Decision 20-02-029 February 6, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of Energy Efficiency Rolling Portfolio Business Plan.	Application 17-01-013
And Related Matters.	Application 17-01-014 Application 17-01-015 Application 17-01-016 Application 17-01-017

ORDER MODIFYING DECISION (D.) 18-05-041 AND DENYING REHEARING OF DECISION, AS MODIFIED

I. INTRODUCTION

In this Order, we dispose of the application for rehearing of Decision (D.) 18-05-041 (or "Decision"),[1] filed by the Public Advocates Office at the California Public Utilities Commission ("Cal. Advocates").

On June 5, 2018, the Commission issued D.18-05-041, approving the Energy Efficiency Rolling Portfolio Business Plans ("Business Plans") for 2018-2025 of the eight program administrators[2] that were filed in January 2017, except as modified in the Decision. The Decision included a required set of metrics and indicators to track progress towards EE goals at the portfolio and sector levels, and also provided policy

[1] All citations to Commission decisions are to the official pdf versions that are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

[2] Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), Southern California Edison Company ("SCE"), Southern California Gas Company ("SoCalGas"), San Francisco Bay Area Regional Energy Network ("BayREN"), Southern California Regional Energy Network, ("SoCalREN")

Tri-County Regional Energy Network ("Tri-County REN"), and Marin Clean Energy ("MCE") filed applications BayREN, SoCalREN, and Tri-County REN are regional energy networks ("RENs")and MCE is a community choice aggregator ("CCA"). The Commission consolidated these applications as Application (A.) 17-01-013 *et al*.

guidance in various areas. The Decision implemented an interim cost-effectiveness standard for the program administrators' business plans in the ramp or transition years (2018 – 2022). (D.18-05-041 at p. 71.) During those ramp years, Annual Budget Advice Letters ("ABAL") must have a portfolio forecast total resource cost ("TRC") that meets or exceeds 1.0, rather than 1.25, which has been the threshold in the past. (D.18-05-041 at p. 71.) The Decision also requires an additional process for proposed portfolios with a forecast TRC that meets or exceeds 1.0 but not 1.25. (D.18-05-041 at pp. 134-137.)

Cal. Advocates[3] filed an application for rehearing of D.18-05-041. In its rehearing application, Cal Advocates alleges that in issuing the Decision, the Commission erred by: (1) approving energy efficiency portfolios that "cannot be reasonably expected to be cost-effective" and that will unduly burden ratepayers; (2) failing to implement a margin of safety on cost-effectiveness until 2023; and (3) not vacating various rulings during the proceeding. (Rehrg. App. at pp. 4, 9-10, 16.)

SoCalGas, the County of Los Angeles on behalf of SoCalREN, the Joint Parties[4], and the Joint Investor-Owned Utilities (IOUs)[5] each filed responses in opposition to Cal Advocates' application for rehearing. The Coalition for Energy Efficiency filed a response in support of Cal Advocates' application for rehearing on July 19, 2018.

We have considered the allegations Cal. Advocates raised in its application for rehearing. The application for rehearing has identified a particular area where modifications to the of D.18-05-041 are warranted, and we order the modifications set forth in the ordering paragraphs below. Rehearing of D.18-05-041, as modified, is denied.

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[3] The Office of Ratepayer Advocates was renamed the Public Advocate's Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

[4] The Joint Parties are: the Greenlining Institute, MCE, the Natural Resources Defense Council, CA Efficiency + Demand Management Council and the Small Business Utility Advocates.

[5] The Joint IOUs are: SDG&E, SoCalGas, SCE and PG&E.

II. DISCUSSION

A. The interim cost-effectiveness standard adopted by D.18-05-041 for the business plans in the ramp years is lawful.

In its rehearing application, Cal. Advocates argues that the Commission erred because D.18-05-041 approves energy efficiency portfolios that "cannot reasonably be expected to be cost-effective" and that will unduly burden ratepayers. (Rehrg. App. at pp. 6, 9.) Cal. Advocates alleges that the Decision violates Public Utilities Code sections 451 and 381 because the energy efficiency portfolios are not likely to be just and reasonable or cost-effective.[6] (Rehrg. App. at p. 6.) These arguments are without merit.

1. The cost-effectiveness standard for the business plans in the ramp years is consistent with statute.

Section 381(b)(1) mandates that **t**he Commission allocate funds to cost-effective energy efficiency and conservation activities, while section 451 requires that rates are just and reasonable. (Pub. Util. Code, §§ 381, 451.) Additionally, there are additional statutes, including sections 454.5(b)(9)(C) and 2790 that require the Commission to establish cost-effective energy efficiency programs. While these statutes require energy efficiency programs that are cost-effective, they do not contain specific guidance as to what is cost-effective, leaving that specific determination to the Commission's discretion and expertise.

In D.18-05-041, the Commission determined that a forecast TRC that meets or exceeds 1.0 for portfolios in the ramp years (2018 – 2022) was an appropriate and reasonable cost-effectiveness standard. (D.18-05-041 at pp. 71, 145-148.) Cal. Advocates does not indicate how the interim cost-effectiveness standard adopted by the Commission is inconsistent with statutory cost-effectiveness requirements. Rather, it largely reargues its position on the issue, which as discussed below, is not permissible under section 1732.

[6] All section references are to the Public Utilities Code unless otherwise specified.

The Commission's interpretation of the Public Utilities Code, as the agency constitutionally authorized to administer its provisions, is given great weight. (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796.) A party seeking to overturn a Commission decision must overcome a strong presumption of the correctness of the findings and conclusions of the commission. (*Market St. Ry. Co. v. Railroad Commission* (1944) 24 Cal.2d 378, 399.)

The Commission, consistent with its broad authority and discretion, and based on the record, determined that a forecast TRC that meets or exceeds 1.0 for portfolios in the ramp years (2018 – 2022) was an appropriate and reasonable interim cost-effectiveness standard.[7] Cal. Advocates has not demonstrated how the cost-effectiveness standard adopted in D.18-05-041 is inconsistent with the applicable statutes. Therefore, we find that Cal Advocates' contention of legal error is without merit.

2. The cost-effectiveness standard adopted for the business plans in the ramp years does not run afoul of Commission precedent.

Cal. Advocates also argues that the Decision is inconsistent with Commission precedent, citing to several past Commission decisions that adopted TRC ratios higher than 1.0. (Rehrg. App. at p. 5.) However, we choose not to follow those decisions.

Rather we applied Commission precedent set forth in D.14-10-046.[8] In this previous Commission decision, we adopted an interim forecast TRC ratio of 1.0 for 2015

[7] *SCE Final Comments on Energy Efficiency Rolling Portfolio Business Plans* (September 25, 2017) at pp. 5, 10-11; *Opening Comments of SoCalGas* (September 25, 2017) at pp. 10-11; *SDG&E Opening Comments Regarding the Issues Raised in Proceeding* (September 25, 2017) at p. 10; *Natural Resources Defense Council Reply Final Comments on Program Administrator Business Plans and Related Items* (October 13, 2017) at p. 4; *SCE Reply Comments to Various Parties' Final Comments on Energy Efficiency Rolling Portfolio Business Plans* (October 13, 2017) at pp. 8-9; *SDG&E Reply Comments Regarding the Issues Raised In Proceeding* (October 13, 2017) at pp. 1-2.

[8] *Order Instituting Rulemaking Concerning Energy Efficiency Roll Portfolios, Policy, Program, Evaluation, and Related Issues – Decision on Establishing Energy Efficiency Programs and Budgets* [D.14-10-046] (2014).

in recognition of the energy efficiency programmatic policy changes adopted by the Decision. (D.14-10-046 at pp. 109-110.)

Similarly, D.18-05-041 adopted an interim forecast TRC ratio of 1.0 for the ramp years due to various substantial policy changes with regards to the energy efficiency program.

> We set this interim cost-effectiveness standard for the ramp years to enable continuity of energy efficiency activities and to allow third parties to develop and deliver new programs, which are central features of the rolling portfolio framework, while keeping sight of our key long-term objectives (meeting energy savings goals, cost-effectively, and within budget). We remain concerned about the gap between ex ante forecasts and evaluated results, as we previously acknowledged in D.15-10-028. However, multiple changes will be occurring at the same time, including a significant increase in program outsourcing and a new governance structure for statewide administration. Our fundamental intent with both these transitions is to achieve greater energy savings more efficiently, on the premises that (1) third parties will bring innovative strategies to bear on California's energy efficiency market, thereby achieving savings that would otherwise go untapped; and (2) statewide administration of certain programs could yield efficiency benefits in the form of standardized processes and seamless customer experience.

(D.18-05-041 at p. 71.)

D.18-05-041's adoption of an interim cost-effective standard for the business plans is consistent with Commission precedent, namely D.14-10-046, and justified due to substantial policy changes in the energy efficiency program. Therefore, Cal. Advocates' argument of legal error is without merit.

3. The cost-effectiveness standard adopted for the business plans in the ramp years is consistent with the Commission's broad authority.

Cal. Advocates' restrictive interpretation of the statutory language on cost-effectiveness requirements for energy efficiency programs fails to recognize statutory mandates of the Commission to develop and promote energy efficiency programs. Energy efficiency is a cornerstone of California's conservation and emissions reduction

efforts and the legislature has promulgated various statutes to expand and support the development of energy efficiency. For example, in addition to requirements of sections 381, 454.5(b)(9)(C) and 2790, Senate Bill (SB) 350 mandates a "cumulative doubling of statewide energy efficiency savings in electricity and natural gas final end uses of retail customers by January 1, 2030." (Pub Resources Code, § 25310(c).)

The Commission has broad authority to achieve these statutory mandates regarding energy efficiency, "with far-reaching duties, functions and powers" over public utility regulation pursuant to the Constitution and the Public Utilities Code. (See Cal. Const., art. XII; Pub. Util. Code, § 701; *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905.) Section 701 vests the Commission with expansive authority to "supervise and regulate every public utility in the State and do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (Pub. Util. Code, § 701; see also *Southern California Edison Co. v. Public Utilities Com.* (2014) 227 Cal.App.4th 172, 186.)

While the Commission must ensure that energy efficiency programs are cost-effective, it must also ensure that energy efficiency programs are a major component of procurement tools to address energy resource needs. The adoption of appropriate cost-effectiveness standards is an important part of both these duties. Based on the record of the proceeding, the Commission adopted a cost-effectiveness standard for the program administrator's business plans in the ramp years that will assist in achieving compliance with statutory mandates for energy-efficiency.[9] The adoption of this interim cost-

[9] *SCE Final Comments on Energy Efficiency Rolling Portfolio Business Plans* (September 25, 2017) at pp. 5, 10-11; *Opening Comments of SoCalGas* (September 25, 2017) at pp. 10-11; *SDG&E Opening Comments Regarding the Issues Raised in Proceeding* (September 25, 2017) at p. 10; *Natural Resources Defense Council Reply Final Comments on Program Administrator Business Plans and Related Items* (October 13, 2017) at p. 4; *SCE Reply Comments to Various Parties' Final Comments on Energy Efficiency Rolling Portfolio Business Plans* (October 13, 2017) at pp. 8-9; *SDG&E Reply Comments Regarding the Issues Raised In Proceeding* (October 13, 2017) at pp. 1-2.

effectiveness standard is lawful and consistent with the Commission's broad authority. Therefore, Cal Advocates' argument of legal error is without merit.

4. An application for rehearing is not a permissible vehicle for a party to try to relitigate the issues, or to ask the Commission to reweigh the evidence.

Cal. Advocates spends much of its application for rehearing relitigating the energy efficiency cost-effectiveness standard issue, repeating arguments made during the proceeding and asking the Commission to reweigh the evidence. (Rehrg. App. at pp. 6-9.) It also contends the Commission ignores certain evidence in the record. (Rehrg. App. at p. 8.)

An application for rehearing is not a permissible vehicle for a party to try to relitigate the issues, or to ask the Commission to reweigh the evidence. (Rule 16.1 of the Commission Rules of Practice and Procedure (Rule), Cal. Code of Regs., tit. 20, §16.1, subd. (c); §1732; See, e.g., *Order Instituting Rulemaking Regarding the California Renewables Portfolio Standard Program* [D.13-02-037] (2013) at p. 2 (slip op.); *Application of Cal-Ore Telephone Company for Rehearing of Resolution T-17133* [D.10-06-049] (2010) at p. 3 (slip op.).)

The Commission already considered and rejected Cal Advocates' factual arguments and reiterating them in this application for rehearing does not establish error. Additionally, as discussed above, even if the Commission did reconsider Cal. Advocates arguments now, they fail to establish that the Decision erred. Therefore, Cal. Advocates' contention of legal error is without merit.

5. Minor modifications to the D.18-05-041 are warranted to clarify the Decision.

Although Cal. Advocates has not demonstrated that the Decision legally erred, we will modify the Decision to add finding of facts and modify a finding of fact to clarify the Decision's rationale for the adoption of the interim cost-effectiveness standard for the program administrators' business plans in the ramp years.

B. The Decision does not err by not implementing a margin of safety on cost-effectiveness until 2023.

In its rehearing application, Cal. Advocates alleges that the Decision errs by not implementing a margin of safety until 2023. Cal. Advocates alleges error due to the Decision's adoption of an interim forecast TRC ratio that differed from a previous requirement. (Rehrg. App. at p. 10.) These allegations lack merit.

1. D.18-05-041's decision to not implement a margin of safety on cost-effectiveness until 2023 is consistent with Commission precedent.

Cal. Advocates contends that the lack of implementation of a margin of safety until 2023 is inconsistent with Commission precedent. (Rehrg. App. at p. 10.) This contention has no merit.

There is Commission precedent to support the Decision's adopted energy efficiency cost-effectiveness standards. In D.14-10-046, we adopted a forecast TRC ratio of 1.0 for 2015 in recognition of energy efficiency programmatic policy changes included in that decision. (D.14-10-046 at pp. 109-110.) D.18-05-041 does the same due to various substantial policy changes with regards to the energy efficiency program. (D.18-05-041 at p. 71.)

However, we recognize that a portion of Finding of Fact 19 does seem to confuse the issue by indicating that D.18-05-041 does not modify the cost-effectiveness requirements of D.12-11-015. (D.18-05-041 at p. 161 [Finding of Fact 19].) Based on comments, the proposed decision was modified to require an interim portfolio forecast TRC that meets or exceeds 1.0 for the ramp years, rather than a TRC of 1.25. (D.18-05-041 at p. 146.) However, this was not captured by Finding of Fact 19. Therefore, we will modify Finding of Fact 19 to clarify the issue.

2. The changes made to the Proposed Decision were not made in an "arbitrary and capricious manner."

Cal. Advocates argues that the change made to the cost-effectiveness standard in the Proposed Decision based on comments were done in an "arbitrary and

capricious manner." (Rehrg. App. at p. 11.) We reject this argument, as being without merit.

Pursuant to section 311(d), the Commission may, "in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision." (Pub. Util. Code, § 311(d).) In this case, the Commission, upon consideration of comments filed by parties, was persuaded to change the proposed decision to adopt a forecast TRC that meets or exceeds 1.0 for the ramp years, rather than 1.25. (D.18-05-041 at pp. 71, 145-148.)

While Cal. Advocates may disagree with the Commission's change in the final determination of the interim cost-effectiveness standard, that does not mean the change was arbitrary or capricious. The change is supported by the record of the proceeding.[10] Furthermore, the change is consistent with the law and in alignment with the Commission's far-reaching duties and broad discretion. (See Pub. Util. Code, §§ 311(d), 701, 1701.) Therefore, Cal Advocates' argument is without merit.

3. The arguments regarding the interim cost-effectiveness standard and its implication are rejected as an impermissible attempt to relitigate and a request for reweighing of the evidence.

Cal. Advocates also raises several concerns regarding the Decision's interim cost-effectiveness standard and its implementation. (Rehrg. App. at pp. 13-15.) The discussion in these portions of the application for rehearing essentially relitigates the cost-effectiveness standard issue and asks the Commission to reweigh the evidence. As discussed above, an application for rehearing is not a permissible vehicle for a party to try

[10] *SCE Final Comments on Energy Efficiency Rolling Portfolio Business Plans* (September 25, 2017) at pp. 5, 10-11; *Opening Comments of SoCalGas* (September 25, 2017) at pp. 10-11; *SDG&E Opening Comments Regarding the Issues Raised in Proceeding* (September 25, 2017) at p. 10; *Natural Resources Defense Council Reply Final Comments on Program Administrator Business Plans and Related Items* (October 13, 2017) at p. 4; *SCE Reply Comments to Various Parties' Final Comments on Energy Efficiency Rolling Portfolio Business Plans* (October 13, 2017) at pp. 8-9; *SDG&E Reply Comments Regarding the Issues Raised In Proceeding* (October 13, 2017) at pp. 1-2.

to relitigate the issues, or to ask the Commission to reweigh the evidence. (Rule 16.1; Pub. Util. Code, § 1732; see, e.g., *Order Instituting Rulemaking Regarding the California Renewables Portfolio Standard Program* [D.13-02-037] (2013) at p. 2 (slip op.); *Application of Cal-Ore Telephone Company for Rehearing of Resolution T-17133* [D.10-06-049] (2010) at p. 3 (slip op.).)

We already considered and rejected Cal Advocates' arguments regarding the interim cost-effectiveness standard and its implementation. Reiterating these arguments in the application for rehearing does not establish error. Additionally, as discussed above, even if we did reconsider Cal Advocates' arguments now, they fail to establish that the Decision erred. Therefore, Cal Advocates' contention of legal error is without merit.

C. D.18-05-041 did not err by not making a determination as to the rulings that were issued during the pendency of the proceeding.

Cal. Advocates asserts the Commission erred because D.18-05-041 did not vacate rulings issued in the proceeding.[11] (Rehrg. App. at p. 16.) Cal. Advocates claims the rulings should be vacated because they are based on errors of law. (Rehrg. App. at p. 16.) This assertion has no merit.

Section 1732 requires a party is required to "set forth specifically the ground or grounds on which the applicant believes the decision or order to be unlawful." (§ 1732). An application for rehearing must set forth specific claims because the applications purpose is "to alert the Commission to a legal error, so that the Commission may correct it expeditiously." (See Rule 16.1(c).)

Additionally, the Commission has ruled that "[s]imply identifying a legal principal or argument, without explaining why it applies in the present circumstances does not meet the requirements of section 1732." (See *Order Instituting Rulemaking to*

[11] Cal. Advocates cites rulings made on February 27, 2018, April 9, 2018 and June 14, 2018. The June 14, 2018 Ruling was made after D.18-05-041 was issued on June 5, 2018.

Consider Adoption of General Order and Procedures to Implement Digital Infrastructure (2006) [D.10-07-050] Cal.P.U.C.2d, p. 19.) As the Commission has previously explained: "We should not be forced to guess how our decisions might be in error by extrapolating from such claims...If the parties do not explain, with specificity, in their applications for rehearing why a decision is in error, we have no opportunity to correct our decisions." (D.10-07-050, *supra,* at p. 20.)

Cal. Advocates' application for rehearing does not comply with the requirements of section 1732 and Rule 16.1(c). Although Cal. Advocates makes specific legal arguments regarding the actual rulings themselves, it does not provide specific citations where the Decision addresses the rulings, and does not explain how the outcome of the rulings affected a specific determination in D.18-05-041. Rather, it seems to argue that the Commission erred because the Decision did not vacate the rulings and that this generally affected Cal. Advocates' due process.

D.18-05-041 did not address the rulings cited by Cal. Advocates. There are no references, discussions or determinations regarding these rulings in the Decision. In fact, the June 14, 2018 Ruling occurred after the issuance of D.18-05-041 on June 5, 2018, so the Decision could not have made any determination on that ruling. Furthermore, Cal. Advocates has not complied with the requirements of section 1732 and Rule 16.1(c) by setting forth specifically how the Decision's failure to vacate the rulings affected a specific determination in the Decision or Cal. Advocates' due process. Therefore, we find that Cal Advocates' allegation of legal error has no merit.

III. CONCLUSION

For the reasons discussed above, good cause does not exist for the granting of rehearing. However, Cal. Advocates' application for rehearing has identified an area where modifications to the Decision are warranted. We modify D.18-05-041 as set forth in the ordering paragraphs below. We deny rehearing of D.18-05-041, as modified.

THEREFORE, IT IS ORDERED:

1. For the reasons stated herein, D.18-05-041 is modified as follows:

   a. Finding of Fact No. 19 shall be modified to read as follows:

"D.12-11-015 requires "the dual test for overall portfolio cost effectiveness, taking into consideration passing both the TRC and PAC tests for each service territory and for the entire approved portfolio, including RENs, will continue to govern the CPUC's cost-effectiveness for the energy efficiency programs." D.12-11-015 further specifies (a) omitting the costs and benefits of the IOUs' codes and standards advocacy work and spillover effects, and (b) setting a higher TRC threshold, of 1.25, as the basis for determining cost-effectiveness of the proposed portfolios on an ex ante, or forecast, basis."

b. The following shall be added as Finding of Fact No. 80:

"It is reasonable to allow time for a thoughtful examination of energy efficiency cost-effectiveness policy as it relates to the Commission's other energy efficiency policy goals."

c. The following shall be added as Finding of Fact No. 81:

"In order to afford more time and flexibility for new programs and/or new third party implementers to develop cost-effective programs, it is reasonable modify the cost-effectiveness standard during the ramp years (program years 2019 – 2022) to a TRC of 1.0 to provide additional time and flexibility and clarity on the process for approval of annual budgets."

2. Rehearing of D.18-05-041, as modified herein, is hereby denied.

3. Applications 17-01-013, 17-01-014, 17-01-015, 17-01-016 and 17-01-017 are closed.

This order is effective today.

Dated February 6, 2020, at Bakersfield, California.

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

President Marybel Batjer, being necessarily absent, did not participate.