Mailed

APR 1 1992

Decision 92-03-085 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Energy Alternatives,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

ORIGINAL

Case 91-05-046
(Filed May 22, 1991)

O P I N I O N

Status of Case

On May 22, 1991, Energy Alternatives (complainant) filed a complaint with the Commission alleging that an "unfair" bid process was conducted by Richard Heath and Associates (RHA), administrators of Pacific Gas and Electric Company (PG&E) "Energy Partners" program, in conjunction with PG&E, in connection with the weatherization contract awarded to Redwood Community Action Agency (RCAA) in PG&E's Humboldt Division, for the 1991 "Energy Partners" program. This program involved the weatherization of approximately 1,600 low-income homes.

Pursuant to notice, a hearing on the complaint was held before Administrative Law Judge (ALJ) Robert L. Ramsey in Redding, on August 16, 1991. At the hearing, the complainant appeared by its president, John T. Seale, PG&E and RHA appeared by counsel, Robert B. McLennan, both parties made opening statements, witnesses were called and examined and cross-examined under oath, seven exhibits were offered and admitted in evidence without objection, and closing arguments were made by each party. Post-hearing briefs were waived by the parties.

Subsequent to the close of the hearing, complainant forwarded for inclusion in the record a letter dated September 19, 1991 from Richard Heath of RHA to Energy Partner Contractors. This letter has been marked as Exhibit 8. PG&E and RHA's attorney has indicated that he has no objection to the admission of this exhibit in evidence. There being no objection, Exhibit 8 is admitted in evidence. The record is now closed and the case stands submitted.

Background

For several years, PG&E has conducted a low-income household weatherization program throughout its various regions or divisions. The "Energy Partners" program is the current version of these long-standing PG&E programs which are designed to help low-income householders cope with high energy bills and enjoy energy conservation benefits. The actual work done under the programs is put out to competitive bid, with separate bids for different geographic areas within PG&E's service territory.

PG&E's "Energy Partners" program targets designated low-income neighborhoods, and attempts, through contractors selected by competitive bid, to weatherize (e.g., install insulation, caulking, weatherstripping, low-flow showerheads and blankets for water heaters) all of the homes in the neighborhood. As part of the bid process for this program, PG&E requires that the winning bidder agree to reserve up to 10% of the number of homes in the bid for out-of-area dwellings that are otherwise eligible. That way, if a low-income customer whose home has never been weatherized seeks weatherization, but is outside the targeted neighborhoods, PG&E can request the winning bidder to contact the customer, and if the customer is found to be eligible, provide weatherization services. As a part of its program, PG&E will, prior to weatherizing a home, make up to $200 in minor repairs, such as replacing broken windows, to make the weatherization feasible and more effective.

The State of California also has a low-income weatherization program which has a similar goal, but there are

significant differences between PG&E's program and that of the State. Under the State program, each recipient of program benefits must meet certain low-income guidelines, and the minor home repair allowance of $700 is much higher than the $200 allowance under PG&E's program. If the cost of minor repair exceeds PG&E's $200 program allowance, that dwelling is ineligible for weatherization under the PG&E program. The dwelling can, however, be made eligible by utilizing the higher minor repair allowance provided for under the State program to make necessary minor repairs, and the house can then be weatherized under the PG&E program. In this manner, both programs can be "leveraged" to maximize the benefit to the customer. This "leveraging" is also referred to as "supplementing" or "dualling."

One very important difference that exists between the programs, however, is that under PG&E's program, the weatherization work may be performed by any contractor who successfully bids the contract, whereas under the State program, the weatherization work can be done only by nonprofit, community-based organizations. Thus, insofar as State-sponsored work is concerned, private contractors are ineligible to participate; whereas both private, for-profit contractors and nonprofit, community-based contractors are eligible to participate in PG&E's program.

Since the inception of PG&E's low-income weatherization program in the early 1980s and that of the State program, it has been the policy of both PG&E and the State to permit community-based organizations to utilize both programs ("leveraging," "supplementing," or "dualling") in the same household as long as the community-based organization does not bill both PG&E and the State for the same work. This allows more low-income homes to be thoroughly weatherized, especially those which require repairs in excess of $200. Private contractors cannot leverage, supplement or dual the programs inasmuch as such contractors are, as noted above, ineligible to participate in the State program.

The point of contention between complainant and PG&E in this case involves one or more telephone contacts between representatives of RCAA and PG&E and/or RHA regarding the 10% out-of-area requirement contained in PG&E's "Energy Partners" Request for Proposal. (Exhibit 1, "Specific Conditions," section 4.2.) According to complainant, the telephone contact(s), took place after a prebid meeting of potential bidders on the "Humboldt project" had been held, but before bids were actually submitted, and that as a result of the contact(s), RCAA received information from PG&E and/or RHA that was of value in preparing RCAA's bid on the project, to the detriment of other bidders who were not given the same information.

According to complainant, the subject of the contact(s) was whether RCAA could satisfy PG&E's 10% out-of-area contract requirement in another area of the State by utilizing the State program rather than the PG&E program, thus allowing RCAA's bid for the PG&E program to be lowered by the amount saved by placing the 10% under the State program. According to complainant, the answer ultimately given to this question was "yes," although this answer was contrary to that given to all potential bidders in the prebid meeting. Further, complainant contends that this information was, as noted above, of importance to all bidders in the preparation of their bids, but was not shared by PG&E, RHA or RCAA with complainant and one McMurray and Sons, the other bidders on the PG&E project, thus giving RCAA an unfair bidding advantage over complainant and McMurray and Sons. RCAA was thereafter named as the successful bidder and was awarded the contract for the weatherization of approximately 1,600 homes under PG&E's 1991 "Energy Partners" program.

PG&E and its administrator, RHA, as well as RCAA admit that after the prebid meeting was held, telephone contacts occurred between Mike Osborne, a PG&E employee, or his secretary, Shirley Laos, and Charles Quillman, a RCAA representative, or his

supervisor, Val Martinez, concerning interpretation of contract provisions, but deny that the subject matter of the contacts involved satisfying the 10% out-of-area requirement of PG&E's program through the use of State funding under the State program as claimed by complainant. Rather, they claim that the contacts concerned only the question of whether "leveraging," "supplementing" or "dualling" of the State and PG&E's programs was allowed under the "Energy Partners" program. In this regard, RCAA's employees testified that while that practice was allowed under earlier contracts, the "Energy Partners" program was a new version of the weatherization program and this was to be the first contract under that new program, and its contact with Osborne were merely to confirm that the practice remained permissible.

It is PG&E's position that: (1) "leveraging," "supplementing" or "dualling" was allowed under the Energy Partners Policy and Procedures manual (Exhibit 3, p. 12, paragraph 6), and the contacts were merely for clarification of that provision; and (2) since RCAA was the only one of the three potential bidders which was a nonprofit, community-based organization, and thus the only one of the bidders eligible to perform work under the State program, the questions regarding "leveraging," "supplementing" or "dualling" were relevant only to RCAA and therefore, neither of the other bidders needed to be advised of the question or its answer.

According to RCAA's employees who testified on behalf of PG&E, the answer given to RCAA merely confirmed that any 10% out-of-area request by PG&E must be performed under the PG&E program, but that the State program could be used to make the home eligible with additional home repairs, and any State-approved incremental measures could also be installed in the house so long as there was no double billing for the same work. Further, according to PG&E, the question and answer, as noted above, were relevant to RCAA only, since RCAA was the only nonprofit, community-based organization bidder in the Humboldt Division

eligible to perform under the State contract. Also, according to PG&E, PG&E representatives communicated both the question and the answer to the other bidders in the Humboldt area, as indicated in Attachment 3 to the complaint, thus no one was prejudiced by the contacts.

Several months following the award of the contract to RCAA, and after roughly 800 of the approximately 1,600 homes in the project had been weatherized by RCAA, a decision was made by RHA which, while not involved directly in this dispute, is relevant to, and affected by it.

By letter dated September 19, 1991 (Exhibit 8), RHA advised all "Energy Partners" contractors that RHA intended to contract with current (1991) Energy Partners contractors for 1992 work. In effect, this meant that no bidding for 1992 work would occur, but that those who were the successful bidders under the 1991 program would get the 1992 work without further bid. Since neither McMurray and Sons nor complainant won 1991 Energy Partners contracts, they are not eligible to participate in the 1992 weatherization program. Thus, if RHA's prebid advice was of a nature which should have been distributed to all potential bidders, was improperly given solely to RCAA, and resulted in an unfair competitive advantage being given to RCAA, its impact on complainant and McMurray and Sons, the only other 1991 program bidders, was not limited to the 1991 program, but extends to the 1992 program as well.

Discussion

The resolution of the controversy involved in this case, and the outcome of the case itself, centers on the conflicting testimony of several witnesses called on behalf of each of the parties. As one would expect under such circumstances, much of what the witnesses testified to was not perceived through the witness' own senses, but through hearsay, surmise, assumptions, and in some cases, through sheer guesswork.

The best evidence of what was said during the telephone conferences involved should logically come from those who were parties to the conversations or had some direct role involving the subject matter of the telephone conversations. In this case, those persons are Quillman, a RCAA employee who made the initial call; Osborne, a PG&E employee who received that call; Martinez, Quillman's supervisor, who made the follow-up call, and Laos, Osborne's secretary, who received that follow-up call. Unfortunately, Laos did not testify and there is no unanimity among the remaining witnesses.

Osborne testified that he was the PG&E employee responsible for all residential programs that PG&E has in its Humboldt Division, including the "Energy Partners" program. He further testified that subsequent to the prebid meeting of potential bidders on the 1991 Humboldt Division Energy Partners contract, he received a telephone call from Quillman, the then weatherization services coordinator for RCAA, requesting information concerning the Energy Partners contract then pending bid. According to Osborne, Quillman asked two questions: (1) the specific area that was to be weatherized and its boundaries; and (2) whether RCAA could "utilize the State program in the 10 percent allocation to reduce their costs." (Tr. p. 34.) Obsborne then answered the first question. As to the second question, Osborne stated: "I took it for exactly what he said, exactly that he was asking to do the state program for the 10 percent potential allocation." (Tr. p. 34.) Osborne said he didn't have an immediate response, but advised Quillman that he thought it could not be done, but to be sure, he wanted to check with RHA before answering the question. He then called Richard Keyes at RHA to get a definitive answer, but was told that Keyes was not available at that time. (Tr. pp. 34-35.)

Osborne further testified that since he was going to be out of the office for a few days, he instructed his secretary, Laos, to call Keyes and relay Quillman's questions, obtain Keyes' answers and then write a letter containing the questions and answers and send a copy to all three potential bidders (RCAA, complainant, and McMurray and Sons). (Tr. p. 35.) Osborne indicated that he felt the requested information was "pertinent" and should be shared with all potential bidders. (Tr. p. 36.)

Osborne stated that the call was thereafter made in his absence, and the answer to the second question, contrary to what Osborne first thought, was in the affirmative. The letter was then written by Osborne's secretary and sent to the three bidders. The letter (exhibit 7) contained only information concerning Quillman's first question and Osborne's answer to it. Inexplicably, it did not contain any reference to either the second question or the answer to it.

Osborne testified that it was sometime after the contract had been awarded that he learned that the answer given to Quillman or RCAA was different than that given by his office to Quillman. He stated that he felt something should be done about it and spoke with his manager, Wes Reed, and informed him of the various conversations: "And I told him that if it was factual, that we maybe should be concerned about it, and bring it to general office's attention and Heath and Associates' attention." (Tr. pp. 36-38.) Reed agreed and referred Osborne to Bing Lee in PG&E's Materials Department who had access to the bids. Osborne then said that nothing further was done, although he felt such information should be shared with all bidders. In answer to a question, he indicated that though he intended the letter to contain the information about RCAA's question and his answer, the failure to include the information in the letter was his error. (Tr. p. 42.)

Quillman, who at the time of the bidding was the weatherization services coordinator for RCAA, testified that at the request of his supervisor, Martinez, he made the phone call to Osborne. His recollection of events was that he called Osborne and asked for clarification "in connection with the service territory and whether or not we could supplement out-of-area jobs with state funds." He stated he did not receive an answer, and later because the deadline for the bids was rapidly approaching, he contacted Keyes of RHA to ask him the same questions. He then testified, "I received the answer regarding service territory and also the fact that it was acceptable to supplement the PG&E jobs with state funding." He indicated the purpose of his contact with Osborne in these words:

> "I was trying to clarify that the longstanding procedure of using both state funds and PG&E funds on the same jobs was still in effect.
>
> "This was a new program, Energy Partners program, the first year it was implemented.
>
> "Up to that time, we had in operation the direct weatherization for PG&E. I was unsure whether or not the issue was still allowable on (sic) whether or not we could leverage the funds." (Tr. pp. 44-45.)

Keyes, Vice President of RHA and RHA's project manager for PG&E's Energy Partners program, testified that he was called by both Quillman and Martinez, Quillman's supervisor, both of whom asked him about PG&E's policy with respect to "dualling." Keyes stated that he told both Quillman and Martinez that dualling was allowed under the new "Energy Partners" program just as it had been under PG&E's earlier programs. He indicated that since the prebid information supplied to the potential bidders spelled this out, and his information did not change the published information, he did not think the telephone calls and his response to the questions asked had to be disclosed to the other bidders.

Martinez testified that at her direction, Quillman called both Osborne and Keyes to determine specifically whether the State's and PG&E's programs could be leveraged. She then corroborated Quillman's and Keyes' version of the discussions and stated that she had called Seale and told him of RCAA's contact with Osborne and Keyes and explained both the questions asked and the answers given regarding dualling the State's and PG&E's programs in connection with the project then under consideration.

From a review of the testimony of the witnesses, we are unable to reconstruct precisely what the conversations were. That is, we cannot establish with absolute certainty whether Quillman's and Martinez's question was whether the State program could be used to <u>supplement</u> PG&E's program or whether the State program could be used to <u>satisfy or substitute</u> for PG&E's program. In this particular case, however, it is not necessary to establish the exact words used in the conversations. In either case, because of the nature of the information sought and received, each party to the conversation had an obligation to insure that all potential bidders were apprised of the conversation, and, to the extent possible, the questions asked <u>and</u> the answers given. The contacts by RCAA's representatives were, in effect, <u>ex parte</u> contacts which were disclosable.

Osborne apparently was bothered enough by the conversation to attempt to report it to all bidders. He is to be commended for his efforts. Unfortunately, his instructions were not accurately carried out by his subordinate. After learning that the letter sent to the potential bidders did not contain complete information, he still displayed uneasiness with the situation and sought to correct it by bringing the matter to the attention of his superior. He then followed his superior's instructions, but those efforts later died of inattention at the hands of some other employee.

If the substance of the conversation was whether the State program could be used to satisfy the out-of-area requirement, as claimed by complainant and attested to by Osborne, that information would have a direct bearing on what it would cost each bidder to fulfill PG&E's contract requirements. Obviously, each bidder would have to consider whether additional funding to weatherize the out-of-area homes was available, thus allowing him to reduce the cost of performing the remainder of PG&E's contract, or whether he would have to adjust his profit level downward to accommodate the cost of travel to and from the out-of-area homes as well as the entire unsubsidized cost of weatherizing those homes. Such information would have been vital to each bidder's cost analysis and bid preparation.

Furthermore, even if the substance of the conversation was simply whether the former practice of "leveraging," "supplementing," or "dualling" could or would continue, as Quillman claims, then this too was vital information which should have been shared as it would allow a nonprofit, community-based bidder to obtain additional funding available to it, but unavailable to commercial for-profit firms.

Quillman clearly noted that this was the first bid under PG&E's new "Energy Partners" program, which replaced the former program which had been utilized for several years. Even though the prebid documentation distributed to all potential bidders by RHA made reference to the use of other sources of funding, it is obvious that RCAA was in doubt whether the State program and PG&E's new program could be "leveraged," "supplemented" or "dualled." Since RCAA was in doubt about that question and such information was apparently of value to RCAA, it is logical to assume that the information would be of assistance or value to the other potential bidders. Such being the case, the parties to the conversation were, once again, under an obligation to advise the other potential bidders of the conversation and to provide all available

information to them. Once again, this was not done, and both complainant and McMurray and Sons were in the position of having to prepare a bid without verification that RCAA had asked whether dualling was allowed on this new program and what the answer was. The failure to do so deprived all potential bidders other than RCAA of information which may have affected their bid. This was improper.

While we do not ascribe any ulterior motives to the failure of any participant to make full disclosure, and are convinced that the failure to disclose was innocent, that does not rectify the situation. We have no way of knowing whether full and complete disclosure would have made any difference in the bid results. We do know, however, that both complainant and McMurray and Sons were deprived of the opportunity to consider the information in the calculation and preparation of their individual bids.

The year 1991 is now history and there is no adequate way to rebid the 1991 contract. In short, there is no way to prove what might have been. We can, however, prevent any continuation of any unfairness occasioned by the nondisclosure, if in fact there was any unfairness, by not allowing the selection of contractors for PG&E's 1992 program for the Humboldt Division to be governed by the 1991 program bid results. The 1992 program should be awarded by bid and that bidding opportunity should be limited to those who were actual bidders on the 1991 program. We do not know if complainant or McMurray and Sons will desire to bid on the 1992 program, or if they do, whether either will be the successful bidder. That is not our concern. We desire only to insure that the field upon which they and any other bidders play is level.

Comments Received After Distribution of ALJ's Proposed Decision

Since this case was not brought under, and does not involve the Women/Minority Business Enterprise (WMBE) statute or

General Order 156, the reference in the ALJ's proposed decision that PG&E recognizes complainant as a WMBE, is irrelevant and has been deleted.

Following distribution of the ALJ's proposed decision pursuant to Public Utilities Code § 311, petitions to intervene and to submit comments were received from California/Nevada Community Action Association (Cal/Neva), from RCAA and from the Insulation Contractors Association (ICA). Because our decision in this case may be interpreted as setting a standard of conduct applicable to situations such as that involved in this case, we will grant the motions to intervene for the limited purpose of filing comments only and will consider the comments.

Cal/Neva, opposing the decision, argues in essence that since dualling of the State and PG&E's low-income home weatherization programs was allowed under both the old and the new programs, and only RCAA was allowed by law to perform work under the State program, no harm was done by the ex parte contact which verified that fact. Cal/Neva misses the point. There was a question raised by one bidder concerning whether under the new contract dualling would continue to be allowed and an answer was received, but neither of the other two bidders were apprised of the ex parte contact, the nature of the question or the answer. This omission is the sin; not whether the result could or would have been different. We do not believe Cal/Neva's comments require any changed in this decision.

RCAA, opposes the proposed decision in its entirety and submits proposed Findings of Fact and Conclusions of Law which it urges us to adopt. In addition, RCAA notes that it has already performed 25% of the contract and has committed money to fund an additional 25%. Thus, it argues that a financial hardship would be imposed by requiring a rebid of the contract. We find this argument unpersuasive.

RCAA also claims it should be allowed to intervene and participate because it is the real party in interest and was never served with the complaint. We also find this argument unpersuasive. RCAA was fully aware of the institution of suit in this case and took no steps to intervene at that time. One or more of its officers or employees testified and yet it still took no steps to intervene. We find no good cause to waive the requirements of Rule 53 of the Commission's Rule of Practice and Procedure.

The motion of RCAA to intervene is granted for the limited purpose of filing comments. Those comments do not require any change in the proposed decision.

In its comments, ICA fully supports the ALJ's proposed decision in this case. In addition, ICA's comments fully support the concept of competitive bidding in contracts of the nature here involves. Since competitive bidding was utilized in awarding the contract under discussion and no party raised the necessity of competitive bidding as an issue, we decline to comment on that aspect of ICA's comments. ICA's remaining comments do not necessitate any changes in this decision.

Comment were also received from Energy Alternatives, the complainant in this case, which urge adoption of the ALJ's proposed decision in its entirely. These comments require no changes in this decision.

Comments on the ALJ's proposed decision were also filed on behalf of the RCAA, the successful bidder on the contract out of which this dispute arises. Although RCAA was the entity to which the contract was awarded, and a current as well as a former employee of RCAA testified at the hearing on behalf of PG&E, RCAA was not a designated or named party in this proceeding; did not move to intervene in the case prior to or at the hearing, though it obviously was aware of the existence of the proceeding; and did not enter an appearance at or participate in the hearing.

RCAA has not filed a motion to intervene for the purpose of filing comments to the proposed decision, but has simply filed comments critical of the proposed decision, including proposed findings of fact and proposed conclusions of law, and urged dismissal of the complaint.

Because it was not a party to this proceeding, and has not filed a motion to intervene for the purpose of filing comments, we will not accept the comments filed by RCAA.

PG&E, in its own name only, filed comments urging that since the ex parte contact confirmed that PG&E's new program and the State program could be dualled as they had under earlier PG&E programs, no harm resulted, and therefore the ex parte contact was neither prejudicial nor prohibited. We disagree. As noted in the proposed decision, PG&E's own employee, Osborne, strongly felt that RCAA's ex parte communication was of such a nature as to require notification to the other bidders, and took steps to insure that the other bidders were notified of the communication, the questions asked and the answers given. While the exact questions asked and the answers given were disputed and it appeared that there was great disparity in interpretations of what was or was not said, we believe that under the circumstances, the fact that the communication took place should have been disclosed in order that all bidders had the benefit of identical information prior to the submission of their individual bids. Even if the communication served only to verify information previously given, it indicated some degree of uncertainty in the mind of at least one potential bidder concerning the subject, dealt with a substantive matter of concern to all bidders who had qualified to bid on the contract, and the fact of contact and the information solicited, whatever it may have been, should have been relayed to the other qualified bidders. Osborne was absolutely correct in this regard, and had his instructions been followed, we would not now be writing this

decision. PG&E's comments do not require a change in the ALJ's proposed decision.

Findings of Fact

1. In late 1990, PG&E, through its administrator RHA, sought bids on its 1991 "Energy Partners" low-income home weatherization program.

2. The State of California also had in existence at the same time, a low-income home weatherization program.

3. Only nonprofit community-based organizations were eligible to bid on projects under the State program.

4. For-profit private companies as well as nonprofit community-based organizations were allowed to bid on projects under PG&E's program.

5. Nonprofit community-based organizations could lawfully supplement PG&E's program benefits with benefits under the State program as long as there was no double billing for the same work.

6. Three potential bidders expressed interest in bidding on PG&E's 1991 "Energy Partners" program in Humboldt County: McMurray and Sons, RCAA, and complainant.

7. Of the three potential bidders, only RCAA was a nonprofit community-based organization, and as such, the only bidder that could lawfully participate in the State's weatherization program.

8. Of the three potential bidders, RCAA was the only potential bidder on PG&E's 1991 program in Humboldt County that could benefit from dualling the State and PG&E programs.

9. A prebid meeting of all potential bidders on PG&E's program was held in late 1990.

10. Prebid documentation distributed by RHA to potential bidders on PG&E's 1991 program contained information explaining that dualling the State and PG&E programs was authorized.

11. Subsequent to the prebid meeting and prior to the submission of bids on the 1991 PG&E program, representatives of

RCAA contacted PG&E and RHA employees involved in the 1991 PG&E program and requested additional information concerning the bid.

12. Information received by RCAA from PG&E and/or RHA in response to its request explained or expanded upon information supplied at the prebid meeting, and as such should have been disclosed to each of the parties that attended the prebid meeting.

13. The contact(s) and information received by RCAA as set forth in paragraphs "11" and "12" of these Findings of Fact were not disclosed to all potential bidders that had attended the prebid meeting.

14. The failure to disclose RCAA's contact with representatives of PG&E and/or RHA as set forth in these Findings of Fact was prejudicial to other potential bidders on the 1991 PG&E Humboldt Division "Energy Partners" program.

15. By letter dated September 19, 1991, RHA advised that PG&E intended to contract with current (1991) Energy Partners contractors for 1992 work.

16. The facts set forth in Findings of Fact 15 extend the prejudice set forth in Findings of Fact 14 to PG&E's 1992 program.

<u>Conclusions of Law</u>

1. An <u>ex parte</u> contact between representatives of RCAA and representatives of PG&E and/or RHA occurred and involved details of PG&E's 1991 "Energy Partners" program.

2. The <u>ex parte</u> contact occurred at a time subsequent to the prebid meeting on the 1991 Humboldt Division Energy Partners contract, but prior to the submission of bids on that program contract.

3. Information obtained as a result of the <u>ex parte</u> contact explained or expanded upon information supplied to all bidders at the prebid meeting, and should have been disclosed to all potential bidders prior to the time bids were to be submitted.

4. The <u>ex parte</u> contact and information derived therefrom was not disclosed to all potential bidders.

5. The failure to disclose the ex parte contact was prejudicial to other bidders on PG&E's 1991 Humboldt Division program.

6. The prejudice resulting from the ex parte contact in connection with PG&E's 1991 Humboldt Division contract bid would be repeated if RHA awarded PG&E's 1992 Humboldt Division contract to 1991 contractors as planned.

7. PG&E Humboldt Division's 1992 Energy Partners contract should be awarded through competitive bidding limited to bidders who bid on the 1991 contract.

8. RHA's decision to award PG&E's 1992 Energy Partners contract to 1991 Energy Partners contractors should be declared null and void and of no legal effect as to PG&E's Humboldt Division.

O R D E R

IT IS ORDERED that:

1. The motions of California/Nevada Community Action Association and Insulation Contractors Association to intervene are granted for the limited purpose of filing comments only to the proposed decision.

2. The award of Pacific Gas and Electric Company's (PG&E) Humboldt Division's 1992 low-income home weatherization program contract to 1991 contractors is declared null and void and of no legal effect.

3. PG&E's Humboldt Division's 1992 low-income home weatherization program contract shall be awarded through competitive bidding limited to bidders who bid on PG&E Humboldt

Division's 1991 "Energy Partners" low-income home weatherization program contract.

This order is effective today.

Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

NEAL J. SHULMAN, Executive Director