Decision 19-03-015 March 28, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 14-07-002
Application of Southern California Edison Company (U338E), San Diego Gas & Electric Company (U902E) and the Natural Resources Defense Council for Rehearing of Resolution E-4792.	Application 16-07-015

DECISION MODIFYING DECISION 17-12-022 ON THE COMMISSION'S OWN MOTION

Summary

This decision modifies Decision 17-12-022 to provide increased flexibility, while maintaining compliance with the statutory budget limit, for year-to-year administrative expenditures in the implementation of the Solar on Multifamily Affordable Homes program. This decision also modifies the funding allocation dedicated for the Commission's Energy Division budget.

This proceeding remains open.

1. Background

Decision (D.) 17-12-022 established the Solar on Multifamily Affordable Homes (SOMAH) program pursuant to Assembly Bill (AB) 693 (Stats. 2015, Chap. 582). As modified by Senate Bill (SB) 92 (Stats. 2017, Chap. 26), the authorized annual budget for the SOMAH program is the lesser of:

- $100,000,000; and
- 10 percent of investor owned utilities' greenhouse gas allowance proceeds (equivalent to 66.67 percent of investor owned utilities' greenhouse gas allowance proceeds for clean energy and energy efficiency projects).[1]

With respect to administrative expenditures, AB 693 requires: "not more than 10% of the funds allocated to the program shall be used for administration."[2] Pursuant to AB 693, in D.17-12-022 the Commission placed a cap of $10 million *annually* on administrative costs in program years in which $100,000,000 is available. D.17-12-022 further provided that "in the event that the auction proceeds are lower, the allowable amount for administrative costs will vary with the amount of money available for the program."[3] Pursuant to D.17-12-022, the electric investor owned utilities (IOUs) (Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Liberty Utilities Company, and PacifiCorp Company) submitted Tier 1 advice letters to establish balancing accounts to record authorized funding, expenditures and incentive payments for the SOMAH program.

On October 11, 2018, San Diego Gas & Electric Company (SDG&E) submitted Advice Letter 3285-E, providing notice of initial one-time information technology (IT) costs, for billing system enhancements that SDG&E estimates to be $1,016,000. SDG&E states these IT costs are necessary for unique billing

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1 California Public Utilities Code Sections 2870(c) and 748.5(c).

2 California Public Utilities Code Section 2870(e).

3 D.17-12-022, at 33.

system enhancements required to implement the virtual net energy metering tariff for the SOMAH program. This amount alone nearly exceeds SDG&E's forecasted available administrative budget for the first year of the SOMAH program (as determined pursuant to D.17-12-022). In future years, these one-time billing IT costs will not exist, and as such, we do not expect there to be similar challenges for SDG&E in maintaining responsibility for program administrative costs in compliance with AB 693's overall limit on administrative expenditures throughout the expected duration of the program.

2. Increased Flexibility for Yearly Administrative Expenditures

The situation described in Section 1 leads us to consider whether to modify D.17-12-022 to provide more flexibility to the electric IOUs in their yearly administrative expenditures for the SOMAH program, while maintaining compliance with the limit established by AB 693. We observe that AB 693 does not impose an annual limit on administrative expenditures. Therefore, removing the annual cap on administrative expenditures established in D.17-12-022, while limiting total administrative expenses to the lesser of (1) the equivalent of $10 million annually over the life of the program and (2) 10 percent of total funds, will comport with the requirements of AB 693. We also observed in D.17-12-022, that "[t]he costs of administration for a statewide program are likely to be more or less uniform from year to year (with the probable exception of the start-up year), even if the available funds are not."[4] We maintain this opinion. For these reasons, and because we are interested in launching the program as soon as practicable, we find it reasonable to remove the annual cap on administrative

[4] D.17-12-022, at 33-34.

expenditures that D.17-12-022 established. We expect that with this added direction the IOUs can, and will, timely finalize the program's statewide administration co-funding agreement with guidance from Energy Division staff.

We acknowledge that providing more flexibility in year-to-year administrative expenditures introduces a risk that the electric IOUs may not fully recover their total administrative expenditures over the duration of the program. As previously described, the funding for SOMAH comes from the utilities' proceeds from allocated greenhouse gas (GHG) allowances and total administrative expenses are limited to 10 percent of the total available funds (or $10 million annually, if total available funds are greater than $100 million). If, for example, a utility's proceeds from allocated GHG allowances are substantially lower than forecasted, such that its total administrative expenditures exceed 10 percent of its total actual budget over the duration of the program, the utility may only recover up to 10 percent of its total actual budget for such administrative expenditures. Any remaining amount of administrative expenditures may not be recovered from the SOMAH budget, pursuant to AB 693 and this decision. We expect the electric IOUs will endeavor to manage their administrative expenditures to the greatest extent possible and employ any other measures within their authority to manage this risk.

Furthermore, while D.17-12-022 found it premature to decide how any funds that have not been spent by the end of the program should be treated, it directed that the treatment of such funds, if any, be the subject of a Tier 3 advice letter submitted by each utility, or of a Commission decision.[5] In response to

[5] D.17-12-022, at 37 (Section 3.5.3 -- IOU Accounting).

comments on the proposed decision, we intend to periodically monitor and examine actual administrative expenses incurred in support of the program, to consider whether to specify a split of available administrative funds between the statewide program administrator (PA) and the electric IOUs, and/or to require the electric IOUs to file reasonableness review applications for recovery of their administrative costs incurred in support of the program. The details of this periodic examination are described in Section 5.

3. Future Audit of IOU Administrative Costs

In D.17-12-022 the Commission required the selected SOMAH program administrator to undergo a periodic audit of program expenditures, in part to ensure "administrative funds are spent in a reasonable and appropriate manner."[6] D.17-12-022 did not address a similar requirement for the IOUs' administrative expenses. We find good reason to provide for such a requirement. The Commission's Energy Division is authorized to coordinate with the Commission's Utility Audits Financial Compliance Branch (UAFCB) or execute a contract with a third-party auditor, to establish an audit or review process for the SOMAH Program, and outline the scope, timeline, and related deliverables. Any audit or review should include, but not be limited to, an accounting of the IOU administrative costs incurred in support of this program. The Commission retains all options for future actions regarding the auditing or review of this program. Options may include directing the IOUs to file reasonableness review applications for recovery of actual costs recorded in the SOMAH balancing accounts, and/or requiring an after-the-fact reasonableness

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[6] D.17-12-022, Appendix B, at 7 (Program Reporting/Data Collection).

review once the duration of the SOMAH Program and the extent of funds used in it are more clearly defined.

4. Modifications to the Energy Division Budget

D.17-12-022 provided up to $2 million per year from the participating IOUs' GHG proceeds be used to reimburse Energy Division for activities related to implementation and oversight of the SOMAH Program.[7] The activities funded by this budget also include preparation of an annual report to the State Legislature as required by Public Utilities Code Section 2870(j)(2); Energy Division staff activities related to the competitive bidding processes required in D.17-12-022; and all evaluation, measurement, and verification (EM&V) activities required of the program.

Energy Division staff has reevaluated its need for funding and determined an annual budget of $500,000 should be sufficient for activities related to implementation and oversight of the SOMAH program, as described above, including the audit or review function described in Section 3. We therefore modify the annual allotment to Energy Division from $2 million annually to $500,000 annually. Funds previously reserved by the IOUs for Energy Division activities should be rolled into the future program year budgets.

5. Comments on Proposed Decision

The Commission mailed the proposed decision to the parties in accordance with Public Utilities Code Section 311 and allowed comments in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. On March 18, 2019, the California Environmental Justice Alliance (CEJA), the Center for Sustainable Energy (CSE), Pacific Gas and Electric Company (PG&E),

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[7] D.17-12-022, Ordering Paragraph 14.

PacifiCorp Company (PacifiCorp), the Public Advocate's Office of the Public Utilities Commission (Public Advocates Office),[8] SDG&E, and Southern California Edison Company (SCE) filed comments. On March 25, 2019, the California Solar and Storage Association (CALSSA), Everyday Energy, CSE, PG&E, SDG&E and SCE filed reply comments.

In opening comments, CEJA, CSE, PG&E, PacifiCorp and SDG&E highlight the fact that uncertainty regarding available administrative funds is a more complex concern than the proposed decision contemplated, emphasizing that the electric IOUs, the statewide PA, and Energy Division would all be drawing from the same, statutorily limited pool of available funds, the total amount of which is a "moving target" as is the overall budget for the SOMAH program, given that AB 693 set a maximum funding amount (*i.e.,* the lesser of $10 million annually and 10 percent of GHG revenues) but did not establish a *minimum* funding amount for the program (*i.e.,* a dollar amount below which program funding may not decline). These parties assert or suggest that removing the annual cap on administrative expenditures will not sufficiently address concerns to the extent that the electric IOUs will finalize the co-funding agreement that is needed to launch the program. CEJA and CSE further assert that removing the annual cap on administrative expenditures will actually limit the scope and services of the program, and thereby jeopardize achievement of the program's goals.

To address this common concern, PacifiCorp and SDG&E on the one hand recommend placing a cap on the statewide PA's administrative budget, noting

[8] Senate Bill 854 (Stats. 2018, Ch.51) changed the name of the Office of Ratepayer Advocates to the Public Advocate's Office of the Public Utilities Commission.

that the statewide PA's forecasted 2019 budget exceeds the 10 percent cap even at the potential maximum overall funding level of $100 million. CEJA and CSE, on the other hand, recommend placing a $15 million cap on the electric IOUs' administrative budgets, asserting "the more successful the SOMAH Program becomes and the higher the participation levels, the more administrative expenses the IOUs will be authorized to charge to the SOMAH Program, which, in turn, will force the SOMAH PA to limit SOMAH Program scope and services."[9] CSE suggests, if the Commission adopts such a cap, the Commission can revisit the cap after 2025, when program funds and costs will be more certain. PG&E recommends two alternatives, the first of which would effectively limit both the statewide PA's administrative budget as well as the overall administrative budget for all of the IOUs, by specifying a percentage split of approximately 80 percent of available administrative funds (after setting aside $500,000 for Energy Division's budget) for the statewide PA, and the remainder to be split among the electric IOUs according to their GHG revenue contribution to the SOMAH program in that year. PG&E further specifies that any unused IOU administrative funds from the larger IOUs (PG&E and SCE) could be allocated to the smaller IOUs, and "[o]nce all IOU SOMAH-related costs are recovered,"[10] any remaining amount could be added to the SOMAH incentive budget.

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9 *Comments of Center for Sustainable Energy® Regarding the Proposed Decision Modifying Decision 17-12-022 on the Commission's Own Motion*, filed March 18, 2019 (CSE opening comments), at 3; and *Comments of the California Environmental Justice Alliance Regarding the Proposed Decision Modifying Decision 17-12-022 on the Commission's Own Motion*, filed March 18, 2019 (CEJA opening comments), at 3.

10 *Pacific Gas and Electric Company (U 39 E) Opening Comments on the Proposed Decision Modifying Decision 17-12-022 on the Commission's Own Motion*, filed March 18, 2019, at 3.

In reply comments, SCE rejects both CSE/CEJA's and PG&E's recommendations, asserting both are arbitrary. SDG&E also opposes both recommendations because, by its calculations, neither option "guarantees" SDG&E will be able to recover its "authorized" administrative budget; SDG&E does not, however, offer a viable alternative for how to effectively resolve the administrative funding concern.

We clarify here that none of the electric IOUs' administrative expenses in support of the SOMAH program are authorized for cost recovery at this time. The electric IOUs' advice letters establishing SOMAH balancing accounts are currently effective, but the IOUs' forecasted administrative expenses, provided in supplemental submissions in response to Energy Division's request for further details, do not constitute budget authorization. We also take this opportunity to re-set expectations regarding IOU recovery of administrative expenses incurred in support of the SOMAH program. Although D.17-12-022 states "the SOMAH Program administrative budget ... includes funding for ... internal utility administrative activities directly attributable to the program,"[11] this does not mean the utilities are entitled to cost recovery, as SDG&E asserts. The objective reality is that overall administrative expenses are limited by statute; D.17-12-022 confirms this. A utility's expenses in support of the SOMAH program, even if found to be directly attributable to the program, may not be entirely recovered pursuant to the statutory limit.

A non-trivial amount of uncertainty is inherent in the SOMAH program: available funds, both annually and throughout the duration of the program;

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[11] D.17-12-022, at footnote 47.

actual participation levels; and actual costs incurred to implement and support the program. Although we do not entirely agree with SCE that CSE/CEJA's and PG&E's recommendations are arbitrary, attempting to specify either a dollar-amount cap or a percentage split under so much uncertainty may not resolve the administrative funding concern. We will not at this time specify a split of available funding between the statewide PA and the electric IOUs but may do so in the future based on information regarding the actual implementation and actual costs incurred to reasonably administer and support the SOMAH program. Both the statewide PA and the electric IOUs must cooperate fully with Energy Division staff in providing information necessary to assess available funds and to determine the adequacy of funding for the statewide PA to reasonably implement the program and for the electric IOUs to reasonably support the program.

Several parties also recommended varying modifications to the proposed decision regarding Commission review of the reasonableness of the electric IOUs' administrative expenditures for the SOMAH program. CSE and CEJA recommend the Commission require annual or semi-annual Tier 3 advice letters in which the IOUs explain their administrative costs that are directly attributable to the SOMAH program. Similarly, the Public Advocates Office recommends Tier 2 advice letters in 2021 detailing administrative costs for the program. The Public Advocates Office further recommends the Commission require the IOUs to file applications for recovery of actual costs incurred for the program. And SCE recommends modifying the proposed decision to specify that reasonableness review of IOUs' administrative costs shall be part of the IOUs' annual Energy Resource Recovery Account (ERRA) review proceedings. In general, we agree with CSE, CEJA and the Public Advocates Office's reasoning that leaving a review of the IOUs' administrative expenditures to the end of the program does not allow an opportunity for necessary examination and possible course correction, and given the funding constraints of the program, it is reasonable to provide for such opportunity. This is part of the reason we retain the option to specify the split of available funds for reasonable administrative expenses between the statewide PA and the electric IOUs, as discussed above. We also retain the option to direct the electric IOUs to file applications for recovery of administrative expenses incurred to support the SOMAH program. To inform our determination, we will require the electric IOUs to jointly file and serve semi-annual reports detailing their administrative expenses incurred in support of the SOMAH program. The initial report shall be due July 21, 2019 and shall detail administrative expenses incurred since the initial date of administrative activities in support of the program, through June 30, 2019. All subsequent reports shall detail administrative expenses incurred in support of the SOMAH program for the preceding six full months (e.g., the report due January 21, 2020 shall detail expenses incurred from July 1, 2019 through December 31, 2019) and should show cumulative totals. The electric IOUs shall jointly file and serve these reports pursuant to a reporting template that Energy Division staff will develop within 60 days after the issue date of this decision.

CSE and CEJA further request the Commission explicitly direct the IOUs to execute the co-funding and incentive agreements in this decision. In reply comments, PG&E warns against such a requirement, at least "until the essential issues connected with those agreements are addressed by the Commission."[12] As

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[12] *Pacific Gas and Electric Company (U 39 E) Reply Comments on the Proposed Decision Modifying Decision 17-12-022 on the Commission's Own Motion*, filed March 25, 2019, at 2.

discussed above, the essential issues associated with administrative funds may not be fully resolvable until after the statewide PA has begun implementing the program. However, with the additional direction provided in this decision, it is reasonable to direct the IOUs to execute the necessary agreements in order to launch the program.

CSE further requests, due to delays in launching the program, the Commission modify D.17-12-022 to adjust the deadline for the initial evaluation of the program. It is reasonable to remove the 2020 deadline from Ordering Paragraph 13 of D.17-12-022 and provide flexibility with respect to the timing of the initial evaluation, while maintaining compliance with Public Utilities Code Section 2870(j)(1).

CSE further requests we specify the proportion, or the means by which the electric IOUs will determine their respective proportion, of total SOMAH program funds each year. CSE notes that the individual IOUs' advice letters detailing the amounts they each would contribute to the SOMAH program totaled more than the statutory limit of $100 million. CSE recommends each IOU's contribution be determined as their respective proportion of the sum of the original amounts included in the IOUs' advice letters. We confirm, pursuant to Ordering Paragraph 7 of D.17-12-022, each electric IOU shall contribute its proportionate share of $100 million (in years when the sum of the IOUs' available funds equal or exceed $100 million) for management of the program, to be calculated based on its share of allowance sale proceeds over the previous four quarters. PG&E recommends a similar method be applied to the co-funding agreement. To the extent necessary, the IOUs' co-funding agreement may follow the same or a similar method for determining each IOUs' share of the statewide PA's administrative expenses.

All other requests or recommendations included in parties' comments are not essential for the purpose of launching the SOMAH program.

6. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Valerie U. Kao and Mary F. McKenzie are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. AB 693 requires that not more than 10 percent of the funds allocated to the SOMAH program shall be used for administration.
2. D.17-12-022 imposes a limit on administrative expenditures for the SOMAH program that is consistent with AB 693.
3. D.17-12-022 imposes a further restriction on annual administrative expenses, such that annual administrative expenditures are limited to the lesser of $10 million and 10 percent of available funding.
4. Modifying D.17-12-022 to remove the cap on annual administrative expenditures, while limiting total administrative expenditures to the lesser of (1) $10 million annually throughout the duration of the program and (2) 10 percent of total funds, will comport with the requirements of AB 693.
5. Determination of total incentive and administrative costs incurred by each IOU will facilitate determination of compliance with AB 693's administrative funding cap.
6. D.17-12-022 required the SOMAH program administrator to submit to a periodic audit of administrative expenses but did not address a similar requirement for IOU administrative expenses.
7. An annual budget of $500,000 is sufficient for Energy Division activities related to implementation and oversight of the SOMAH program.

8. A non-trivial amount of uncertainty is inherent in the SOMAH program; specifying a split of available administrative funds under so much uncertainty may not sustainably resolve the administrative funding concern.

Conclusions of Law

1. D.17-12-022 should be modified as reflected in Appendix A of this decision.

2. It is reasonable to authorize Commission staff to establish an audit or review process for the SOMAH Program, and outline the scope, timeline, and related deliverables. Any audit or review should include, but may not be limited to, an accounting of the IOUs' administrative costs incurred in support of the SOMAH Program.

3. The statewide PA and the electric IOUs should cooperate with Energy Division staff in providing information necessary to assess available funds and to determine the adequacy of funding for the statewide PA to reasonably implement the program and for the electric IOUs to reasonably support the program.

4. We should regularly monitor and examine the electric IOUs' administrative expenditures, throughout program implementation, to consider budget modifications that may be necessary to better achieve the program's goals and maintain compliance with Public Utilities Code Section 2870.

O R D E R

IT IS ORDERED that:

1. Decision 17-12-022 is modified as reflected in Appendix A of this decision.

2. The Commission's Energy Division is authorized to coordinate with the Commission's Utility Audits Financial Compliance Branch or execute a contract with a third-party auditor, to establish an audit or review process for the Solar on

Multifamily Affordable Homes (SOMAH) Program, and outline the scope, timeline, and related deliverables. Any audit or review must include, but not be limited to, an accounting of the investor owned utilities' administrative costs incurred in support of the SOMAH Program.

3. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Liberty Utilities Company, and PacifiCorp Company shall jointly file and serve semi-annual reports detailing their administrative expenses incurred in support of the Solar on Multifamily Affordable Homes Program. The initial report shall be due July 21, 2019 and shall detail administrative expenses incurred since the initial date of administrative activities in support of the program, through June 30, 2019. All subsequent reports shall detail administrative expenses incurred in support of the SOMAH program for the preceding six full months (*e.g.,* the report due January 21, 2020 shall detail expenses incurred from July 1, 2019 through December 31, 2019). The electric IOUs shall file and serve these reports pursuant to a reporting template that Energy Division staff will develop within 60 days after the issue date of this decision. These reports are required until six months after all available incentive funds are issued or January 21, 2031, whichever comes first.

4. Within 30 days after the issue date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Liberty Utilities Company, and PacifiCorp Company shall execute the necessary co-funding and incentive agreements to launch the Solar on Multifamily Affordable Homes Program.

5. This proceeding remains open.

This order is effective today.

Dated March 28, 2019, at San Francisco, California.

MICHAEL PICKER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

Appendix A

Modifications to D.17-12-022 (deletions in strikeout and additions in underlined italics).

At 33:

The second issue, derived directly from the first, is the size of the administrative budget for the program. The statute provides that "not more than 10% of the funds allocated to the program shall be used for administration." (Section 2870(e).) This directive puts a ceiling of *the lesser of:*

- $10 million ~~annually on administrative costs in program years in which $100,000,000 is available;~~ *multiplied by the number of years for which funding is authorized; and*
- *10 percent of total available funds.*

~~I~~*i*n the event that the auction proceeds are lower, the allowable amount for administrative costs will vary with the amount of money available for the program.

At 57:

Up to ~~$2 million~~ *$500,000* per year from the participating utilities' GHG proceeds may be used to reimburse ~~e~~Energy ~~d~~Division for activities related to implementation and oversight of the SOMAH Program. Activities funded by this budget will include, but may not be limited to: Energy Division's preparation of an annual report to the State Legislature as required at Section 2870(j)(3); any Energy Division activities related to the competitive bidding processes required in this decision; and all evaluation, measurement, and verification activities.

Ordering Paragraph 14, new Ordering Paragraph 15, and renumbered Ordering Paragraph 16:

13. Every three years, Energy Division shall select a contractor to conduct measurement and verification of the Solar on Multifamily Affordable Housing program~~,~~ through a Request for Proposal (RFP) process similar to that used for selection of the Program Administrator~~. An initial evaluation will be conducted in time to inform the 2020 report to the State Legislature~~, as required in Section 2870(j)(1). Specifically, the Commission's Energy Division will select the Program Administrator through an RFP process managed by San Diego Gas & Electric Company on behalf of the Commission. The RFP process shall be led by staff from the Commission's Energy Division, and Energy Division staff will make the final decision on the winning bidder.

14. Up to ~~$2 million~~ *$500,000* per year from the Solar on Multifamily Affordable Housing (SOMAH) Program administrative budget may be used to reimburse Energy Division for activities related to implementation and oversight of the SOMAH Program. Activities funded by this amount will include, but may not be limited to: Energy Division's preparation of an annual report to the State Legislature as required at Section 2870(j)(3); any Energy Division activities related to the competitive bidding processes required in this decision; and all evaluation, measurement, and verification activities.

Appendix B, at 3 (Budget):

The *total* administrative budget is capped at ~~a maximum~~ *the lesser* of*:*

- $10M ~~of program funds per year.~~ *multiplied by the number of years for which funding is authorized; and*
- *10 percent of total available funds.*

In accordance with AB 693, Energy Division is directed to provide regular evaluations to the legislature of the SOMAH Program that shall include information on, but not be limited to, the number of projects approved, number of projects completed, number of pending projects awaiting approval, and geographic distribution of the projects. Energy Division is authorized up to ~~$2 million~~*$500,000* per year of the administrative budget to hire an independent contractor through competitive solicitation to conduct, every three years, starting in 2020, a process evaluation of the program and the Program Administrator.