

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 16, 2004

**Agenda ID #3729
Quasi-Legislative
Ratesetting**TO: PARTIES OF RECORD IN RULEMAKING (R.) 01-08-028 AND
R.01-10-024

This is the draft decision of Administrative Law Judges (ALJs) Malcolm and Walwyn. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure (Rules). These rules are accessible on the Commission's Website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJs and the Assigned Commissioners, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by LTC
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

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 10% 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 Retrofit 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 Retrofit Program is misleading. TURN observes that PG&E's Fourth Quarter 2003 report shows that PG&E overspent its budget for the Single Family Retrofit 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 Retrofit 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, 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 those 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 program funds between programs without prior Commission approval and permits the ALJ to authorize reallocations of funds in excess of 25%.

Given the existing flexibility the utility enjoys, PG&E’s petitions to modify these three orders are unjustified and we herein deny them. We find generally that PG&E does not require the flexibility it seeks in order to fund the Single Family Retrofit Program and providing it at this time 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 does not convince us that it lacks sufficient flexibility to continue successful programs. 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. PG&E has consistently underspent its energy efficiency budget in recent years, by \$4.6 million in 2002 and \$7.6 million in 2003. This underspending occurred in years when PG&E had a substantially smaller budget than the one it has in 2004-2005. Moreover, PG&E can seek authority from the assigned ALJ to allocate funds between programs. For these reasons, we do not understand the urgency of PG&E's request for unlimited spending authority.

Aside from the matter of funding flexibility, PG&E's suggestion that it cannot adequately fund its 2003 or 2004 Single Family Retrofit Program is troublesome. PG&E's petition at least implies that this program cannot be adequately funded without approval of its proposed two-way balancing account. Yet PG&E's petitions fail to mention that it could augment the Single Family Retrofit budget in 2004 by using energy efficiency funds authorized as part of the procurement budget or by seeking a ruling from the ALJ for funding shifts in excess of 10% for 2003 or in excess of 25% for 2004.

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. Given this lack of factual accuracy and clarity, we consider the arguments presented in the reply completely unhelpful in deciding the merits of the petitions.

These concerns notwithstanding, we value the Single Family Retrofit 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 Retrofit Program. This additional flexibility, in combination with pre-existing options for transferring funds between programs, should assure program continuity during 2004 and 2005.

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. Comments were filed on _____ and reply comments were filed on _____.

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 Retrofit 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 Retrofit 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 Retrofit 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.

This order is effective today.

Dated _____, at San Francisco, California.