

Decision 22-10-028 October 20, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Policies, Procedures and
Rules for the Self-Generation Incentive
Program and Related Issues

Rulemaking 20-05-012

**DECISION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY'S
PETITION TO MODIFY DECISION 22-04-036**

Summary

The Commission grants the petition of Southern California Edison Company (SCE) to modify Decision (D.) 22-04-036, *Decision Establishing Heat Pump Water Heater Program Requirements*. Accordingly, D.22-04-036 is modified to allow SCE to transfer the Heat Pump Water Heater program funds to the third-party program administrator/program implementer quarterly, based on: (1) quarterly budgets submitted by the third-party and approved by the Energy Division, and (2) actual, reasonable expenditures supported by quarterly reporting with documentation to the Energy Division.

Rulemaking 20-05-012 remains open.

1. Procedural History

On July 18, 2022, Southern California Edison Company (SCE) filed a petition to modify Decision (D.) 22-04-036 (petition). On August 17, 2022, Center for Sustainable Energy (CSE) filed a response to support the modification sought by SCE and made two additional requests. On August 26, 2022, per the

authorization provided by the Administrative Law Judge, SCE filed a reply to CSE's response.

2. Background

The Commission opened Rulemaking (R.) 20-05-012, *Order Instituting Rulemaking Regarding the Policies, Procedures and Rules for the Self-Generation Incentive Program and Related Issues* on May 28, 2020. D. 22-04-036, issued in R.20-05-012, adopted final budgets, incentive levels and other program requirements for the Self-Generation Incentive Program (SGIP) Heat Pump Water Heater (HPWH) program.¹ Specifically, D.22-04-036 adopted final budgets totaling \$87.4 million for the program, established a single statewide program administrator / program implementer (PA/PI) structure, and directed SCE to conduct the selection process for the PA/PI and then enter a contract with the selected vendor. It also ordered that SCE be responsible for collecting and disbursing the program funding to the PA/PI within 30 days of receipt. Accordingly, SCE is required to transfer \$74.7 million to the HPWH third-party PA/PI in 2023 and the remaining \$10 million in program funds at the end of January 2024.

3. Petition to Modify D.22-04-036

Rule 16.4(b) of the Commission's Rules of Practice and Procedure requires that a petition for modification concisely state the justification for the requested relief and propose specific wording to carry out all requested modifications to the decision. In its petition to modify D.22-04-036, SCE requests that Ordering Paragraph (OP) 5(g) be modified so that SCE does not transfer the full amount of funds received in the SGIP HPWH balancing account or subaccount to the PA/PI within 30 days execution of SCE's contract.

¹ On August 22, 2022, D.22-08-032 was issued to correct several inadvertent errors in D.22-04-036.

In its petition, SCE asserts that the current order “introduces significant, unnecessary risk in the Commission’s oversight of the HPWH program by requiring SCE to transfer a substantial sum of money held in trust for the benefit of investor-owned utility (IOU) electric and gas customers to a third party over whom the Commission has no regulatory jurisdiction.”² SCE also argues that there is no reason for Commission to order the transfer of total HPWH funding to a non-regulated entity, in advance of any need to spend that amount of funding to implement the program and pay incentives. To support its request, SCE lists potential risks created by the current order. Specifically, the unregulated third-party could: (1) experience financial distress or bankruptcy while in possession of customer funds that could potentially be used to pay other debts of the PA/PI; (2) fail to perform material contract terms, and, given SCE’s role as contract holder, litigation to claw back funds could be time-consuming, costly and difficult; and (3) engage in fraud or malfeasance with no regulatory remedy, but mere contract damages, available to SCE or the Commission.³ Given these risks, SCE argues, if OP 5(g) remains unchanged, neither the Commission nor SCE will be able to adequately “[s]afeguard the SGIP HPWH funds, disburse funds only for authorized program activities as described here, and provide an audited accounting of the funds . . .” as required by the Decision’s OP 5(i).⁴

SCE requests that the existing OP 5(g) be replaced with a directive that SCE transfer program funding to the third-party PA/PI quarterly, based on: (1) quarterly budgets submitted by the third party and approved by the Energy Division, and (2) actual, reasonable expenditures supported by quarterly

² Petition at 1.

³ Petition at 2.

⁴ Petition at 2.

reporting with documentation to the Energy Division. SCE also requests that “the initial transfer should be an amount reasonably required by the third-party PA/PI, as determined by the Energy Division, to operate during the first quarter of the program implementation year. The modification should require adequate, ongoing supporting documentation from the PA/PI, including an attestation, to demonstrate that it has used the disbursed funds only for authorized program activities.”⁵

In its response, CSE agrees with SCE that the directive provided in OP 5(g) is neither prudent nor necessary to guarantee the timely payment of incentive funds to program applicants.⁶ CSE supports the quarterly forecasting process described by SCE in its Petition for Modification, with a modification that would allow the SGIP HPWH PA/PI to request an off-cycle advance of additional funds if actual program participation outpaces the forecasted amount of funds. Specifically, CSE requests that: (1) SCE’s proposed quarterly invoicing process be modified to order the contracting parties to allow for off-cycle requests for additional funds if actual incentive claims outpace anticipated participation in a given quarter; and (2) the PA/PI must also have authority to issue incentive payments prior to review of supporting documentation by SCE or Energy Division.⁷

In its reply, SCE does not oppose, in concept, providing the PA/PI a contractual right to request off-cycle advances more often than quarterly, but SCE prefers that the Commission allow the parties, which include Energy Division Staff, to negotiate the specific contractual terms, rather than mandating

⁵ Petition at 2.

⁶ CSE Response at 1.

⁷ CSE Response at 3.

further details in the Decision. SCE also opposes CSE's recommendation that the Commission grant the PA/PI authority to issue incentive payments prior to review of supporting documentation by SCE or Energy Division in order to ensure timely incentive payments. In SCE's view, it is inappropriate for California customers to assume the risk of early incentive payments, and it is unclear whether a PA/PI would be able to recover incentive funds ultimately not approved by the Energy Division Staff. SCE contends that there is no need for the Commission to decide this issue because specific payment terms and required approvals for incentive payments will be the subject of the arms-length commercial negotiation between the bidder(s), SCE as the contract holder, and the Energy Division Staff, as the contract manager.

4. Discussion

Rule 16.4(d) of the Commission's Rules of Practice and Procedure requires petitions for modification to be filed and served within one year of the effective date of the decision proposed to be modified. SCE filed the petition to modify D.22-04-036 within one year of the effective date of D.22-04-036, therefore the petition is timely and complies with Rule 16.4(d).

Upon the review of SCE's Petition, CSE's response, and SCE's reply, the Commission finds the Petition to Modify D.22-04-036 reasonable and grants the relief requested by SCE.

The Commission agrees with SCE and CSE that the directive provided in OP 5(g) is not necessary to guarantee the timely payment of incentive funds to program applicants. SCE's proposed quarterly forecasting process with the initial transfer to operate during the first quarter of the program implementation year is reasonable and should be adequate to ensure timely incentive payments. SCE's proposed modification should also help eliminate potential risks for misuse of

the program funds and allow SCE and the Commission to “[s]afeguard the SGIP HPWH funds, disburse funds only for authorized program activities as described here, and provide an audited accounting of the fund,” as directed by D.22-04-036.

Accordingly, OP 5(g) of D.22-04-36 shall be revised to read as:

5.g. Transfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE’s contracting expenses to the SGIP HPWH PA/PI **on a quarterly basis** within ~~30 days of execution of SCE’s contract with the PA/PI, or within 30 days of receipt of the funds, whichever occurs last~~ **10 business days of the Energy Division’s approval of the SGIP HPWH PA/PI budget for such upcoming quarter, which budget should reasonably forecast the PA/PI’s expenditures during the upcoming quarter and account for actual, reasonable expenditures incurred to date and any existing unspent, unallocated funding in the PA/PI’s possession and require the PA/PI to provide the Energy Division and SCE adequate supporting documentation including an attestation under penalty of perjury by an officer, that it has spent program funding only on authorized program activities;**

The Commission does not adopt CSE’s requests to modify D.22-04-036 to expressly allow off-cycle requests for additional funds and for providing authority to the PA/PI to remit incentives using program funds without prior approvals. It is procedurally improper to raise this new matter in a response to a petition to modify D.22-04-036 since no party other than SCE was provided with the opportunity to comment on the request. Second, while the Commission supports expedited processing of incentive claims to ensure the success of the program, the Commission finds that it is reasonable and administratively more efficient for the negotiating parties to address these contractual details during the

negotiation phase. These contractual details may include any necessary approvals and the timing of incentive payments, and off-cycle requests for additional funds that are not expressly determined by the Commission in D.22-04-036.

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, as provided in Rule 14.6(c)(2) of the Commission's Rules, the otherwise applicable 30-day public review and comment period for this decision is waived.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Nilgun Atamturk is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE timely filed a petition to modify D.22-04-036.
2. The advance transfer of the bulk of the HPWH funding to a non-regulated entity is unnecessary to guarantee the timely payment of incentive funds to program applicants.

Conclusions of Law

1. SCE's proposed modification eliminates potential risks for misuse of the HPWH funds and allows SCE and the Commission to "[s]afeguard the SGIP HPWH funds, disburse funds only for authorized program activities as described here, and provide an audited accounting of the fund," as directed by D.22-04-036.
2. The quarterly invoicing process proposed by SCE is reasonable.
3. SCE's petition to modify D.22-04-036 should be granted.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 22-04-036 filed by Southern California Edison Company on July 18, 2022, is granted.
2. Ordering Paragraph 5(g) of Decision 22-04-036 is modified to read as:
 - 5.g. Transfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE's contracting expenses to the SGIP HPWH PA/PI on a quarterly basis within 10 business days of the Energy Division's approval of the SGIP HPWH PA/PI budget for such upcoming quarter, which budget should reasonably forecast the PA/PI's expenditures during the upcoming quarter and account for actual, reasonable expenditures incurred to date and any existing unspent, unallocated funding in the PA/PI's possession and require the PA/PI to provide the Energy Division and SCE adequate supporting documentation including an attestation under penalty of perjury by an officer, that it has spent program funding only on authorized program activities;
3. Rulemaking 20-05-012 remains open.

This order is effective today.

Dated October 20, 2022, at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
Commissioners