

**Dissent Opinion of Commissioner Loretta Lynch
Energy Efficiency Decision 03-08-067**

I dissent from the majority decision for three reasons. First, the majority fails to address a critical component for measuring the true success of any energy efficiency program. Second, the timeframes set in this decision to evaluate future energy efficiency program structures stacks the deck in favor of continued utility administration without a fair chance for other options. Third, the majority's decision runs contrary to the legislative mandates of Assembly Bill 117 (Migden, 2002), which guarantees that local governments have the right to run their own energy efficiency programs. Moreover, last minute changes and procedural short cuts meant that we had little to no time to contemplate or understand the consequences of language inserted into the majority decision the day of the vote.

First, the majority decision does not address a fundamental aspect of this proceeding: evaluation, monitoring and verification (EM&V) of actual energy efficiency program performance. This decision leaves these activities with the utilities. If we learned anything from the myriad business and accounting scandals over the past year, it is that we must separate program operation from program evaluation. Independent EM&V remains a crucial issue for energy efficiency going forward, and whichever entity we select to implement programs in the future, the evaluation and monitoring must be done by independent entities. This decision fails to de-link these two crucial aspects of California's energy efficiency programs. How will we know if California's energy efficiency programs are working, much less improving, if the entities reporting on

program performance have a financial interest in maintaining the status quo?

Second, the majority decision sets deadlines for various EM&V programs in a manner that will predispose the outcome of the long-term administration question. Specifically, this decision states that the Commission will address the question of long-term administration by April 2004. The problem is that this decision also says that the EM&V of the non-utility, or third-party, programs is not due until July 2004. So, the Commission will not have a record with which to evaluate non-utility programs' success or failure. The only data that will be in the record is the evaluation and verification of the utility programs, performed in-house or with captured contractors paid for and directed by the utilities. So the Commission will have only captured EM&V utility programs on its record and an absence of any evaluation of non-utility programs on the record – at the time when we wrestle with the future structure and administration of California's energy efficiency programs and evaluate which programs work and which programs are cost-effective.

This data disparity will create a record that prejudices the question of administration in favor of the utilities and disadvantages the little guy, for example, the cities and counties and small business consultants newly participating in California's energy efficiency programs. Many of the third-parties in this proceeding have limited resources to dedicate to our proceedings while they get the energy efficiency job done. We need to afford these parties an active opportunity not only to participate in the question of long-term administration but also to prove what they have

already accomplished before we make a decision on the future of program administration, whatever direction the Commission chooses. The Commission needs a robust record in order to make a fair and informed decision on the threshold issue in this proceeding.

Third, the majority decision runs afoul of AB 117 (Migden, 2002) and its requirement to open up energy efficiency programs to all providers rather than confining it solely to the utilities. The Commission should consider all program proposals that it receives and judge them individually on the merit, not based on whether they are utility or non-utility programs. I agree with the last-minute changes to the majority decision indicating that there will not be predetermined amounts of funding for utility and non-utility programs, yet the decision still appears to prejudge the issue by suggesting that 70 percent of the funding will go to utility programs and 20 percent will go to non-utility programs (with the remaining 10 percent set aside for marketing and outreach). Ultimately, our adherence to AB 117's energy efficiency provisions will be determined by whether the Commission evaluates program proposals at face value or predetermines the outcome by putting them in utility and non-utility baskets with pre-set amounts of funding available.

The Commission would have benefited from more time to work these issues out before we voted on this decision, which is monumental in setting in stone energy efficiency policy for over \$500 million worth of programs for the next two, critical years. The need for more time and more work is clear from both the many last-minute changes and the statements of my fellow Commissioners Brown and Wood that this

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decision was not ripe and could use some additional work. I share the goal of all Commissioners in moving forward in energy efficiency. But, what I have learned in the past is that when the Commission moves forward too fast, as at the height of the energy crisis, we create unnecessary hurdles for ourselves along the way. The Commission needs to be working hard to smooth those hurdles out and to give all parties a fair shot at proving that their programs work so that we get the maximum bang for California's energy efficiency buck.

Dated August 21, 2003, San Francisco, California.

/s/ LORETTA M. LYNCH

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Commissioner

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