEV programs

indefinitely, but they may not presume indefinite ratepayer finding. Our inquiry here is whether and how ratepayers should continue to pay for these activities.

It is a fair assumption that from here on, IOUs will always have LEVs in their possession and that IOU customers will always use LEVs. If we were to adopt the foregoing criteria, ratepayer-funded discretionary LEV funding would never end, contrary to statute and all our prior decisions.

Thus, the IOUs may not justify continued ratepayer funding simply because “LEVs are in the hands of utilities” or “the IOU and its customers use LEVs.” It is not even relevant whether ratepayers “receive direct benefits from such programs.” Such benefits could be unrelated to safety, reliability or low cost and in that case, they would not be justifiable under § 740.3. To receive continued ratepayer funding, the IOUs must tie requests for funding to the ratepayer goals of safety, reliability and low cost.

(2) Research, Development and Demonstration Work

The Report proposes that the Commission refrain from developing new guidelines for determining whether ratepayer funding of LEV-related research, development and demonstration (RD&D) work is appropriate. In D.95-11-035, we prohibited activities designed to lead directly to the development of new commercial products: “Their development should be supported by the firms that could profit from their commercialization. . . .”⁸ We further stated that, “the use of regulated monopoly funds for the development of a private business in this emerging market raises the potential for unfair competition.”⁹ The LEV statute states that “The commission’s policies shall . . . ensure that utilities do not unfairly compete with nonutility enterprises.” Pub. Util. Code § 740.3(c).

⁸ D.95-11-035, 1995 Cal. PUC LEXIS 978, at *126.

⁹ *Id.* at *140-41.

We did not find any problem with the IOUs' RD&D expenditures in D.03-10-086, and no party has shown a need for detailed rules. Therefore, we adopt the Report's recommendation, and do not develop further rules in this area. We opt instead to rely on the proscriptions in the statute and our prior decisions.

(3) Customer Education

We find too vague WSPA's critique that 1) the IOUs' customer education should be limited to utility vehicles and refueling stations, and not include general information on the operation of LEVs that should be provided by manufacturers or dealers; and 2) the IOUs should not be allowed to "inform customers about the economic operation of LEVs and related infrastructure"¹⁰ unless such information is limited to training in the use of utility infrastructure and in the economic operation of vehicles as it impacts the utility and the efficient use of energy. Any requirement that IOUs parse funding in this way would be too difficult to enforce. As long as the IOUs' educational efforts further the goals of ratepayer safety, reliability of the electric and gas systems, and control of ratepayer costs, we will not further circumscribe the educational activities in which the utilities engage. We shall provide reasonable funding for the utilities' customer education programs. These programs should primarily further the goals of ratepayer safety, reliability of electric and natural gas systems, control of ratepayer costs, inform customers about related load impacts and methods for mitigating them in a manner that is responsive to their and the public's needs.

¹⁰ *Id.* at 25.

IV. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in these proceedings.

V. Comments on Alternate Decision

The alternate decision of Commissioner Susan P. Kennedy in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on April 28, 2005.

Findings of Fact

1. The only subjects of this proceeding are what have been called the utilities' "discretionary" programs, including the customer service, training, research and development programs. Although these activities are not directly required by statutory clean air requirements, the evidence shows they are generally closely related to either utility fleet safety, or cost reduction, or to such other traditional utility functions as load management, system safety and reliability and customer tariff inquiries. Therefore it is not necessarily within the utility's "discretion" to cease providing them even if funding were denied at some future time.
2. Mandatory LEV activities include the acquisition of alternative fuel use fleet vehicles pursuant to federal law, operation and maintenance costs associated with use of alternative fuel use fleet vehicles and associated infrastructure, infrastructure (fueling facilities and related equipment) needed to support alternative fuel use fleet vehicles, employee training and instruction necessary for the use of alternative fuel use fleet vehicles, and accounting for the costs of these mandatory activities. Mandatory activities are outside the scope of this proceeding.
3. It would be overly burdensome for the IOUs to provide all the information in the form set forth in the report template attached to D.03-10-086. The

somewhat streamlined template recommended in the Joint Report, by bringing the required disclosures into line with utility accounting conventions, would cut compliance costs yet still provide the CPUC with adequate information with which to evaluate and oversee the utility's LEV programs.

4. The streamlined report template recommended in the June 22, 2004 Joint Report as well as set forth in the April 19, 2004 Joint Recommendations is straightforward and adequately tracks P.U. Code Section 740.3. Because LEV programs provide health benefits through improved air quality, thus satisfying utilities' obligations under P.U. Code Section 451, it is not necessary for each and every subprogram to artificially disaggregate and report the percentage of that subprogram that goes toward each of the other three benefits of "safety, reliability, and cost reduction," mentioned in P.U. Code Section 740.3. A somewhat more aggregated showing of those three ratepayer benefits, in addition to the air quality benefits of these LEV subprograms is sufficient and is more cost-effective means for CPUC oversight of these programs.

Conclusions of Law

1. IOU's discretionary LEV programs may be ratepayer funded if such programs are shown to be in the ratepayer's interest. The interests of ratepayers, short- or long-term, includes both direct benefits that are specific to ratepayers in the form of safer, more reliable or less costly gas or electrical service, per P.U. Code Section 740.8, in addition to the "health and comfort" benefits gained from air quality improvements achieved through utility services and instrumentalities that facilitate LEV adoption throughout California, per P.U. Code Section 451.

2. The IOUs should use the streamlined, more cost-efficient Annual Reporting Narrative Template recommended in the Joint Report and set forth in the April 19, 2004 Joint Recommendations. The IOUs proposals for future funding should include such information as included in that same template.
3. While the IOUs discretionary LEV education and training programs should primarily serve to ensure safety, reliability and cost reductions for utility electricity and gas systems, IOUs are not prohibited from also including as part of their LEV education and training efforts program elements that incidentally educate the public generally about the societal benefits of clean air or LEVs in fulfillment of the utility's obligations under P.U. Code Section 451 to provide services promoting the health and comfort of their patrons and the public.
4. We shall provide reasonable funding for the utilities' customer education programs that primarily further the goals of ratepayer safety, reliability of electric and natural gas systems, control of ratepayer costs, inform customers about related load impacts and methods for mitigating them in a manner that is responsive to their and the public's needs.
5. We need not develop new guidelines to determine whether to approve ratepayer funding of LEV programs including LEV-related RD&D. Sufficient guidance appears in existing Commission decisions and relevant statutes.
6. We will evaluate the IOUs discretionary LEV programs a multi-year basis, no more frequently than every 3 years, as part of their GRCs or Cost of Service proceedings.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and Southern California Gas Company (SoCalGas) (collectively utilities or IOUs) shall not use ratepayer funds for discretionary Low Emissions Vehicles (LEV) programs unless they are found to be consistent with P.U. Code Section 740.8 and P.U. Code Section 451.
2. The IOUs shall use the streamlined narrative template set forth in the Joint Recommendations of April 19, 2004 to prepare their annual reports. This template shall also be used as the basis for the IOUs showing supporting future requests for discretionary LEV program funding.
3. The IOUs shall not use discretionary LEV program funds for education and training that does not primarily serve to ensure safety, reliability and cost reductions for utility electricity and gas systems, though, to provide environmentally and socially responsible utility services. Program elements may incidentally educate the public generally about the societal benefits of clean air or LEVs, in fulfillment of the utility's obligations under P.U. Code Section 451 to provide services promoting the health and comfort of their patrons and the public.
4. We will evaluate future requests for discretionary LEV on a multi-year basis in each of the utilities' next General Rate Cases (GRCs) or other cost of service (COS) proceedings according to the schedules for these proceedings otherwise set by the CPUC.
5. In order to prevent any lapse in current levels of discretionary LEV program funding, if the CPUC is not able to issue a final decision in each utility's upcoming GRC or COS proceeding, we will automatically postpone the sunset

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date of December 31, 2005 adopted in D.03-10-086 so that current discretionary LEV program funding levels continue until a final CPUC decision is issued on each utility's next LEV funding request in its respective GRC or COS proceeding.

6. These proceedings are closed.

This order is effective today.

Dated _____, at San Francisco, California.