

Decision 09-10-029

October 15, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of the 2009-2011 Low Income Energy Efficiency and California Alternate Rates for Energy Programs and Budget (U39 M).

Application 08-05-022  
(Filed May 15, 2008)

And Related Matters.

Application 08-05-024  
Application 08-05-025  
Application 08-05-026

**ORDER MODIFYING DECISION (D.) 08-11-031, AND DENYING REHEARING OF DECISION, AS MODIFIED**

**I. INTRODUCTION**

Decision (D.) 08-11-031 (“Decision”) disposes of the large investor-owned utilities’ (“IOUs”) 2009-2011 low income energy efficiency (“LIEE”) and California Alternate Rates for Energy (“CARE”) applications.<sup>1</sup>

An application for rehearing of the Decision was timely filed by Division of Ratepayer Advocates (“DRA”). In its rehearing application, DRA challenges the Commission’s determination regarding the number of homes that have been treated by the Low Income Home Energy Assistance Program (“LIHEAP”), which in turn affects the number of homes to be treated by the LIEE program. Specifically, DRA alleges that the Commission erred in overlooking the evidence provided by DRA regarding the total number of homes treated by the LIHEAP (or “LIHEAP number”), and in adopting a

<sup>1</sup> The IOUs include Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas and Electric Company (“SDG&E”), and Southern California Gas Company (“SoCalGas”).

LIHEAP number based on information provided by the IOUs. Accordingly, DRA argues that its due process rights have been violated. Further, DRA claims that the Commission erred on a material fact in determining the LIHEAP number, and thus, the Commission would be acting unlawfully if it did not correct the error.

A joint response to the rehearing application was filed by The Association of California Community and Energy Services (“ACCES”), The Community Action Agency of San Mateo County (“CAASM”), The East Los Angeles Community Union (“TELACU”), The Maravilla Foundation, and A World Institute for a Sustainable Humanity (“A W.I.S.H”). The joint parties support the rehearing application.

We have reviewed each and every allegation in the application for rehearing. We modify D.08-11-031 to correct typographical errors as well as clarify the Commission’s rationale for rejecting DRA’s challenge to the adopted LIHEAP number. With the modifications, good cause has not been established to grant rehearing. Accordingly, we deny the application for rehearing of D.08-11-031, as modified herein, because no legal error has been shown.

## II. DISCUSSION

### A. **Finding of Fact No. 63 is supported by the record evidence and, therefore, does not violate DRA’s due process rights.**

In Finding of Fact No. 63 of the Decision, we determined that “[a]pproximately 224,387 homes were treated by LIHEAP from 2002-07.” (D.08-11-031, p. 211.) DRA contends that the record does not support this finding in light of evidence submitted by DRA which supports a lower LIHEAP number. Therefore, by allegedly ignoring the evidence submitted by DRA, DRA contends that its due process rights have been violated. (Rehrg. App., pp. 6-8.) According to DRA, 224,387 is a significant overestimation and the Commission should have adopted a lower LIHEAP number. In support of their argument, DRA cites to email correspondence wherein the state Department of Community Services and Development (“DSCD”), the agency that administers LIHEAP in California, provided DRA with various LIHEAP

figures that amount to approximately 89,000 less than the LIHEAP number DCSD had previously provided to the Commission.<sup>2</sup> DRA emphasizes an email attached to its Opening Comments wherein DCSD provided DRA with the following explanation of why the LIHEAP data DCSD provided to DRA differed from the data DCSD had previously provided to the Commission as well as the IOUs:

The primary difference is attributable to the manner in which the data was consolidated and delivered to each of the utilities. Service territories that are shared by more than one utility were included in each utility's spreadsheet. When the numbers from the four spreadsheets were consolidated [to reach a total LIHEAP number of 224,387], there were several service territories or counties that were included as many as three times.

(DRA Opening Comments, Appendix C, p. 3.) Therefore, DRA argues that 224,387 is a significant overestimation of the LIHEAP number in light of DCSD's explanation that certain treated homes were double or triple counted due to overlapping data. (Rehrg. App., pp. 6-8.) We did consider this evidence and DRA's argument but we were unconvinced. (See D.08-11-031, pp. 111-112.) In its rehearing application, DRA is merely asking us to reweigh the evidence and find in its favor. However, DRA's attempt to relitigate the position it lost does not support an allegation of legal error.<sup>3</sup>

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<sup>2</sup> DRA's application for rehearing includes an attachment containing several emails between individuals from DRA and DCSD, including charts representing two versions of LIHEAP numbers for homes treated from 2002-2007. (See Rehrg. App., Attachment, pp. 1-7.) The first LIHEAP number chart, updated through July 30, 2008 and provided to DRA by DCSD, indicates a total LIHEAP number of 135,481. (Rehrg. App., Attachment, p. 2.) This first LIHEAP number chart was first submitted to us as an attachment to DRA's Opening Brief. (See Appendix C to DRA Opening Brief.) The second LIHEAP number chart, included in an email from DCSD to DRA dated October 6, 2008 indicates a total LIHEAP number of 135,154. (Rehrg. App., Attachment, p. 3.) This second LIHEAP number chart was first submitted to us as an attachment to DRA's Opening Comments on the Proposed Decision. (See Appendix D to DRA Opening Comments.) DRA notes that the difference between these LIHEAP numbers is attributable to the exclusion of Siskiyou County in the second LIHEAP number chart, a county which is not in any IOU service territory. (DRA Opening Comments, p. 14, fn. 45.)

<sup>3</sup> Public Utilities Code Section 1732 requires the rehearing applicant to "set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful." (Pub. Util. Code, § 1732.) Rule 16.1(c) of the Commission's Rules of Practice and Procedure further requires that "[a]pplications for rehearing shall set forth specifically the grounds on which the

*(footnote continued on next page)*

The following table (“LIHEAP table”) is found on page 112 of the Decision and is provided here for reference purposes for the below discussion. The LIHEAP table includes the total LIHEAP number of 224,387 as adopted, and reflected in Finding of Fact No. 63, as well as LIHEAP figures for the respective utilities:

<b>Households Weatherized from 2002 - 2007</b>			
	<b>DOE</b>	<b>LIHEAP</b>	<b>Total</b>
<b>PG&amp;E</b>	14,524	62,013	<b>76,537</b>
<b>SCE</b>	11,722	54,358	<b>66,080</b>
<b>SDG&amp;E</b>	1,596	6,444	<b>8,040</b>
<b>SoCalGas</b>	13,374	60,356	<b>73,730</b>
<b>Total</b>	<b>41,216</b>	<b>183,171</b>	<b>224,387</b>

Findings in the decision of the Commission must be “supported by substantial evidence in light of the whole record.” (See Pub. Util. Code, §1754, subd. (a)(4).) Factual findings by the Commission “are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence.” (*Toward Utility Rate Normalization v. Public Utilities Commission* (1978) 22 Cal.3d 529, 537.)

The record evidence supports our finding that approximately 224,387 homes were treated by LIHEAP from 2002-07. DCSD provided the LIHEAP figures adopted in the Decision.<sup>4</sup> (D. 08-11-031, pp. 111-112.) The LIHEAP figures provided by DRA were submitted late in the proceeding<sup>5</sup> and were not the same as the figures we received directly from DCSD. Therefore, despite differences in data provided by DCSD

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applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.” (Code of Regs., tit. 20, § 16.1, subd. (c).) DRA’s allegation constitutes no more than an attempt to relitigate how we weighed the record evidence, which is not an appropriate allegation of error within the meaning of this statutory provision.

<sup>4</sup> The parties had notice and an opportunity to be heard on that fact that we relied on LIHEAP data that was provided to us directly by DCSD. (Proposed Decision of ALJ Thomas, p. 101.) Moreover, email correspondence between DRA and DCSD establishes that DRA was aware DCSD provided us and the IOUs with LIHEAP figures. (DRA Opening Comments, Appendix C, p. 2.)

<sup>5</sup> See fn. 2.

to us and the parties, we weighed all of the record evidence and were ultimately persuaded to adopt the LIHEAP number based on initial data provided to us by DCSD. Accordingly, record evidence supports our finding and DRA's contention lacks merit.

Although DRA fails to establish legal error, we recognize that the Decision's rationale for rejecting DRA's challenge to the adopted LIHEAP number is somewhat unclear. In addition, the Decision's discussion regarding the LIHEAP number contains several typographical errors. Accordingly, as described below in the ordering paragraphs, we will modify the Decision to correct typographical errors and clarify the basis for our rejection of DRA's challenge to the adopted LIHEAP number.

Regardless of these modifications, and for the reasons described above, DRA's contention fails to demonstrate legal error and is rejected.

**B. The Decision does not contain a material factual error.**

DRA contends that the LIHEAP number adopted in the Decision constitutes material factual error and, accordingly, results in legal error because thousands of low-income ratepayers are not allocated funds to provide for LIEE treatment as a result. (Rehrg. App., p. 8.) According to DRA, the number of homes treated by LIHEAP is material because it determines the eligible population for the IOUs to treat in order for the state of California to reach the LIEE program's programmatic initiative by 2020. (Rehrg. App., p. 8.) DRA is merely rearguing the same arguments that were rejected. Thus, DRA's contention of legal error lacks merit.

DRA's contention is based on the false premise that we erred in adopting a LIHEAP number of 224,387. There is no factual error because, as described above, record evidence supports the LIHEAP number adopted in Decision. Moreover, DRA's argument does not constitute an allegation of legal error but is merely an improper attempt to relitigate an argument we already rejected. (See Pub. Util. Code, §1732.) Accordingly, DRA's contention is rejected.

### III. CONCLUSION

For the reasons stated above, D.08-11-031 is modified to reflect the corrections and clarifications specified below. The application for rehearing of D.08-11-031, as modified, is denied because no legal error has been shown.

**THEREFORE, IT IS HEREBY ORDERED** that:

1. D.08-11-031 is modified as follows:
  - a. In Section 28 “Comments on Proposed Decision” on page 201, the entire text contained in the third bullet point is deleted and replaced with the following language:

*LIEE Eligible Population.* We do not change the LIEE eligible population despite DRA’s assertion that the number in the decision is incorrect. DCSD provided the LIHEAP figures adopted in the proposed decision. Furthermore, the Commission did not receive from DCSD any information that cast doubt on the figures DCSD originally provided to the Commission.
  - b. The first complete sentence on page 112 is removed and the footnote that follows this removed sentence (fn. 88) is placed at the end of the preceding sentence to read as follows:

With data obtained directly from the Department of Community Services and Development (DCSD), approximately 224,387 homes were treated by LIHEAP from 2002-07.<sup>88</sup>
  - c. The text contained in fn. 88 is deleted and replaced with the following language:

We have received various figures from DCSD, as DRA points out in its comments on the proposed decision, but figures shown here are the ones we received from DCSD.

- d. The table on page 112 of D.08-11-031 is modified to switch the complete row of figures for SCE and SoCalGas, respectively. With this modification, the table reads as follows:

2. Rehearing of D.08-11-031, as modified, is hereby denied.

This order is effective today.

Dated October 15, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners