

Decision 10-12-002 December 2, 2010

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

Application of Pacific Gas and Electric Company for Approval of the 2009-11 Low Income Energy Efficiency and California Alternate Rates for Energy Programs and Budget (U39M).

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

And Related Matters.

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

**DECISION GRANTING, IN PART,  
PETITION OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY TO MODIFY DECISION 08-11-031**

**1. Summary**

This decision grants, in part, a joint petition to modify Decision (D.) 08-11-031 filed by San Diego Gas & Electric Company (U 902 E) and Southern California Gas Company (U 904 G), dated May 14, 2010 (Petition). The Petition raises five separate issues regarding D.08-11-031 and proposes related modifications to D.08-11-031. This decision grants, in part, the relief sought in the Petition by adopting some of the proposed modifications, while denying other proposed modifications requested therein for reasons set forth below.

**2. Background**

In Decision (D.) 08-11-031, the Commission approved the budgets for California's Large Investor Owned Utilities' (IOUs) Low Income Energy

Efficiency (LIEE) and California Alternate Rates for Energy (CARE) programs for 2009 through 2011.

On May 14, 2010, San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) (collectively the Petitioners) filed a Petition to Modify Decision 08-11-031 (Petition) requesting to: “1) establish memorandum accounts to track natural gas appliance testing costs; 2) increase their enrollment of disabled households in the LIEE programs; 3) correct the list of eligible measures offered under the LIEE program; and [4]) modify certain LIEE program components.”<sup>1</sup>

On May 14, 2010, Southern California Edison Company (SCE) and Disability Rights Advocates (DisabRA) each filed a response to the Petition (SCE’s Response and DisabRa’s Response, respectively). Both SCE’s and DisabRA’s Responses were focused only on the Petitioners’ request concerning how specifically the ordering paragraph (OP) 31 of D.08-11-031 should be further conditioned such that it specifically details how the Petitioners are permitted and directed to elicit the information concerning each customer’s disability status. While both SCE’s and DisabRA’s Responses generally support the Petitioners’ basis for the proposed modification of D.08-11-031, SCE and DisabRA each proposes alternate languages for the modification.

On May 26, 2010, the Association of California Community and Energy Services, The Community Action Agency of San Mateo County, Inc., The East Los Angeles Community Union and the Maravilla Foundation

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<sup>1</sup> Petition, at 2.

(collectively the Joint CBOs) filed their response to the Petition. The Joint CBOs support the Petitioners' proposed modifications of D.08-11-031.

### **3. Discussion**

#### **3.1. Memorandum Accounts**

The Petitioners' first request is that D.08-11-031 should be modified to permit the Petitioners to establish memorandum accounts to track unanticipated and unforeseen natural gas appliance testing (NGAT) costs incurred in excess of the estimated funds forecasted and authorized in their general rate case (GRC) through D.08-07-046 (GRC Decision). The Petitioners claim that D.08-11-031, issued only three months after the GRC Decision, required NGAT testing of significantly more LIEE homes such that these expenditures, not anticipated by the Petitioners at the time of the GRC Decision, must be incurred and therefore should be tracked.

To address this very concern, on July 24, 2009, the Petitioners filed Advice Letters 4004 and 1876-G (Advice Letters), setting forth nearly identical basis and seeking authorization to establish NGAT memorandum accounts to track LIEE-related NGAT costs that are incremental costs associated with implementing D.08-11-031, and are not currently in the base rates. On February 25, 2010, Resolution G-3441 was issued and denied the Petitioners' Advice Letters and the authorizations requested therein.

Review of the procedural history shows that this issue has been reviewed in the context of LIEE proceedings many times over, even before Resolution G-3441. The Commission, time and again, reiterated its decision that "... NGAT was classified as a basic utility service because promoting customer safety is a general utility function. Therefore, despite the close ties between NGAT and LIEE, NGAT is not an appropriate expenditure for LIEE funds and

we refuse [the utility's] request."<sup>2</sup> Thus, we reaffirm that any funding issues raised by NGAT testing are outside the purview of D.08-11-031, a LIEE decision, and instead should appropriately be addressed through a modification of the GRC Decision.

However, the Petitioners explain that they are not seeking authorization to recover NGAT costs in this proceeding. Instead, they merely seek a mechanism to be established such that they could track the NGAT expenditures and subsequently pursue recovery of the NGAT expenditures resulting from the more than two-fold increase in the number of NGAT-treated homes required by D.08-11-031. While ideally, such modification should be made of the GRC Decision, based on the foregoing, we find that the Petitioners' request to modify D.08-11-031 to permit the Petitioners to establish memorandum accounts to track unanticipated and unforeseen NGAT costs in this proceeding is reasonable and therefore granted.

### **3.2. Disabled Customer Status**

The Petitioners also propose that OP 31 of D.08-11-031 should be modified to permit the utilities to allow disabled customers to self-identify as disabled and propose to insert the following additional language in OP 31 to explicitly permit less invasive and non-face-to-face communication to elicit that information:

IOUs are allowed to ask customers on all other methods of communication and to pose such a question as optional and voluntary for customers to choose whether to identify if they or a member of their household have a permanent disability.

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<sup>2</sup> D.08-11-031 at 135, citing D.05-04-052 and D.06-12-038.

DisabRA, SCE and the Joint CBOs support the basis for the Petitioners' proposed modification, with the view that perhaps the utilities should be permitted to make some less direct and non-face-to-face inquiries of customers to elicit the information concerning their disabled person status by, *inter alia*, presenting the questions in written forms, enrollment applications, websites, etc., such that the disabled customers would have the option "to self-identify" if they so choose.<sup>3</sup> DisabRA and SCE propose alternate languages for modification of OP 31.

We find that OP 31 does not require modification. OP 31 already allows the IOUs to include, as part of the required 15% disabled household enrollment, "customers who voluntarily self-identify as disabled." Thus, the requested modification to OP 31 would merely restate what is already permitted under the current OP 31 language. We further determine that the current language of OP 31 effectively addresses the two important and competing goals for the said OP: (1) the language clearly prohibits and safeguards against the type of situations where customers cannot readily or comfortably decline from answering the question concerning their disability status; and (2) the language affords the IOUs the necessary discretion and flexibility in implementation so not to prescribe and specify every method and/or question that may be employed by the Petitioners to secure such information. Moreover, the Petitioners now acknowledge there no longer is a need to modify OP 31 and D.08-11-031.<sup>4</sup> Based

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<sup>3</sup> Petition at 8.

<sup>4</sup> The Petitioners acknowledge that they will include optional language on their written applications and other customer materials that will allow customers to self identify as disabled without a need for any modification to D.08-11-031. See the Petitioners' Opening Comment to the Proposed Decision filed October 18, 2010, at 4.

on the foregoing, the Petitioners' request to modify OP 31 of D.08-11-031 is denied.

### **3.3. Measures**

The Petitioners request that we modify D.08-11-031 to "include additional LIEE measures offered in certain climate zones.... The request is being made because the Joint Utilities inadvertently omitted measures available for certain climate zones in their LIEE and CARE Program Applications."<sup>5</sup> We find that part of this request has merit and therefore grant the related relief sought. We deny the remaining part of this request as discussed below.

Careful review of this request shows that there are two groups of measures being sought for approval in this request. The first are the measures which clearly meet the cost effectiveness criteria set forth in OP 31 of D.08-11-031<sup>6</sup> that were erroneously left off of the Attachment F<sup>7</sup> to D.08-11-031. There appears to be no explanation as to why this first group of measures were left off of the approved measures list, other than perhaps the IOUs may have forgotten to list them in their applications or there were some other obvious clerical type of error involved. The second are measures that were left off of the Attachment F to D.08-11-031 which the record of the proceeding evidences that the Commission weighed competing factors and chose not to approve and therefore were left off of the approved list.

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<sup>5</sup> Petition, at 9.

<sup>6</sup> These measures pass the cost-effectiveness test threshold of 0.25 benefit/cost ratio adopted in D.08-11-036 as illustrated in Attachments 3 and 4 of the Petition.

<sup>7</sup> Attachment F to D.08-11-031 has been revised since the issuance of D.08-11-031 in D.09-11-009 (issued on November 20, 2009) which published the Revised Attachment F, effective November 20, 2009.

We find the corrections to Attachment F of D.08-11-031 adding and approving the first group of inadvertently omitted measures is reasonable. As for the second group of measures, we do not find that they are truly inadvertently omitted measures and are not persuaded by that portion of the request. While the Commission permitted a specific set of measures allowable as health, comfort, and safety measures, these additional measures were not included in the discussion at that time and thus do not meet this requirement. Moreover, the Petition provided no additional justification to approve these measures.

We also note, this Petition comes in the late stage of this budget cycle. In the future, we strongly urge the IOUs to bring new errors to the Commission's attention in the beginning of the budget cycle upon issuance of a decision and not at this late juncture.

Based on the foregoing, the Petitioners' request to modify D.08-11-031 to now consider and approve measures they had omitted in their LIEE and CARE Applications, nearly two years ago, is approved in part and denied in part. Attachment F to D.08-11-031 has been revised since the issuance of D.08-11-031 in D.09-11-009 (issued on November 20, 2009) which published the Revised Attachment F, effective November 20, 2009. The Amended Revised Attachment F setting forth the corrected approved measures list reflecting the measures approved as part of this decision is attached hereto and should supersede Attachment F to D.08-11-031 and Revised Attachment F of D.09-11-009.

### **3.4. "Furnace Clean and Tune" Measures**

The Petitioners also request that the Commission modify D.08-11-031 to specifically acknowledge and set forth "Furnace Clean and Tune" as a separate

measure and consider it as an approved add-back measure. As a stand alone measure, “Furnace Clean and Tune” does not meet the cost effectiveness criteria set forth in D.08-11-031. We also find it undesirable to specifically adopt and single out SoCalGas’ and SDG&E’s unique measure references or terminologies, such as “Furnace Clean and Tune.” We are therefore not persuaded by this request, and as such, we deny the request to modify D.08-11-031 to accommodate the “Furnace Clean and Tune” as a separate approved add-back measure.

Going forward however, we do strongly encourage the IOUs to try to use consistent references or terminologies to refer to measures. We understand that such coordinated efforts are currently underway in anticipation of the upcoming budget applications. Such efforts by the IOUs will aid the future Commission decision making process and facilitate consistency in Commission decisions and policy or guidance documents such as manuals.

### **3.5. Audit and Rewards Program**

The Petitioners request that D.08-11-031 should be modified to eliminate the Petitioners’ audit and rewards portion of their LIEE programs. The Petitioners, in their last set of LIEE budget applications, in 2008, requested and received permission for the audit and rewards portion of the LIEE program.<sup>8</sup>

The Joint Utilities instead propose that the funds originally slated for implementation of the customized audit and rewards program be used to cover the expense of providing additional measures (weather stripping, caulking, etc.) to additional customers under the “all feasible measures” approach.

While, we again question the Petitioners’ delay in revisiting a two-year old decision, we note that OP 84 of D.08-11-031 did not require the Joint Utilities

to implement the audit and rewards program. Rather, OP 84 merely granted its request of said program. Therefore, we deny this request to modify the decision to permit the Petitioners to eliminate the audit and rewards portion of the LIEE programs. The IOUs should follow the fund shifting procedures as adopted in D.10-10-008.

#### **4. Assignment of Proceeding**

Dian M. Grueneich is the assigned Commissioner and Kimberly Kim is the assigned Administrative Law Judge in this proceeding.

#### **5. Comments of Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 18, 2010 and reply comments were filed on October 25, 2010. The changes to the proposed decision have been made as a result of those comments.

#### **Finding of Fact**

SDG&E and SoCalGas filed a joint petition to modify D.08-11-031 on May 14, 2010, seeking to modify and clarify the text of D.08-11-031 to:

establish memorandum accounts to track natural gas appliance testing costs; 2) increase their enrollment of disabled households in the LIEE programs; 3) correct the list of eligible measures offered under the LIEE program; and [4)] modify certain LIEE program components.

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<sup>8</sup> D.08-11-031, at 164 and OP 84.

### **Conclusion of Law**

1. The petition for modification should be granted, in part, and denied, in part.
2. The Petitioners' request to modify D.08-11-031 to permit the Petitioners to establish memorandum accounts to track unanticipated and unforeseen NGAT costs in this proceeding is reasonable and therefore should be granted.
3. The Petitioners' request to clarify and modify OP 31 of D.08-11-031 to permit the utilities to allow disabled customers to self-identify as disabled is unnecessary and therefore should be denied.
4. Only part of the Petitioners' request to modify D.08-11-031 to include inadvertently omitted measures as approved LIEE measures is reasonable, justified and has merit; and therefore the related relief sought should be granted. The remaining part of the Petitioners' request to include other additional measures as approved LIEE measures lacks merit and should be denied. Attachment F to D.08-11-031, which has since been revised and titled as Revised Attachment F to D.09-11-009, should be further amended to reflect accurate list of approved LIEE measures resulting from this decision.
5. The Petitioners' request that the Commission modify D.08-11-031 to specifically acknowledge and set forth "Furnace Clean and Tune" as a separate add-back measure should be denied.
6. The Petitioners' request that the Commission modify D.08-11-031 to permit the Petitioners to eliminate the audit and rewards portion of the LIEE programs is unnecessary and should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition to Modify Decision 08-11-031 filed by San Diego Gas & Electric Company and Southern California Gas Company is granted, in part, and denied in part, as follows:

- a. The large investor owned utilities are hereby authorized to establish memorandum accounts to track unanticipated and unforeseen natural gas appliance testing costs; and
- b. The Amended Revised Attachment F, dated November 19, 2010 and attached hereto, illustrates the updated approved list of low income energy efficiency measures, adding previously inadvertently omitted measures and shall supersede Attachment F to Decision (D.) 08-11-031 and Revised Attachment F to D.09-11-009.

2. Unless specifically granted, all other requests and reliefs sought in the Petition to Modify Decision 08-11-031 filed by San Diego Gas & Electric Company and Southern California Gas Company are denied.

3. Applications (A.) 08-05-022, A.08-05-024, A.08-05-025, and A.08-05-026, remain open.

This order is effective today.

Dated December 2, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

**ATTACHMENT F**

