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Decision 11-12-035 December 15, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.	Rulemaking 11-10-003 (Filed October 6, 2011)

PHASE 1 DECISION ESTABLISHING INTERIM RESEARCH, DEVELOPMENT AND DEMONSTRATION, AND RENEWABLES PROGRAMS FUNDING LEVELS

Table of Contents

PHASE 1 DECISION ESTABLISHING INTERIM RESEARCH, DEVELOPMENT AND DEMONSTRATION, AND RENEWABLES PROGRAMS FUNDING LEVELS

1. Summary

Funding authorized in Public Utilities Code Section 399.8, which currently governs the system benefits charge (also known as the public goods charge), expires as of January 1, 2012. Public benefits provided by the expiring funding are in the areas of energy efficiency, renewables, and research, development, and demonstration (RD&D).

This rulemaking addresses funding and program issues related to the renewables and RD&D portions of the expiring system benefits charge funding. Issues related to the expiration of energy efficiency funding will be handled in the Commission's ongoing proceedings related to energy efficiency, currently Rulemaking 09-11-014.

This decision institutes a new surcharge, known as the Electric Program Investment Charge (EPIC), to fund renewables and RD&D programs. The levels and allocations for the EPIC will be at the same levels as for the current public goods charge, after subtracting the energy efficiency component. The EPIC is instituted on an interim basis, subject to refund, until policy, programmatic, governance and allocation issues are decided in Phase 2 of this Rulemaking.

2. System Benefits Charge (or Public Goods Charge) Purpose and History

Beginning with the deregulation of the electricity industry in California in 1996 under Assembly Bill (AB) 1890 (Stats 1996, ch. 854), the concept of a system benefits charge or public goods charge (PGC) was mandated by statute. Conceptually, the Legislative purpose was to guarantee funding for necessary activities that may not otherwise be supported during a move toward competitive wholesale and retail markets for electricity.

Originally, covered activities included energy efficiency, low-income energy efficiency, low-income rate discounts, renewables investments, and research, development, and demonstration (RD&D) investments. Intervening statutory changes have resulted in removal of low-income energy efficiency and rate discount programs from system benefits charge funding (low-income programs and discounts are now funded and covered under separate statutory requirements); the renewables and RD&D provisions have also been modified several times since 1996. The most significant change was the termination of the Supplemental Energy Payments program for renewables in 2007, transferring responsibility from the California Energy Commission (Energy Commission) to this Commission for administration of "above market funds" for renewables projects.

The current system benefits charge requirements are embodied in Public Utilities Code § 399.8,[1] covering only energy efficiency, renewables, and RD&D activities. The majority share of the PGC funding (approximately $250 million per year) goes to support investor-owned utilities' (IOUs) energy efficiency programs. Those funds are combined with IOU procurement funds to support cost-effective energy efficiency investments overseen by the Commission.[2] The

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[1] All references are to the Public Utilities Code, unless otherwise noted.

[2] There are additional natural gas funds utilized to support natural gas energy efficiency programs from the parallel gas public purpose program fund. Together, the three sources of funds have been combined to support portfolios of energy efficiency programs offered by the natural gas and electric IOUs and oversee by the Commission.

Footnote continued on next page

current rulemaking for energy efficiency policies is R.09-11-014. As stated in the Order Instituting Rulemaking (R.11-10-003), R.09-11-014 is the venue in which we will consider whether and how to replace the energy efficiency funding from the expiring electric system benefits charge.

The funds specified in § 399.8 are charged to customers by each electrical corporation pursuant to § 399.8(b)(1) through a nonbypassable rate component (per § 399.8 (c)(1)) and, pursuant to § 399.8(d), collected by the three largest electrical IOUs regulated by this Commission: Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE). The charges are collected from customers on a volumetric (equal cents per kilowatt hour (kWh)) basis from individual classes of customers. Local publicly owned electric utilities also have similar but separate requirements under § 385, which are not the subject of this rulemaking.

In general, for the IOUs covered by the § 399.8 PGC, the energy efficiency funds have been collected and held by these utilities, and then spent on programs for their customers under the oversight authority of the Commission. The renewables and RD&D program funds have been remitted to the Energy Commission to oversee and administer on behalf of the IOUs and their customers. For the 2011/2012 fiscal year, the Energy Commission's estimated expenditures for PGC-funded RD&D programs are $70.4 million, and $73 million for renewables.

All funds and expenditures for energy efficiency programs are being considered in Rulemaking (R.) 09-11-014.

The funding provisions of § 399.8 sunset as of January 1, 2012.[3] Several proposals were considered by the Legislature in 2011 to extend funding collections and make various modifications to the program oversight structure. However, as of the end of the Legislative session on September 9, 2011, no new law had been passed to renew collection and disbursement of the system benefits charges for energy efficiency, renewables, or RD&D under § 399.8. Thus, without further action, the funding under § 399.8 will end automatically on January 1, 2012.

On September 23, 2011, Governor Jerry Brown sent a letter to Commission President Michael Peevey requesting that we "take action under the Commission's authority to ensure that programs like those supported by the Public Goods Charge are instituted – and hopefully at their current levels. As the Commission goes forward, please take into account the constructive ideas for program reform that were identified during the legislative process as well as ways to create jobs swiftly through investment in energy savings retrofits. We cannot afford to let any of these job-creating programs lapse."

In this new Rulemaking, we will determine whether and how the Commission should act to preserve funding for the public and ratepayer benefits associated with renewables and RD&D activities to date provided by the electric PGC that will be without continued funding on January 1, 2012.

As determined in the R.11-10-003, this proceeding will be handled in two phases. A Scoping Memo was issued by the assigned Commissioner on November 8, 2011. The Scoping Memo determined that Phase 1 of this

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[3] While authorization in § 399.8 to collect the PGC ends on January 1, 2012, the statute does not sunset, and all of its provisions remain law.

proceeding will address the Commission's authority for the continued collection of system benefits charges for the renewables and RD&D purposes, and provide limited guidance as to programmatic objectives and details about how the funds should be used. Phase 1 will also address how those funds, if any, should continue to be collected from IOU ratepayers and for how long.

R.11-10-003 posited a number of questions to parties regarding funding levels, programmatic issues and governance structures for renewables and RD&D programs currently funded by the PGC. As discussed in more detail below, we will explore these questions in more detail in Phase 2 of this proceeding. We also will monitor the legislative process for any further legislation related to the continuation of programs funded by the expiring PGC.

3. Parties' Comments

Comments were filed by parties on October 20, 2011 by Agricultural Energy Consumers Association; Bay Area Biosolids to Energy Coalition; California Building Industry Association; California Farm Bureau Federation; California Energy Efficiency Industry Council (Efficiency Council); California Large Energy Consumers Association/Energy Producers and Users Coalition (CLECA); California Manufacturers and Technology Association (CMTA); Consumer Federation of California (CFC); Division of Ratepayer Advocates (DRA); Greenlining Institute; Ella Baker Center; Green Power Institute (Green Power); Joint Comments of the Green Power Institute/the California Biomass Energy Alliance/the California Forestry Association/Wheelabrator; Joint Comments of the Natural Resources Defense Council/the Union of Concerned Scientists/the Vote Solar Initiative/Sierra Club California/Californians for Clean Energy and Jobs/The Nature Conservancy (Joint Environmental Groups); Joint Comments of Silicon Valley Leadership Group/Clean Tech San Diego/Clean

Economy Network/CALSTART/TechNet/Californians for Clean Energy and Jobs; Joint Watershed Research & Training Center/Pacific Forest Trust; Local Government Sustainable Energy Center; Marin Energy Authority; PG&E; SDG&E; San Francisco Bay Area Rapid Transit District; Solar Alliance; SCE; Sustainable Conservation; The Utility Reform Network (TURN); University of California; and Waste Management.

Reply comments were filed on October 25, 2011 by many of the same parties. A prehearing conference/workshop was held on October 27, 2011.

Many parties support continuing funding for the RD&D and renewables programs currently funded by the PGC. Many parties seek continuation of funding for some or all of these programs at the current levels. Several parties, including DRA and Joint Environmental Groups, contend that the Commission has authority to continue funding these programs, as discussed in Section 4.1 below.

DRA recommends continuation of funding for an interim period for those projects that are already supported by the renewables and RD&D programs administered by the Energy Commission until December 31, 2012 or until the Commission can fully determine how the programs should be funded and administered in Phase 2 proceedings for R.11-10-003. Other parties support a longer interim funding period, such as five or ten years. DRA believes bridge funding will provide continuity for already budgeted and approved projects for 2011 and 2012 and allow time for the Commission to establish metrics to prioritize projects and evaluate program effectiveness.

Joint Environmental Groups express the perspective of many proponents of continued funding. They claim California's public interest RD&D investments have produced multiple benefits for electricity ratepayers, resulting in breakthroughs in energy efficiency and renewable energy, clean energy technology, energy security, environmental protection, and significant bill savings. Regarding renewable programs, Joint Environmental Groups believe that there is unique added value to using ratepayer funds to invest in technologies that have moved past the research and development phase, but are not yet mature enough to compete successfully in a Renewables Portfolio Standard solicitation. Supporting such technologies will ultimately create a larger pool of resources for utilities to choose from and create additional and lower cost options for renewable energy investments.

Similar to DRA, TURN recommends that the Commission continue funding for renewables and RD&D programs on a temporary basis until the Legislature acts to provide a permanent funding source, in order to prevent disruptions in current programs administered by the Energy Commission. TURN recommends that the Commission authorize funding to continue through December 31, 2012 at levels sufficient to support expected disbursements under existing program structures.

SDG&E does not object to continuing the funding for existing renewables in place today for those projects already receiving funding. SDG&E does, however, believe it is time to start phasing out this program. SDG&E supports continuation of the New Solar Homes Partnership until its statutory end date, subject to certain reforms. SDG&E would eliminate funding for the Emerging Renewables Program. However, SDG&E also recommends that in place of Emerging Renewables Program funding, incentives should focus on biogas development. SDG&E recommends that RD&D be funded at its current level, but with changes to its current administration.

Several parties do not support continued funding for RD&D and/or renewables programs currently funded by the PGC, at least at current levels. General concerns fall into the areas of Commission jurisdiction and authority, the effect of high rates, cost-effectiveness of programs, overlap of programs, and whether there are direct benefits to ratepayers.

SCE raises a number of concerns about the legal authority for the Commission to continue funding for RD&D and renewables programs currently funded by the PGC. These issues are discussed below in Section 4.1. SCE contends that if the Commission, despite SCE's legal concerns, decides to extend funding for these purposes, it should: (1) only allow funding for programs that are not duplicative of existing renewables and RD&D programs; (2) only allow funding for programs that can be proven effective and support the safe and reliable delivery of electricity for the IOUs' customers; and (3) cap the funding at the level reflected in the IOUs' current rates. SCE does not believe the Commission should continue PGC funding for any renewables energy programs.

CFC is concerned that if a law is not passed to specifically confer authority on the Commission to continue the RD&D and renewables programs currently funded by the PGC, it may be beyond the authority of the Commission to continue these programs as if the law were still in place. Further, assuming authority does exist, CFC contends that it is unfair to have ratepayers pay for programs where ratepayers are not the direct beneficiaries of the programs. CFC believes ratepayers may be paying twice for RD&D programs which are funded through general rate cases, and that it is not appropriate to continue funding existing RD&D programs at current levels after the end of 2011.

CMTA is not certain that any continued funding of renewables and RD&D programs via a nonbypassable surcharge is necessary or appropriate. CMTA would have the Commission wait to fund these activities through such a surcharge until the Legislature acts to amend § 399.8. CMTA contends that high unemployment in California, high utility bills and an overall poor business climate make the continuation of current funding levels for renewables and RD&D programs funded by the PGC an unnecessary add-on to electric rates.

CLECA does not recommend that funding be continued through a public benefits ratepayer surcharge. If the Commission moves forward with a funding proposal for renewables or RD&D programs currently funded through the PGC, CLECA recommends an expeditious review of the ratepayer benefits of the programs. CLECA also recommends establishing separate balancing accounts for each of the three categories of soon-to-expire PGC funding to enable potential reductions to be refunded to customers if a determination is made in 2012 that the continued program funding is not justified.

4. Discussion

In this Phase 1 decision, we will require that current funding levels associated with the public goods charge for RD&D and renewables programs remain in effect on an interim basis through a new surcharge (described in detail below), until we can more fully consider the questions raised in the Rulemaking and the comments of parties. SDG&E recommends that funds should not be collected after January 1, 2012 until program redesign is completed during Phase 2 of this proceeding. We agree that programmatic and governance issues must be considered in Phase 2; however, we agree with Efficiency Council and other parties that it is important that we act in Phase 1 of this proceeding to continue to collect funds at current levels to avoid a curtailment or gap in funding that would put at risk the continued pipeline of new technologies and strategies required to support the state's clean energy and climate goals.

As discussed in detail below, we have the authority to require collection of funds for RD&D and renewables projects. We will require the collections of funds under a new interim surcharge, subject to refund, to prevent potentially confusing variations in rates, avoid (if possible) inefficient changes to utility accounting mechanisms, and ensure there will be adequate funding when we decide exactly which programs should continue, and under what governance structure, in Phase 2. We will require the funds to be collected by the utilities, but held in balancing accounts and accruing interest thereon pending the outcome of Phase 2.

4.1. Legal Authority

4.1.1. Position of Parties

SCE raises the question of whether the Commission has the authority to continue to fund programs currently funded by the PGC. SCE argues that because there are limits on the Commission's legal authority and the Commission cannot act in direct contravention of the Legislature, it is questionable whether the adoption of a PGC to fund Energy Commission-administered programs is within the Commission's jurisdiction. SCE claims that it is also likely that the Commission lacks general legal authority to delegate its administrative and regulatory authority to the Energy Commission.

Further, without citing legal authority, SCE argues that given the Legislature's failure to renew the expiring PGC, a new Commission-imposed PGC would seem to be in direct contradiction to the actions of the Legislature. SCE states that § 399.8(c)(1) explicitly provides that the current PGC is "ending January 1, 2012." Since the Legislature also rejected several proposed bills to extend the PGC in the last legislative session, SCE contends that the Legislature's clear direction was that the PGC should expire on January 1, 2012. Thus, SCE claims there are serious questions whether the Commission has the authority to impose the same PGC the Legislature determined should expire.

SCE contends the Commission recently recognized restrictions on its authority in deferring to the Legislature with respect to the creation of the California Institute for Climate Solutions (CICS). The Commission initially approved the creation of the CICS, a grant-making body to fund research and development to reduce greenhouse gas emissions and slow global warming, through a surcharge on customer bills.[4] Shortly thereafter, the Legislative Counsel of California issued an analysis concluding that the Commission had no constitutional or statutory authority to establish the CICS.[5] After the Legislature passed a bill providing that the Commission shall not establish a research program for climate change unless authorized by statute, the Commission vacated its decision establishing the CICS, stating that "we recognize that our inherent and broad authority is limited when the Legislature acts to impose a specific limit on that authority or otherwise provides explicit direction regarding a particular matter."[6]

DRA believes that the Commission has the authority to continue the PGC in some form, provided the ratepayer funds are used for permissible purposes that are consistent with (1) the Commission's broad authority over public utility service in general, and (2) specific responsibilities conferred by the Legislature,

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4 *See* D.08-04-039.

5 *See* April 28, 2008 Letter from Bradley Webb, Deputy Legislative Counsel, to Senator Don Perata on California Public Utilities Commission: California Institute for Climate Solutions #0812255.

6 D.08-11-060 at 4-5.

including oversight of utility electric procurement and implementation of the renewable portfolio standard and the "loading order."

DRA points out that although the Legislature allowed § 399.8 to sunset, at least one other provision of the Public Utilities Code appears to provide authority to impose a PGC -- Section 381, which has been in effect since 1996.[7] Section 399.8, to which § 381 (c) refers, authorized funding at certain levels, for certain purposes, and also imposed certain funding limits. Although the levels and limits imposed by § 399.8 will no longer be in effect after January 1, 2012, DRA argues that § 381 still directs the Commission to require a separate "rate component" for ratepayer funds collected for the purposes specified in § 381 (b): "programs that enhance system reliability and provide in-state benefits as follows:

> (1) Cost-effective energy efficiency and conservation activities.
>
> (2) Public interest research and development not adequately provided by competitive and regulated markets.
>
> (3) In-state operation and development of existing and new and emerging eligible renewable energy resources, as defined in Section 399.12."

DRA contends that programs that are already supported by the Energy Commission-administered Renewable Energy Program and Public Interest Energy Research (PIER) programs probably fit within categories (2) and (3) above. If so, DRA contends the Commission would have authority to continue the current surcharge to provide a reasonable amount of bridge funding for these programs until it completes its evaluation of the PGC-funded programs in this

[7] AB 1890.

proceeding, or until the Legislature provides further direction. DRA also indicates that it has not identified any state laws which would expressly preclude the Commission from continuing reasonable and justifiable surcharges for public purpose programs.

Joint Environmental Groups argue that the Commission has the general authority to set rates for investor owned public utilities, and the specific ability to consider RD&D costs when setting those rates. For example, through the administrative hearing process, the Commission can "establish new rates, classifications, rules, contracts, or practices or schedule or schedules..."[8] Specifically for the purposes of this proceeding, Joint Environmental Groups point to § 740, under which the Commission has the explicit authority to provide for RD&D in setting rates. Further § 740.1 sets out criteria for evaluating the research and development efforts of gas and electricity providers. Given the plain language of § 740 and the judiciary's willingness to respect the Commission's interpretation of its governing laws, Joint Environmental Groups contend the Commission has solid legal ground for continuing to factor in research and development costs when setting gas and electricity rates.

4.1.2. Discussion

In general, the Commission has clear power to "fix rates, establish rules ... and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction."[9] By statute, the Commission is additionally authorized to "supervise and regulate every public utility in the State and may do all things,

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[8] Pub. Util. Code § 729.

[9] Cal. Const., art. XII, §§ 1, 6.

whether specially designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."[10] Section 451 provides in part that "All charges demanded or received by any public utility…for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable."

The Commission required utilities to provide various public purpose programs and collect funds through rates for many years before the restructuring of the electric industry in California in 1995. D.95-12-063, which initiated the electric restructuring program, noted that:

> California's electric utilities have a long history of participating in activities that assist many California citizens. These activities include rate discounts for low- income individuals, programs to improve economic development, efforts like the Women, Minority, and Disabled Veteran-owned Business Enterprise program (WMDVBE) to improve the procurement practices of regulated utilities, energy efficiency efforts, promotion of resource diversity and development of renewable resources, and the development of statewide guidelines for utility research, development and demonstration (RD&D) efforts. Many of these programs are provided because of Legislative mandate. These programs exceed the basic requirement that a utility provide safe, reliable and reasonably priced electric services, and reflect a recognition that the electric utilities are fundamental to the fabric of our society, deliver a necessary service, and can assist in the achievement of valuable social goals.[11][12]

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10 San Diego Gas & Elec. Co. v. Superior Court, 13 Cal.4th 893, 914-15 (1996), quoting Consumers Lobby Against Monopolies v Pub. Util. Com., 25 Cal.3d 891, 905 (1979).

11 64 CPUC 2nd 1 at 69.

12 Other examples of public purpose costs include the recovery of the California High Cost Fund costs (e.g., D.88-07-022 (1988) 28 CPUC 2d 371, as modified by D.91-05-016 and D.91-09-042) and Universal Service (e.g., D.87-10-088 (1987) 25 CPUC 2d 556); see

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The authority for the Commission to fund such programs before 1996 stemmed from our Constitutional authority, as well as a number of code sections. The Commission has general authority in § 701 to "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." For RD&D, §§ 740[13] and 740.1,[14] added in 1973 and 1984, respectively, together with § 701, provided this authority. These sections remain in effect today, without

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also D.96-10-066 (1996) 68 CPUC 2d 524 (Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of AB 3643).

[13] Section 740 reads: For purposes of setting the rates to be charged by every electrical corporation, gas corporation, heat corporation or telephone corporation for the services or commodities furnished by it, the commission may allow the inclusion of expenses for research and development.

[14] Section 740.1 reads: The commission shall consider the following guidelines in evaluating the research, development, and demonstration programs proposed by electrical and gas corporations:

(a) Projects should offer a reasonable probability of providing benefits to ratepayers.

(b) Expenditures on projects which have a low probability for success should be minimized.

(c) Projects should be consistent with the corporation's resource plan.

(d) Projects should not unnecessarily duplicate research currently, previously, or imminently undertaken by other electrical or gas corporations or research organizations.

(e) Each project should also support one or more of the following objectives:

(1) Environmental improvement.

(2) Public and employee safety.

(3) Conservation by efficient resource use or by reducing or shifting system load.

(4) Development of new resources and processes, particularly renewable resources and processes which further supply technologies.

(5) Improve operating efficiency and reliability or otherwise reduce operating costs.

modification since enactment. For renewables, §§ 701.1[15] and 701.3,[16] codified in 1992 and 1991, respectively, together with § 701, provided authority. These

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[15] Section 701.1 reads: (a) The Legislature finds and declares that, in addition to other ratepayer protection objectives, a principal goal of electric and natural gas utilities' resource planning and investment shall be to minimize the cost to society of the reliable energy services that are provided by natural gas and electricity, and to improve the environment and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, biomass, and geothermal energy.

(b) The Legislature further finds and declares that, in addition to any appropriate investments in energy production, electrical and natural gas utilities should seek to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use and distribution that offer equivalent or better system reliability, and which are not being exploited by any other entity.

(c) In calculating the cost effectiveness of energy resources, including conservation and load management options, the commission shall include, in addition to other ratepayer protection objectives, a value for any costs and benefits to the environment, including air quality. The commission shall ensure that any values it develops pursuant to this section are consistent with values developed by the State Energy Resources Conservation and Development Commission pursuant to Section 25000.1 of the Public Resources Code. However, if the commission determines that a value developed pursuant to this subdivision is not consistent with a value developed by the State Energy Resources Conservation and Development Commission pursuant to subdivision (c) of Section 25000.1 of the Public Resources Code, the commission may nonetheless use this value if, in the appropriate record of its proceedings, it states its reasons for using the value it has selected.

(d) In determining the emission values associated with the current operating capacity of existing electric power plants pursuant to subdivision (c), the commission shall adhere to the following protocol in determining values for air quality costs and benefits to the environment. If the commission finds that an air pollutant that is subject to regulation is a component of residual emissions from an electric power plant and that the owner of that power plant is either of the following:

(1) Using a tradable emission allowance, right, or offset for that pollutant, which (A) has been approved by the air quality district regulating the power plant, (B) is consistent with federal and state law, and (C) has been obtained, authorized, or acquired in a market-based system.

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(2) Paying a tax per measured unit of that pollutant. The commission shall not assign a value or cost to that residual pollutant for the current operating capacity of that power plant because the alternative protocol for dealing with the pollutant operates to internalize its cost for the purpose of planning for and acquiring new generating resources.

(e) (1) The values determined pursuant to subdivision (c) to represent costs and benefits to the environment shall not be used by the commission, in and of themselves, to require early decommissioning or retirement of an electric utility power plant that complies with applicable prevailing environmental regulations.

(2) Further, the environmental values determined pursuant to subdivision (c) shall not be used by the commission in a manner which, when such values are aggregated, will result in advancing an electric utility's need for new power plant capacity by more than 15 months.

(f) This subdivision shall apply whenever a power plant bid solicitation is required by the commission for an electric utility and a portion of the amount of new power plant capacity, which is the subject of the bid solicitation, is the result of the commission's use of environmental values to advance that electric utility's need for new power plant capacity in the manner authorized by paragraph (2) of subdivision (e). The affected electric utility may propose to the commission any combination of alternatives to that portion of the new power plant capacity that is the result of the commission's use of environmental values as authorized by paragraph (2) of subdivision (c). The commission shall approve an alternative in place of the new power plant capacity if it finds all of the following:

(1) The alternative has been approved by the relevant air quality district.

(2) The alternative is consistent with federal and state law.

(3) The alternative will result in needed system reliability for the electric utility at least equivalent to that which would result from bidding for new power plant capacity.

(4) The alternative will result in reducing system operating costs for the electric utility over those which would result from the process of bidding for new power plant capacity.

(5) The alternative will result in equivalent or better environmental improvements at a lower cost than would result from bidding for new power plant capacity.

(g) No provision of this section shall be construed as requiring an electric utility to alter the dispatch of its power plants for environmental purposes.

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sections remain in effect today, without modification since enactment. Nothing in the Public Utilities Code expressly proscribes the Commission from ordering collection of a new surcharge.[17]

In 1995, D.95-12-063 provided for the establishment of new competitive providers of electricity in California. That decision expressed concerns about the effect of the transition to a competitive market on public purpose programs, but expressed a policy to continue to ensure adequate funding for such programs:

> … the continued reliance on utilities to achieve social goals may put the utility at a disadvantage in the move toward a more market-based, customer-oriented electric services industry. Subjecting utilities to the cost of programs that their competitors do not bear may not be a sustainable strategy.[18]

D.95-12-063 proposed a nonbypassable system benefit surcharge, the PGC, on retail sales to fund public goods RD&D and energy efficiency activities, and the establishment of a target level of generation from renewable resources. Before the Commission could impose this surcharge itself, AB 1890 was passed

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(h) No provision of this section shall prelude an electric utility from submitting to the commission any combination of alternatives to meet a commission-identified need for new capacity, if such a submission is otherwise authorized by the commission.

(i) No provision of this section shall be construed to change or alter any provision of commission decision 92-04-045, dated April 22, 1992.

16 Section 701.3 reads: Until the commission completes an electric generation procurement methodology that values the environmental and diversity costs and benefits associated with various generation technologies, the commission shall direct that a specific portion of future electrical generating capacity needed for California be reserved or set aside for renewable resources.

17 *See* Southern California Edison Co. v. Peevey, 31 Cal. 4th 781, 792 (2003); Assembly v. Public Utilities Commission, 12 Cal. 4th 87, 103 (1995).

18 64 CPUC 2nd 1 at 69.

and signed into law. A part of this statute related to public purpose programs was codified in § 381. Section 381(a) states, with regard to certain energy efficiency, RD&D, and renewables programs: "… the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage."

Section 381(c) states: "The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds at the levels and for the purposes required in Section 399.8." Section 399.8 (a) states: " ... in order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made." Section 399.8 established the specific funding levels referenced in § 381 (c).

The funding levels required by Section 399.8 expire on January 1, 2012. Section 381 remains law, although funding for programs under its requirements will soon expire Arguably, the Commission continues to be authorized by this statute to "require each electrical corporation to identify a separate rate component to collect the revenues used to fund (certain energy efficiency public interest RD&D and renewable energy) programs." However, with the expiration of § 399.8, parties question whether the Commission has authority to continue to impose a PCG or PCG-like separate rate component under § 381. The legislative history of § 381 is complex. We will consider this question more fully in Phase 2. However, we need not rely on either § 381 or § 399.8 at this time.

The Commission has both broader Constitutional regulatory authority to do all things cognate and germane to the regulation of public utilities, and specific statutory authority to set regulatory policies regarding RD&D and renewables. At this time, we determine that we have sufficient authority to require the utilities to impose a new surcharge for RD&D and renewables programs under our Constitutional authority, and under §§ 451, 701, 701.1, 701.3, 740, 740.1 and other relevant code sections specific to RD&D and renewables programs and the Commission's ratemaking authority. This authority does not substitute for the expiring funding authority in § 399.8, but provides separate funding authority. Thus, any rates or charges we impose in this order are not a continuation of the § 399.8 system benefits charge, but instead new or different charges for programs within the existing Constitutional and statutory framework.

We now turn to the question of continuing authority to transfer funds to the Energy Commission to administer through programs such as the PIER program and the Existing Renewable Facilities program. The current authority to require the IOUs to remit funds to the Energy Commission stems from Section 384, which provides the Energy Commission with authority to accept funds for use in PIER and manage them under existing PIER rules and regulations. RD&D is within the statutory mandate of the Energy Commission under Public Resources Code §§ 25216(c) and 25401. Additionally, the Energy Commission has the necessary authority under Public Resources Code § 25218 to accept funds, contract and spend funds in accordance with its mandate.

There are precedents for other transfers of funds for Energy Commission administration, subject to this Commission oversight. In D.04-08-010, Ordering Paragraph 18, we selected the Energy Commission over at least three other possible administrators, to administer natural gas RD&D funds.[19] These funds were authorized under Section 890, enacted in 2000, and are separately funded from electric RD&D funds. D.04-08-010 at stated:

> In choosing an administrator for public purpose gas R&D programs, we have considered the arguments, qualifications, and experience of Sempra, UC and CEC. As a starting point, we look to D.95-12-063 addressing electric restructuring, in which we stated 'We do not intend for the surcharge to collect funds to pursue research that the competitive market will provide on its own. **After a transition period, perhaps by January 1, 1998, the funds collected through a surcharge for public goods research should be administered by an independent, non-utility entity**' (footnote omitted; emphasis in original).

D.04-08-010 then stated: "The application of this language to gas R&D leads us to conclude that the administrator should be a non-utility entity." While this decision was, at least in part, based on ease of coordination and synergy with the electric RD&D program authorized under AB 1890, the act of selecting the Energy Commission to administer the natural gas RD&D funds was grounded in this Commission's authority to transfer funds to the Energy Commission for administration of Commission-authorized programs, subject to this Commission's oversight. This authority is independent of Section 399.8 authority for electric RD&D funds, as the natural gas RD&D program was not based on Section 399.8.

PG&E, SDG&E and SCE all question the Commission's authority to select the Energy Commission to administer RD&D investments. The basis of this

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[19] Ordering Paragraph 18 of D.04-08-010 states: "The California Energy Commission is appointed as administrator of the gas R&D program until further action by the Commission."

challenge is a citation to D.06-01-024, a Commission decision on solar programs which decided against Energy Commission administration and oversight of solar programs. However, this citation does not limit the Commission's authority in the manner suggested. The relevant section of D.06-01-024 discusses the limits of the Commission's ability to fully transfer oversight of programs, as distinguished from administration:

> We distinguish program oversight from program administration in this regard. We use the term program oversight to mean those activities that involve formal decision-making on program elements, funding levels and ratemaking, which are the lawful obligations of the Commission or, in the case of the ERP, the CEC. Program administration involves day-to-day operations requiring little discretion and in compliance with state rules and decisions. D.06-01-024 at 9.

This distinction is key: while the Commission cannot delegate its authority and responsibility to determine recoverable costs, program rules, regulations and policies, it does have authority to transfer the day to day administration of a program, as it does with a variety of programs. The Commission can and should accept the input of the Energy Commission in its oversight, planning, rule and policy making, but can and should maintain appropriate responsibility for final authority of the program, particularly in so far as policy and programmatic matters and final funding levels are concerned.

We conclude that we have continued authority to provide funding for RD&D programs, which may be administered by the Energy Commission, through a surcharge other than the existing system benefit charge. We also conclude that we have continued authority to provide funding for renewables programs, which may be administered by the Energy Commission, through a surcharge other than the existing system benefit charge. In the absence of

Section 399.8 funding authority, we must determine what RD&D and renewables programs are just and reasonable and should be funded by a new surcharge, and which of these programs can and should be administered on a day-to-day basis by the Energy Commission.

4.2. Renewables Programs

Currently, the renewables energy portion of the system benefits charge amounts to approximately $73 million annually collected from customers of three electric IOUs. Per each utility's comments, 2011 levels for renewables programs are as follows:

PG&E:	$36.836 million
SCE:	$30.271 million
SDG&E:	$6.520 million

Current funding supports the following general program areas, overseen by the Energy Commission using funds remitted on a quarterly basis from IOUs:[20]

- Existing Renewable Facilities. According to the Energy Commission's website,[21] the purpose of the Existing Renewable Facilities Program (ERFP) is to allocate state funds to increase the competitiveness of existing (operational on or prior to September 26, 1996) in-state renewable generating facilities. For the purpose of the ERFP, self-sustainability refers to the ability of these facilities to continue operation without public funding by no later than December 31, 2011. The ERFP aims also to secure the environmental, economic

[20] More detail on the Energy Commission's renewable activities and spending was presented at a Senate Hearing in March, 2011 and can be viewed at: http://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/03-29-11CEC.pdf.

[21] http://www.energy.ca.gov/renewables/existing_renewables/index.html.

and reliability benefits these facilities provide. ERFP eligible technologies include solid-fuel biomass, solar thermal electric and wind power. The majority of the funding in this program supports payments to existing biomass facilities.

- Emerging Renewables. This program includes payments to small fuel cell, wind, and solar facilities, as well as supporting the New Solar Homes Partnership. According to the Energy Commission's website,[22] payments from the Emerging Renewables Program are intended to reduce the net cost of generating equipment using emerging renewable technologies and thereby stimulate substantial sales of such systems. Increased sales of generating equipment are expected to encourage manufacturers, sellers, and installers to expand their operations and reduce their costs per unit. The Energy Commission temporarily suspended the Emerging Renewables Program effective March 4, 2011.
- Consumer Education. The objective of this program is to help build a viable customer-driven market for renewable power through consumer education. This area also includes assistance to local governments and workforce training.

Many parties have stated that there are significant ratepayer and public benefits associated with the current renewables programs funded by the PGC. Other parties have questioned whether the current renewable programs funded by the PGC provide value to ratepayers. At the same time, there are a number of other Commission programs aimed at supporting a vibrant renewables marketplace and providing the benefits from reduction of greenhouse gases. These programs include the California Solar Initiative, the Renewables Portfolio Standard, and the Self-Generation Incentive Program (SGIP). Beyond renewable energy expenditures anticipated to be made for these programs, there are

[22] http://www.energy.ca.gov/renewables/history.html.

potentially a number of other public purposes and ratepayer benefits that can be achieved via a continuation of current programs funded by the PGC, or via similar programs. These include:

- Market transformation, including activities that will help drive down costs such as developing common technical and performance standards; developing standardized data interface, interconnection, and grid integration standards; uniform metering requirements; streamlined interconnection procedures with common rules or requirements; assistance and streamlining for local permitting; and common approaches to local permits and fees that will drive down this aspect of total installed cost.
- Market facilitation to enable the competitive market place to work more effectively such as making market price transactions transparent to foster greater price competition; proactive designation of preferred renewable resource development locations and transmission corridors; quality control assurances for consumer transactions; and encouraging financing or insurance products and services.
- Workforce analysis and development plans, as needed, to guide educational and workforce training institutions and on-the-job training and apprentice programs to produce a qualified labor force that can support achievement of renewable goals.
- Supplemental funds or subsidies for "low income" households or owners of "affordable housing" to adopt solar solutions and who, absent deeper funding support, are not able to purchase or finance solar technologies at market prices and "mainstream" incentive levels.

In pursuit of its own vision for cleaner air, fuel diversity, and new opportunities for economic development, California has been a pioneer for the last 30 years with its promotion of renewable energy and low carbon technologies. Created in 1998, the Renewable Energy Program has vigorously encouraged investments in renewable energy by providing various rebates and renewable electricity production incentives for new and existing renewable facilities and emerging technologies. With a long-term objective of a competitive and self-sustaining renewable energy industry, the Renewable Energy Program has continued along with the development of the Renewables Portfolio Standard. Overall, the Renewable Energy Programs efforts actively support California's energy policies and Commission energy programs by providing California ratepayers with cleaner sources of energy for their homes and businesses.

Several parties raise a number of concerns about the functions of the renewables programs currently funded by the PGC. In Phase 2, we will determine which of the renewables programs currently funded by the PGC should continue, in present or modified form. At this time, we will continue to collect funds for future renewables programs at approximately the same level as currently collected. We will require the three major IOUs to collect these funds, subject to refund, on an interim basis under a new surcharge, described in Section 4.4 of this decision. However, as described in Section 4.4, we will not require the IOUs to remit these funds to the Energy Commission at this time.

4.3. Research, Development, and Demonstration

Currently, RD&D investments are funded at approximately $70 million annually out of the system benefits charge and administered as the PIER Program by the Energy Commission. Per each utility's comments, 2011 levels for RD&D are as follows:

PG&E:	$35.227 million
SCE:	$28.894 million
SDG&E:	$6.210 million

The Energy Commission also administers a natural gas RD&D program separately funded by approximately $24 million per year in natural gas public purpose program funds. Electric RD&D funds are remitted to the Energy

Commission quarterly from IOUs. Historically, grants and investments for electric RD&D have fallen into the following general categories:

- Energy efficiency and demand response
- Renewables
- Advanced electricity generation
- Transmission and distribution
- Climate/environmental
- Transportation

CLECA contends that the Commission may not order blanket funding for general RD&D that offers only public benefits. CLECA points out that the § 740.1 restricts ratepayer funding for utility RD&D efforts focused on ratepayer benefits that do not "duplicate research currently, previously, or imminently undertaken by other[s]." CLECA is correct about the limits of § 740.1. However, this language substantially describes the types of programs currently undertaken via the PIER program. Further, as discussed above, the Commission has adequate authority through the combination of Constitutional authority and §§ 701, 701.1, 740, 740.1 to require the collection of RD&D funds which are cognate and germane to the regulation of public utilities.

As many parties have stated, there are both ratepayer and public benefits associated with the current RD&D programs funded by the PGC. The Energy Commission's website describes the PIER program as follows:

> The Public Interest Energy Research (PIER) program is the state's premier energy RD&D program, advancing science and technology in the fields of energy efficiency, renewable energy, advanced electricity technologies, energy-related environmental protection, and transmission and distribution, and transportation technologies. To accomplish this, PIER enlists businesses, utilities, energy companies, public advocacy groups, and world-class scientists at California's universities and national laboratories. In the last decade

> PIER has invested more than $700 million to bring to market energy technologies that provide environmental and economic benefits to California's ratepayers.[23]

RD&D activities encompass a number of different and related activities to support technology and strategy development for public interest resources for energy. This area is intended to cover the spectrum between primary research all the way through initial commercialization of technologies. Currently, the majority of this work under the existing PGC mechanism is administered by the Energy Commission PIER program. The federal government, primarily through the U.S. Department of Energy, funds some research related activities, though funding has varied widely in recent years. In addition, the utilities have begun to renew their interest in funding more RD&D work designed to directly address the needs of their customers and the supporting grid. Some of this is done collectively via (e.g.) the Electric Power Research Institute and for gas the Gas Technology Institute.

One goal of public interest RD&D is to ensure that California ratepayers benefit from state-funded research, by advancing science and technology that is not being adequately funded by the private sector. More specifically, RD&D funding should lead to technology advancement and breakthroughs necessary to overcome the barriers that prevent the achievement of state energy policy goals.

Energy RD&D funding is vital to achieving our state's aggressive policy goals related to energy efficiency, renewable energy, petroleum reduction, smart grid integration and reliability, and GHG reductions. Investments in energy RD&D stimulates innovation, attracts new businesses, and create jobs in

[23] http://www.energy.ca.gov/research/index.html.

academia and the private sector. Ratepayers receives the benefit of more cost efficient, lower environmental impact and higher reliability solutions.

One illustrative example is investments in energy efficiency research funded by the PGC that fed into the State's building and appliance efficiency standards. The Energy Commission estimates that seven measures alone save upwards of $1 billion a year, when the actual measures are installed by Californians.[24] Additionally, the existence of PIER has allowed California companies and research institutions to successfully compete for federal funds.

Parties submitted strong comments attesting to the benefits to both ratepayers and the general public derived from the PIER program. In order to ensure continuity and reduce uncertainty, it is both in the ratepayer's interest and the public interest that continued, uninterrupted collection of funds for these types of RD&D programs continue. We are interested in exploring fully the extent to which the PIER program should continue to be funded in part by ratepayers. Several parties have brought up a number of concerns about the functions and governance of the RD&D programs now funded by the PGC; we will consider these issues in Phase 2 of this proceeding. In Phase 2, we will determine exactly what the future funding levels, programmatic guidelines and governance structure will be for RD&D programs.

At this time, we will continue to collect funds for RD&D programs at approximately the same level as currently collected, while we explore how those funds can best be used for ongoing RD&D efforts which are in the ratepayers'

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[24] *See* March 1, 2011, testimony by Laurie ten Hope, California Energy Commission before the Senate Energy Committee.

and public interest. We will require the three major IOUs to collect these finds under a new surcharge, described in Section 4.4 of this decision.

We now give guidance about some issues we intend to address in Phase 2. We agree with the comments of several parties that the PIER program has been successful in many ways, and the benefits of these programs should continue. We also agree with several commentors that there is room for improvement. While we have determined that we have authority to continue funding RD&D programs which are in the ratepayers' and public interest, we intend to consider whether some of the programs currently funded by the PGC are no longer necessary, are no longer in the public interest, or are redundant to other programs. We will then apply such considerations to funding under the new surcharge.

One area we will explore in detail is governance. It is appropriate to consider an effective and efficient governance structure under this Commission's direction which would involve cooperation and coordination with organizations both including and beyond the Energy Commission which have significant expertise in the area of necessary electric industry RD&D, including other relevant state agencies, leading academic institutions in the state, and the electric utilities. With an efficient and effective governance structure, it is likely that the topics of research can be further refined, leading to a more effective use of ratepayer funds.

Other key questions for continuation of electric RD&D funding are 1) to determine the kinds of target activities that should receive California ratepayer funding, as distinct from funding from the federal government, industry, or elsewhere; 2) to determine what entity can best administer RD&D intended to benefit solutions delivered via the utility grid and its operations; and 3) to agree upon appropriate criteria and stakeholder consultation to guide the selection of funded activities.

A potential addition could be the formation of a technical working group to provide detailed input on leading and future areas where electric industry RD&D can be focused. Such an advisory group could consist of representatives of industry in California who could provide input on the commercialization potential of various RD&D efforts (with appropriate safeguard to prevent conflicts of interest).

As described in Section 4.4, we will not require the IOUs to remit the RD&D funds they collect through the new rate component to the Energy Commission at this time.

4.4. The Electric Program Investment Charge

To provide a continuing and consistent level of fund collection for renewables and RD&D programs, we will require the three largest electrical corporations, PG&E, SCE and SDG&E, to impose a new surcharge. This shall be known as the Electric Program Investment Charge or EPIC. This new surcharge will be collected from ratepayers in the same manner as the expiring PGC, except that it will not collect funds for energy efficiency programs. As with the PGC, the EPIC will be recovered through the public purpose program (PPP) rate component of the customer bill. The interim surcharge level for the EPIC will be set at a level to collect approximately the same amount of money as the expiring PGC for renewables and RD&D programs on an interim basis until we can resolve outstanding funding level, programmatic and governance issues in

Phase 2 of this proceeding.[25] We do not prejudge the final policies and programs to be supported by the EPIC; these will be determined by Phase 2 of this proceeding.

The EPIC will be in effect on an interim basis until further action by the Commission, which we anticipate will occur in Phase 2 of this proceeding. However, as suggested by DRA and TURN, this charge should remain in place only for a limited time, until a final Phase 2 decision is issued. Therefore, the interim EPIC will expire on January 1, 2013 if the Commission has not acted to continue or modify it.

We will require each of the three electric IOUs to set up a balancing account for RD&D and renewables programs to be funded by the EPIC. These balancing accounts will track the funds collected for these purposes. Because Phase 2 will determine the level of any funding for the programs to be funded by the EPIC, the funding levels we establish today are both interim and subject to refund.

CLECA recommends that we clarify that, in setting up a charge to collect funds in the same manner as the PGC, we are not changing the current cost allocation methodology. The current cost allocation methodology is on a cost per kilowatt/hour basis which varies by class or rate group. As CLECA points out, changing this methodology would result in cost-shifting among classes. Nothing in this decision is intended to change the current cost allocation methodology.

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[25] In Phase 2, we will consider funding issues regarding whether funds for the New Solar Homes Partnership can be collected from California Alternate Rates for Energy customers, per Section 2851(d)(3), if applicable.

We do not require the IOUs to remit the funds collected through the EPIC to the Energy Commission at this time or to any PGC-funded renewables or RD&D program. While exact figures are unavailable, we understand from our collaborative staff at the Energy Commission that the Energy Commission is likely to have three to six months of funding available as of the end of 2011 for each of its programs currently funded by the PCG. The Energy Commission also has authority to continue activities related to these programs until at least the end of the 20122/2012 fiscal year, ending June 30, 2012. We fully expect and encourage the Energy Commission to use already-collected funds to continue the beneficial purposes of the PIER and renewables programs until we make our final policy, programmatic, funding and governance determinations in Phase 2 of this proceeding.

5. Next Steps

In January 2012, we will provide a staff report for parties to comment upon, with the input of collaborative staff from the Energy Commission. This report will recommend which of the current renewables and RD&D programs, if any, should be funded through the EPIC, as well as any potential modifications to these programs and proposed new programs. This report will recommend which of these particular programs, if any, should be administered on a day to day basis by the Energy Commission and appropriate governance for these programs, consistent with the guidance provided herein. The report will also consider the structure of any programs which should not be administered by the Energy Commission. The report will make recommendations about the appropriate level of ongoing funding for EPIC-funded programs, and thus any changes in the revenues to be collected by the EPIC. The report may also recommend new or different programs which could receive EPIC funding.

We anticipate an initial Phase 2 decision on the recommendations of the staff report and the comments of parties in the first quarter of 2012. There may be a need for subsequent decisions to consider further details and implementation actions.

6. Comments on Proposed Decision

The proposed decision of ALJ Gamson in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 5, 2011, and reply comments were filed on December 12, 2011.

Based on comments, we have made several revisions to the proposed decision, including:

- addition of language regarding the applicability of § 451 to our Phase 2 review of EPIC-funded programs;
- deletion of a Finding of Fact regarding Energy Commission funds;
- deletion of dicta and a Conclusion of Law regarding the test for programs under and policy direction from § 399.8; and
- addition of language clarifying that the EPIC is part of the PPP charge on the customer bill.

We have also made a number of corrections and clarifications, including simplifying the EPIC from two charges to one. Several outstanding Motions for Party Status are granted.

Other comments not addressed through revisions to the proposed decision assert that the Commission has not established the EPIC is just and reasonable or will provide ratepayer benefits, and allege that the EPIC constitutes an unlawful tax.[26] As we have already discussed, the EPIC will be collected only on an interim basis, subject to refund, until the Commission concludes Phase 2 of this proceeding, at which time the Commission intends to have finalized the policies and details concerning programmatic, funding level, and governance matters and particularized ratepayer benefits will be enumerated. Until that time, and under the terms under which the EPIC will be collected in the interim, these comments are premature.

Additional comments raised matters that more appropriately should be raised in Phase 2. These matters include how programs should be structured, focused, or funded and how EPIC funds should be disbursed.[27] We need not finalize these details now but expect to do so at the conclusion of Phase 2 of this proceeding.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and David M. Gamson is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E, SCE, and SDG&E currently assess a system benefit charge known as the public goods charge or PGC that funds, among other things, certain RD&D and renewable energy programs. The authority to collect this charge at current levels ends on January 1, 2012.

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[26] Comments on the Proposed Decision of the CFC, PG&E, and SCE.

[27] E.g., Comments on the Proposed Decision of PG&E and SDG&E.

2. Issues related to energy efficiency programs currently funded by the PCG are being addressed in R.09-11-014.

3. The Commission required various public purpose programs for many years before the restructuring of the electric industry in California in 1995.

4. The Public Goods Charge was first implemented by statute in 1996 in AB 1890. Conceptually, the Legislative purpose was to guarantee funding for activities that may not otherwise have been supported during a move toward competitive wholesale and retail markets for electricity.

5. The current public goods charge for renewables programs provides ratepayer and public interest benefits through the Existing Renewable Facilities, Emerging Renewables (including the New Solar Homes Partnership) and Consumer Education programs administered by the Energy Commission.

6. The current system benefits charge for RD&D programs provides ratepayer and public interest benefits through RD&D grants and investments for energy efficiency, demand response, renewables, advanced electricity generation, transmission and distribution, climate/environmental and transportation provided through the PIER program administered by the Energy Commission.

7. The expiration of the system benefits charge in Pub. Util. Code § 399.8 on January 1, 2012 in the areas of RD&D and renewables will jeopardize the continuance of ratepayer and public interest benefits in these areas in the absence of alternative funding.

8. Despite the expiration of funding for the PGC, § 399.8 remains in effect, to be considered as policy direction. Section 399.8 provides for specific funding levels for "prudent investments in energy efficiency, renewable energy, and

research, development and demonstration," but does not limit itself to programs with ratepayer benefits.

9. Section 451 requires, among other things, that public utility charges be just and reasonable and that every public utility furnish and maintain such adequate, efficient, just, and reasonable service as are necessary to promote the safety, health, comfort, and convenience of its customers and the public.

10. Sections 740 and 740.1, both codifed in 1990, provided authority for the Commission to require ratepayer funding for certain RD&D programs before 1996. Sections 701.1 and 701.3, codified in 1992 and 1991, respectively, provided authority for the Commission to require ratepayer funding for certain renewables programs before 1996. These sections remain in effect today, without modification since enactment.

11. Section 381, enacted in 1996 and amended in 2006, requires that the Commission require each electrical corporation to identify a separate rate component to collect revenues to fund, among other things, certain public interest research and development, and in-state operation and development of certain existing and new and emerging renewable energy resources.
Section 381(c) is linked to § 399.8.

12. Since 2004, the Commission has required that funds collected from ratepayers by gas utilities for natural gas RD&D be remitted from the gas utilities to the Energy Commission.

13. D.06-01-024, in the context of solar programs, discussed the Commission's authority to transfer the day to day administration of a program.

14. After January 1, 2011, the Energy Commission will have approximately three to six months of funding available for the programs currently funded by the PGC.

15. A future phase of this proceeding can determine the appropriate ongoing funding levels, programmatic details and governance structures for renewable and RD&D programs funded until now by the system benefit charge.

16. A staff report, subject to parties' comment, on programmatic, governance and funding levels for programs to be funded by a new RD&D/renewables charge will assist the Commission in Phase 2.

Conclusions of Law

1. Benefits associated with the expiring system benefits charge in § 399.8 in the areas of renewables and RD&D programs should continue to accrue to the ratepayers and citizens of California to the extent that such future programs are just and reasonable and consistent with law.

2. The California Constitution and the §§ 451, 701, 701.1, 701.3, 740, 740.3 provide authority for the Commission to require a surcharge by electrical corporations to ensure continuation of the ratepayer and public benefits associated with the expiring system benefits charge in Public Utilities Code Section 399.8 for renewables and RD&D programs.

3. It is in the public interest to impose an interim surcharge, subject to refund, on distribution customers of electric corporations at the same rates as the expiring system benefits charge in Public Utilities Code Section 399.8 (subtracting out the portion of the rates collected for energy efficiency programs), for renewables and RD&D programs that are just and reasonable, and in the ratepayer interest and the public interest.

4. While the Commission cannot delegate its authority and responsibility to determine rates, program rules, regulations and policies, it does have authority to transfer the day to day administration of a program. This authority does not stem primarily from Section 399.8.

5. Funds collected through a new interim surcharge should be collected by electric corporations for the purposes of funding renewables and RD&D programs in the ratepayer and public interest, but not disbursed until the Commission determines the programmatic, governance and funding levels appropriate for these programs. These funds should be collected subject to refund.

6. A Phase 2 decision, based on a staff report and parties' comments, should be issued as soon as practicable in order to ensure continuation of RD&D and renewables programs with ratepayer and public benefits.

O R D E R

IT IS ORDERED that:

1. Effective January 1, 2012, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall no longer impose the system benefit charge authorized by Public Utilities Code Section 399.8.

2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each institute a surcharge, effective January 1, 2012, to collect funds for: i) renewables programs, and ii) research, development, and demonstration programs. The surcharges shall be imposed on an interim basis, subject to refund, until the Commission issues its final decision at the conclusion of Phase 2 of this rulemaking, or until January 1, 2013 (whichever comes first). The surcharges shall be called the Electricity Program Investment Charge or EPIC.

3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each impose the Electricity Program Investment Charge established by Ordering Paragraph 2 in this decision, on all

distribution customers in the same manner as the expiring system benefits charge associated with Public Utilities Code Section 399.8, for the purposes specified in Ordering Paragraph 2 in this decision. This surcharge shall be set at the same levels per kilowatt/hour as the rates for the system benefits charge, after subtracting the portion of the system benefits charge collected for the energy efficiency programs associated with Public Utilities Code Section 399.8. This surcharge shall reflect the same allocation among classes as the rates for the system benefits charge, and shall be collected in the Public Purpose Program component of rates as with the current system benefits charge.

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each establish a balancing account for the Electricity Program Investment Charge established in Ordering Paragraph 2 of this decision. Each balancing account, to be known as the "EPIC Balancing Account," shall record funds collected from customers through the EPIC charge, at the level commensurate with funds previously remitted to the Energy Commission for renewables programs and research, development and demonstration programs authorized under Section 399.8 for 2011. The funds collected and placed in these balancing accounts, and the interest earned thereon, shall not be disbursed until authorized by the Commission's final decision at the conclusion of Phase 2 of this proceeding. The new tariffs for these balancing accounts shall be transmitted with the advice letter required by Ordering Paragraph 5 of this decision.

5. No later than December 22, 2011, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each file a Tier 1 Advice Letter consistent with Ordering Paragraphs 2 through 4 in this decision, withdrawing (or substituting) the tariff sheets

governing the collection of the Public Goods Charge and submitting proposed new (or revised) tariff sheets authorizing them to collect the EPIC on an interim basis, subject to refund, pending the Commission's final decision in Phase 2 of this proceeding. Subject to review for compliance with the Ordering Paragraphs of this Interim Decision, the new (or revised) tariff sheets shall become effective, and collection of the EPIC shall commence, on January 1, 2012.

6. The Motions for Party Status of Proteus, Inc. and La Cooperativa de Campensina, The National Asian American Coalition, the Latino Business Chamber of Greater Los Angeles and the Black Economic Council; Kern County Taxpayers Association; San Francisco Bay Area Rapid Transit District; and Ecology Action of Santa Cruz, Inc. are granted.

7. Rulemaking 11-10-003 remains open.

This order is effective today.

Dated December 15, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners