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Decision 03-10-041 October 16, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Annual Earnings Assessment Proceeding (AEAP) Application of Pacific Gas and Electric Company for Approval of Energy Efficient Shareholder Incentives for Third Claim for Incentives for 1998 Accomplishments for Pre-1998 Programs, and for Recovery of Costs for the 2002 Interruptible Load Programs.	Application 03-05-002 (Filed May 1, 2003)
In the Matter of the Application of Southern California Gas Company (U 904 G) for Authority to Increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand-Side Management Program Year 1997 and Low-Income Program Years 2001 and 2002 in the 2003 Annual Earnings Assessment Proceeding ("AEAP").	Application 03-05-003 (Filed May 1, 2003)
In the Matter of the Application of San Diego Gas & Electric Company for Approval of Incentives Associated with its Accomplishments for Low Income Program Year 2001 and Demand Response Program Expenditures in the 2003 Annual Earnings Assessment Proceeding ("AEAP").	Application 03-05-004 (Filed May 1, 2003)
In the Matter of the Application of Southern California Edison Company (U 338-E) for Approval of Pre-1998 Demand-Side Management Earnings Claims, 2001 and 2002 Low Income Energy Efficiency Earnings Claims, and Interruptible Load Programs Memorandum Account Balances Recorded in 2002, and In Support of 2002 Energy Efficiency Program Performance Achievements.	Application 03-05-009 (Filed May 1, 2003)

INTERIM OPINION ESTABLISHING REQUIREMENTS FOR CONTRACTING AND ADMINISTRATION OF LOW-INCOME ENERGY EFFICIENCY IMPACT EVALUATIONS

By Commission order, Southern California Edison Company (SCE), Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas), collectively referred to as "the utilities," are required to conduct load impact evaluations for their Low-Income Energy Efficiency (LIEE) programs.[1] In 2003, the utilities will be contracting with private contractor(s) to conduct this evaluation for Program Year (PY) 2002, which is paid for out of public goods charge funds.[2]

Consistent with our obligation to oversee LIEE programs, pursuant to Public Utilities Code Section 327(a), we believe that it is necessary to take specific steps to ensure that the LIEE impact evaluation will be conducted in an independent manner and will provide accurate information that enables us to assess the impacts of LIEE programs. An independent assessment hinges on the following key conditions. The utilities must select contractors who adhere to the highest professional standards and demonstrate expertise in the subject matter while adhering, at a minimum, to State and Commission conflict of interest rules and procedures. The utilities must fully cooperate with the selected contractors in providing the best available, most up-to-date data and the appropriate documentation for these data, in a timely manner. Sampling and data collection tasks required for LIEE impact evaluations should be conducted by the contractor with the cooperation of the utilities. If interviews are required as part of data collection, contractors shall adhere to proper informed consent procedures and employ documentation techniques that are reliable and ensure

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[1] See Decision (D.) 93-05-063, D.94-05-063, D.94-10-059, D.94-12-021, D.95-12-054, D.96-12-079, D.98-03-063, and D.99-06-052.

[2] The public goods charge is a separate component of utility rates that collects monies to fund LIEE and other public purpose programs administered by the utilities.

accuracy. The utilities may not unduly influence a contractor's selection of appropriate research methodologies or study sampling techniques and should not define, suggest or otherwise identify for the contractor, any of the study's findings, conclusions or recommendations. Any deviation from these basic requirements should be considered a breach of the contract.

Accordingly, we direct the utilities to select a competent independent contractor (or contractors) to conduct the LIEE impact evaluation, subject to two requirements. First, the Director of the Energy Division, or the Director's designee, shall review and authorize the release of any reports regarding the LIEE impact evaluation, whether draft or final, prior to their release. Second, the utility managing the contract for the evaluation shall not make the final and retention payments to the contractor(s) selected for the LIEE impact evaluation without review and authorization of the draft and final reports by the Director of the Energy Division, or the Director's designee.

These two requirements shall apply to the LIEE impact evaluations conducted for PY 2002 and beyond, unless otherwise directed by Commission order, and should be clearly stated in all requests for proposals (RFPs) and contracts associated with LIEE impact evaluations .

Comments on Draft Decision

The draft decision of Assigned Commissioner Kennedy and Administrative Law Judge (ALJ) Gottstein was mailed to the parties in accordance with Public Utilities Code Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on October 6, 2003 by PG&E, SCE and jointly by SDG&E and SoCalGas. SDG&E and SoCalGas also jointly filed reply comments on October 14, 2003.

We have carefully considered the comments and have clarified the draft decision in response to these comments. In particular, we clarify the conditions that apply to LIEE load impact evaluations in order to ensure non-biased, independent and accurate results. As explained below, we do not substantively alter the draft decision with respect to the role of Energy Division in the review and approval of contractor reports and payments. However, we do clarify that Energy Division sign-off is required only for the final and retention payments under the contract, in response to utility concerns.

In their comments, the utilities argue that the Commission should rely upon the Measurement and Evaluation (M&E) protocols articulated in D.93-05-063 and subsequent Commission decisions to ensure independent and accurate impact evaluations.[3] However, the M&E protocols prescribe the general technical approaches to be employed in load impact studies and aim to assure independent evaluations on those grounds. The protocols do not address the non-technical areas of contract administration, coordination and study development that involve subjective judgments or decision-making that may also influence the independence of study results. In our judgment, the current process regarding these non-technical areas of contract administration is not working effectively. Additional oversight is needed to ensure the quality and independence of LIEE impact evaluations, consistent with the Commission's obligation to oversee the administration of low-income programs, and to avoid the possibility or appearance of utility manipulation in these important studies.

[3] Subsequent Commission decisions include: D.99-06-052, D.94-10-059, D.95-12-054, D.96-12-079, D.98-03-063.

The additional requirements proposed by this decision do not obviate the technical requirements articulated in the M&E protocols, as suggested by the utilities. In particular, the independent review of the load impact studies provided by the protocols remains unchanged. We concur with PG&E's suggestion that the Office of Ratepayer Advocates' (ORA) retain the option of hiring a third-party contractor for an independent review of these studies, paid for via the public goods charge.[4] Contractors hired to perform LIEE impact evaluations should be notified (e.g., via the RFP and contract terms) that all data, findings, methods, sampling techniques, and impact evaluation results may be subject to an independent review and/or evidentiary hearing.

The utilities also argue in their comments that requiring authorization from the Director of the Energy Division or his/her designee would create uncertainty with regard to a contractor's rights and obligations and thus, hinder the utilities' ability to attract and hire qualified third-party evaluators. The utilities also posit that acquiring such authorization from the Director of the Energy Division or the Director's designee may create additional risk in the contracting process due to delays or withholding payment for services a contractor has performed.

These arguments appear to have some merit and we acknowledge them by amending the original requirements of the draft decision. In this instance, we have made an amendment to accommodate Energy Division staff workload considerations. Specifically, we clarify that Energy Division sign-off on contractor payments is required only for the final and retention payments. The withholding of the final payment and a 10% retention pending satisfactory

[4] PG&E's Comments on Draft Decision, October 6, 2003, p. 4.

completion of the given contract terms is a standard feature of Commission contracts. Such provisions should be included in the utility contracts for the LIEE impact evaluations.

The utilities also argue that the additional oversight and involvement in the LIEE impact evaluation process constitutes micromanagement. In our judgment, the draft decision permits the level of Commission oversight that is routinely employed by the Commission to carry out its regulatory obligation in the low income program and in other areas of Commission jurisdiction. We also note that Energy Division has routinely authorized payments on utility-administered contracts ordered by the Commission without the dire consequences suggested in the utilities' comments.[5] Moreover, there is no undue risk to the contractor for services rendered in an independent manner and in compliance with the terms of the given contract. In our view, the conditions we articulate as necessary for ensuring such independence are not unrealistic expectations to place either on a utility contractor, or on the utility contract administrator.

With the clarifications noted above, we approve the draft decision.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Meg Gottstein is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission needs a competent, independent and objective evaluation of the impact of LIEE programs, based upon sound research methods, quality data and the highest professional standards and practices.

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[5] See, for example, the energy efficiency program implementation contracts pursuant to D.97-02-014, D.97-08-056 and D.01-11-066.

2. Independence and objectivity can be achieved when the utility does not directly or indirectly assert influence over the study methodology or the contractor's project conclusions and findings.

3. The contractor hired to conduct this study will need the utilities to provide the best available data and information about those data upon request, and in a timely manner.

4. The utilities will be contracting with private contractor(s) to conduct the PY 2002 LIEE impact evaluation.

5. The monies expended for LIEE impact evaluations are from public goods charge funds.

6. The M&E protocols are designed to address the broad technical protocols of the load impact studies but do not address the non-technical areas of contract administration, coordination and study development that involve subjective judgments or decision-making that may also influence the independence of study results.

7. Energy Division has authorized payments for utility-administered contracts without the additional risks and delays articulated by the utilities in their comments.

8. The withholding of a retention payment(s) and final payment to the contractor(s) pending the satisfactory completion of the contract scope and terms is consistent with Commission contracting practice and procedures.

9. The contracting and administration requirements directed by today's decision are intended to ensure the quality and independence of LIEE impact evaluations, consistent with the Commission's obligation to oversee the administration of low-income programs.

Conclusions of Law

1. The Director of the Energy Division, or the Director's designee, should approve all LIEE impact evaluation reports prior to their release and should authorize the final and retention payments to the contractor(s) selected to perform the LIEE impact evaluation, before such payments are made by the utilities.

2. The LIEE impact evaluation should be conducted under the conditions required for an independent assessment, as described in this decision.

3. Nothing in today's decision is intended to rescind ORA's authorization to conduct an independent review of load impact evaluations, paid for via the public goods charge per the M&E protocols.

4. In order to provide clear direction to the utilities for their PY 2002 LIEE impact evaluation, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company ("the utilities") shall not make final or retention payments to the Low-Income Energy Efficiency (LIEE) impact evaluation contractor(s) unless such payments have been authorized in writing by the Director of the Energy Division or the Director's designee. As discussed in this decision, the utilities shall retain 10% of all invoiced amounts pending Energy Division approval of final payments.

2. The utilities shall not release any draft or final reports on LIEE impact evaluations prior to obtaining written authorization by the Director of the Energy Division or the Director's designee.

3. To ensure an independent assessment of LIEE program impacts, the utilities and their contractors shall comply with the following requirements:

(a) The utilities shall select contractors who adhere to the highest professional standards and demonstrate expertise in the subject matter, while adhering at a minimum to the State and Commission's conflict of interest rules and procedures.

(b) The utilities shall fully cooperate with the selected contractors in providing the best available, most up-to-date data and the appropriate documentation for these data, and in a timely manner.

(c) Sampling and data collection tasks required for the LIEE impact evaluations shall be conducted by the contractor with the cooperation of the utilities. In circumstances where the contractor cannot for any reason complete the sampling task, sample selection will be carried out in consultation with Energy Division staff. If interviews are required as part of data collection, contractors shall adhere to proper informed consent procedures and employ documentation techniques that are reliable and ensure accuracy.

(d) The utilities shall not unduly influence a contractor's selection of appropriate research methodologies or study sampling techniques and should not define, suggest or otherwise identify for the contractor and of the study's findings, conclusions or recommendations.

(e) Any deviation from the above requirements shall be considered a breach of the contract.

4. The requirements for contracting and administration described in this decision shall be stated in all requests for proposals and contracts associated with LIEE impact evaluations. In addition, contractors hired to perform LIEE impact evaluations should be notified that all data, findings, methods, sampling

techniques, and impact evaluation results may be subject to an independent review and/or evidentiary hearing.

5. Today's decision shall apply to LIEE impact evaluations for program year 2002 and beyond, unless otherwise directed by Commission order.

This order is effective today.

Dated October 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners