

Decision 23-11-009 November 2, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue the Development of Rates and Infrastructure for Vehicle Electrification.

Rulemaking 18-12-006

DECISION MODIFYING DECISION 22-11-040

Summary

This decision grants the unopposed Petition for Modification filed by Southern California Edison Company in part and modifies Decision 22-11-040, the decision on Transportation Electrification Policy and Investment. This proceeding remains open.

1. Background

Decision (D.) 22-11-040 adopted a long-term transportation electrification policy framework that included a third-party administered statewide rebate program. D.22-11-040 directed Southern California Edison Company (SCE) to contract and manage the contract with a single third-party Program Administrator (PA) to implement the rebate program and conduct Marketing, Education and Outreach (ME&O) activities. D.22-11-040 also indicated that any contract with the selected PA, and any PA subcontracts, must comply with state

contracting requirements, including the California Public Utilities Commission's (Commission) conflict of interest policies.¹

On May 25, 2023, SCE filed a petition for modification of D.22-11-040. SCE seeks to modify D.22-11-040's requirement that any contracts related to the PA must comply with state contracting requirements. SCE argues that requiring SCE, the selected PA, and any of the PA's subcontractors to comply with state contracting requirements is: (1) contrary to statute, (2) not necessary to protect the interests of ratepayers, and (3) inserts significant complexity into the contracting process.² Based on these arguments, SCE asserts that the Commission should modify the D.22-11-040 to remove all language requiring compliance with state contracting law by SCE and the PA.³ Since SCE filed the petition for modification within one year of the decision, it is timely and complies with Commission Rule of Practice and Procedure (Rule) 16.4(d).

On June 26, 2023, San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) filed a joint response to SCE's petition for modification generally supporting the modifications requested by SCE. No other parties submitted responses.

2. Requested Relief

SCE argues that D.22-11-040's requirement that SCE, the PA and the PA's contractors comply with state contracting requirements is: (1) contrary to statute, (2) not necessary to protect the interests of ratepayers, and (3) inserts significant

¹ See D.22-11-40 at 164; Finding of Fact 107; Conclusions of Law 93 and 101.

² SCE Petition for Modification of D.22-11-040 at 2.

³ SCE requests removal of language from the body of the decision as well as in the Findings of Fact and Conclusions of Law.

complexity into the contracting process.⁴ SCE indicates that as a general matter, the Commission does not require SCE or its contractor's subcontractors to follow state contracting requirements.⁵

SCE asserts that the language in D.22-11-040 requiring compliance with the state contracting requirements should be removed because it is contrary to statute. While SCE agrees that California law regarding public contracting requirements applies when the Commission enters a contract, it asserts that such law does not apply to SCE or the PA. SCE cites to California Public Contract Code section 10103, arguing this statute exempts utility contracting with a third party pursuant to a Commission order from state contracting laws.⁶ SCE asserts that the statute is directly applicable because SCE is a public utility and private entity that is implementing the program pursuant an order of the Commission.

SCE also argues that the Commission should modify D.22-11-040 as requested because the language at issue could have a detrimental effect on the long-term transportation electrification policy framework due to its potential to cause significant practical and operational difficulties.⁷ SCE emphasizes that state contracting laws are complex and requiring the compliance with these laws may dissuade many potential bidders. SCE claims this could result in a smaller the pool of bidders, which could increase costs for customers.⁸

⁴ SCE Petition for Modification of D.22-11-040 at 2.

⁵ *Ibid.*

⁶ SCE Petition for Modification of D.22-11-040 at 4; California Public Contract Code section 10103).

⁷ SCE Petition for Modification of D.22-11-040 at 5.

⁸ *Ibid.*

Based on the concerns raised above, SCE requests modification of D.22-11-040 to remove the following language:

- Page 164, in the body of the Decision: “We further require the [investor-owned utilities’ (IOUs’)] contract with the selected Program Administrator, and any subcontracts with the Program Administrator, to comply with state contracting requirements, including the Commission’s ‘Conflict of Interest’ policies.”
- Finding of Fact 107: “California mandates certain contracting requirements, including the Commission’s ‘Conflict of Interest’ policies.”
- Conclusion of Law 93: “The Commission should require the IOUs’ contract with the selected Program Administrator, and any subcontracts with the Program Administrator, to comply with state contracting requirements, including the Commission’s ‘Conflict of Interest’ policies.”
- Conclusion of Law 101: “The IOUs’ contract with the selected Program Administrator, and any Program Administrator subcontracts, must comply with state contracting requirements, including the Commission’s ‘Conflict of Interest’ policies.”

3. Discussion

In evaluating SCE’s petition for modification, we turn to the statute.

California Public Contract Code section 10103 states:

Work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority is not subject to [the State Contract Act], whether or not done under public supervision or paid for in whole or part out of public funds.

The language of the statute specifies that any work done directly by a utility company pursuant to a Commission order is not subject to the

requirements of the State Contract Act.⁹ Although the statute specifies that the work at issue be done “directly” by the utility, we find in this specific circumstance that it reasonable to include work done by SCE’s contractors and subcontractors within the definition of “directly.” Based on this interpretation, we find that SCE’s statutory argument has merit in this specific circumstance and that we should modify D.22-11-040 to remove language requiring SCE and the PA to comply with state contracting requirements.¹⁰

However, we emphasize that although the requirements of the State Contract Act do not apply to SCE, this does not affect the Commission’s engagement and oversight over the PA and any subcontracts with the PA. For example, as part of the selection process for the PA and any subcontractors thereof, the Commission may require additional background information it deems appropriate from SCE, including conflict of interest checks and ongoing ethical walls.

As we have found that SCE’s statutory argument has merit, we decline to address SCE’s secondary arguments regarding potential effects of the language.

4. Conclusion

We find that SCE’s unopposed petition for modification has identified specific areas where modifications to D.22-11-040 are warranted and we will order modifications as detailed in the ordering paragraphs.

⁹ California Public Contract Code section 10103, *et seq.*

¹⁰ As Finding of Fact 107 does not impose such requirements, it will not be removed.

5. Waiver of Comments Period

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

6. Assignment of the Proceeding

Alice Reynolds is the assigned Commissioner and Marcelo Lins Poirier and Colin Rizzo are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. D.22-11-040 adopted a long-term transportation electrification policy framework.
2. The long-term transportation electrification policy included a third-party administered statewide rebate program and directed SCE to contract and manage the contract with a single third-party PA to implement the rebate program and conduct ME&O activities.
3. D.22-11-040 required SCE's contract with the selected PA and any subcontracts with the PA comply with state contracting requirements, including the Commission's conflict of interest policies.
4. SCE is a public utility.
5. The PA is a private entity.
6. No party filed an opposition to SCE's petition for modification.
7. SDG&E and PG&E filed a joint response supporting SCE's petition for modification.

Conclusions of Law

1. SCE's petition for modification complies with Rule 16.4(d).
2. The Commission is subject to California contracting laws.

3. California Public Contract Code section 10103 specifies that a utility contracting with a third party pursuant to a Commission order is not subject to the state contracting requirements.

4. The Commission has broad authority with respect to engagement with and oversight of the PA and any subcontracts with the PA, and this authority should be reflected in D.22-11-040.

5. Pursuant to California Public Contract Code section 10103, the Commission should grant SCE's petition for modification and remove the requiring compliance with state contracting requirements by SCE and the PA.

6. Since no party filed a response opposing SCE's petition to modify D.22-11-040 was filed, and because this decision grants the relief requested, the comment period for this decision is waived pursuant to Rule 14.6(c)(2).

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 22-11-040 filed by Southern California Edison Company on May 25, 2023, is approved. For the reasons stated herein, Decision 22-11-040 is modified to remove the following language:

- (a) Page 164: "We further require the IOUs' contract with the selected Program Administrator, and any subcontracts with the Program Administrator, to comply with state contracting requirements, including the Commission's 'Conflict of Interest' policies."
- (b) Conclusion of Law 93: "The Commission should require the IOUs' contract with the selected Program Administrator, and any subcontracts with the Program Administrator, to comply with state contracting requirements, including the Commission's 'Conflict of Interest' policies."

- (c) Conclusion of Law 101: “The IOUs’ contract with the selected Program Administrator, and any Program Administrator subcontracts, must comply with state contracting requirements, including the Commission’s ‘Conflict of Interest’ policies.”
- 2. Decision 22-11-040 is modified to insert the following language:
 - (a) Conclusion of Law 93: “The Commission has broad authority with respect to engagement with and oversight of the Program Administrator and any subcontracts with the Program Administrator.”
- 3. Rulemaking 18-12-006 remains open.

This order is effective today.

Dated November 2, 2023, at Sacramento, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners