

Decision 92-04-024 April 8, 1992

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ORIGINAL
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion to comply with Senate)
Bill 987 and realign residential)
rates, including baseline rates,)
of California's energy utilities.)

1.88-07-009
(Filed July 8, 1988)

O P I N I O N

I. Summary

This decision adopts an interim program that will carry out Senate Bill (SB) 693 (Ch. 443, Stats. 1991). Our early implementation of a "bare bones" program will enable the energy utilities to begin the administrative process of extending our 15% rate discount to ratepayers and other persons who most certainly are within the intent of SB 693. This interim decision provides that a base level of non-profit group living facilities will receive the Low Income Ratepayer Assistance (LIRA) discount beginning no later than October 1, 1992. These facilities are non-profit homeless shelters with 10 or more beds that provide overnight lodging for a minimum of 6 months of the year, and non-profit residential facilities that provide a service, other than lodging, wherein 100% of the residents would meet the LIRA eligibility standards.

We find that evidentiary hearings to design a program to carry out SB 693 would be premature at this time. The comments of parties to this investigation and members of the public have guided our approach to implementing SB 693. We believe that actual experience with the adopted program, instead of a philosophical debate over perceived policy issues, would best further the statute. The energy utilities are required to describe their progress on the expanded LIRA programs in their annual LIRA

reports. We will decide subsequently whether the facts reported warrant any subsequent Commission action to refine the expanded LIRA program.

II. Background

A. Legislative History

This investigation was originally instituted to implement changes to Section 739 of the Public Utilities (PU) Code made by SB 987 (Ch. 212, Stats. 1988). Section 739 is the "baseline statute," and SB 987 added the following language:

"(g)(1) The commission shall establish a program of assistance to low-income electric and gas customers, the cost of which shall not be borne solely by any single class of customer."

Accordingly, in September 1989, the Commission adopted the LIRA program, which provides a 15% discounted electric and gas rate, including applicable customer charges, for low-income residential customers. (Decision 89-09-043, 32 CPUC 2d 406.) The income eligibility standard is 150% of the federal poverty level; it is the same as the income requirement for Universal Lifeline Telephone Service. Rather than produce evidence of income, a customer may qualify for the LIRA rate by participating in a public assistance program which has essentially the same income limitations.

Eligibility for LIRA is based on the income of the utility customer's entire household. If a house is occupied by unrelated adults, even if each adult would individually qualify for LIRA, the combined income of the residents would make the facility ineligible for the LIRA discount. Operators of non-profit residences whose clients would have qualified, if they were capable of living independently, sought changes to the LIRA program.

Since the baseline statute has historically addressed residential rate design, SB 987 has been interpreted to authorize a discount in the residential rate. Thus, those who lodged low-income persons in a building other than a house and were billed at a rate other than the residential rate, such as a commercial rate, could not take advantage of a rate discount. By extending the Commission's program of assistance to non-profit group living facilities, SB 693 (Ch. 443, Stats. 1991) authorizes the Commission to grant relief to commercial rate customers.

SB 693 further amends Section 739 by adding the following:

- "(g)(2) The commission's program of assistance to low-income electric and gas customers shall, as soon as practicable, include nonprofit group living facilities specified by the commission, if the commission finds that the residents in these facilities substantially meet the commission's low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit, such as improved quality of care or improved food service, of the low-income residents in the facilities."

B. Procedural Background

On December 6, 1991, a Notice of Public Participation Hearing (Notice) was mailed to parties on the service list and to all members of the public who had previously attended the workshops sponsored by the Commission Advisory and Compliance Division (CACD) to elicit comment on the possibility of expanding the LIRA program. The Notice set forth a list of issues raised by SB 693 and invited interested members of the public to express their views at either of two public participation hearings. The hearings were held on January 7, 1992 in San Francisco and on January 10, 1992 in Long Beach.

Representatives of 14 non-profit organizations interested in an extended LIRA program attended and made comments on the record. Employees from Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), Southern California Gas Company (SoCal Gas), San Diego Gas & Electric Company (SDG&E), and Southern California Water Company were present at the public participation hearings. Oral comments were received from Edison, SoCal Gas, and SDG&E; written comments were submitted by PG&E. Each utility urged the Commission to schedule a prehearing conference to provide a forum for the further definition of implementation issues.

The administrative law judge (ALJ) announced that the Commission would welcome additional written comments if they were submitted by January 24, 1992. On that date, extensive suggestions were received from PG&E, SDG&E, SoCal Gas, and Edison. Representatives of group residential facilities also submitted comments.

Prior to the public participation hearings, CACD had hosted workshops to discuss the impact of SB 693 and the LIRA program in general on utilities, community-based organizations, and non-profit community action agencies. The CACD workshops were held on November 14, 1991 in Burbank and on December 5, 1991 in San Francisco and were attended by representatives of the above-named utilities and community agencies.

III. Issues Raised by SB 693

A. Literal Reading of the Statute

The statute suggests several issues for the Commission's consideration. First, the Commission must specify which non-profit group living facilities should be eligible for energy assistance. The statute requires the assistance to be used for the direct benefit, "such as improved quality of care or improved food

service," of the low-income resident. This implies that the assistance should be targeted to non-profit group living facilities that provide a service, such as meals or rehabilitation, in addition to lodging.

Second, the assistance is to be provided to facilities whose residents "substantially meet" the Commission's low-income eligibility requirements. It is not clear whether the word "substantially" refers to the percentage of qualifying residents or the deviation of their income from the Commission's maximum income for LIRA eligibility.

Third, the facility must be able to certify that the energy assistance will be used for the direct benefit of the low-income residents in the facilities. What constitutes a "direct benefit" is a matter subject to interpretation. Moreover, it may be possible to find that any reduction in energy expense incurred by a non-profit residence would accrue to the benefit of the residents, since the energy savings cannot be diverted for the benefit of a private individual.

When each of these issues is resolved, the Commission and utilities must devise a means of verifying that the applicant meets the adopted criteria. The Commission must balance the need for accurate information against the burden of paperwork that would discourage otherwise eligible facilities from seeking rate relief.

B. Comments by the Utilities

Each of the four actively participating utilities recommended that a prehearing conference be held to further define the issues to be resolved before a LIRA program for group living facilities can be implemented. Edison succinctly identified five primary issues:

1. Definition of a "qualified group living facility,"
2. Nature of the benefit,
3. Verification of residents' income level,

4. Certification of the facility, and
5. Verification that assistance directly benefits residents.

PG&E, SoCal Gas, and SDG&E summarized testimony they would offer at evidentiary hearing on these issues. All of the utilities agreed that any group living facility receiving the expanded LIRA benefit must be not-for-profit. They suggested that the Internal Revenue Service (IRS) letter granting a corporation tax-exempt status under Section 501(c)(3) of the Internal Revenue Code constitutes proof of the facility's non-profit status. This was supported by operators of non-profit group living facilities. According to the utilities, substantial compliance with the Commission's low-income criteria means that at least 70% to 80% of the facility's residents must qualify under the LIRA income levels. PG&E added that at least 70% of the facility's energy must be used for residential purposes. The utilities were unanimous in their recommendations against providing the LIRA benefit to government-subsidized housing.

All of the utilities proposed a 15% rate discount as the expanded LIRA benefit. PG&E recommended that before additional forms of energy assistance are offered, a cost-effectiveness analysis of those changes should be undertaken. PG&E and SoCal Gas would explicitly limit the 15% discount to the residential rate. SoCal Gas would enable qualified customers to choose between the residential rate, discounted by 15%, and an existing commercial schedule. Rates offered under commercial schedules are lower than residential rates. However, this would provide no relief to facilities such as homeless shelters, which are currently on the commercial schedule.

PG&E observes that since the statute amended by SB 693 applies only to residential service, one could infer that customers on non-residential schedules, such as non-profit group living facilities, were not intended to qualify for any relief offered by

the amended statute. PG&E reminds the Commission that agricultural ratepayers have lobbied for LIRA rates, and the Commission has denied their requests. However, PG&E admits that the Commission may wish to interpret the intent of SB 693 to be that all non-profit, low-income group living facilities should be eligible for LIRA benefits, regardless of their customer class status.

SDG&E and PG&E suggest that the certification process be twofold: (1) the facility would certify the income eligibility of its residents and (2) the utility would confirm the non-profit status of the facility. An annual certification procedure is recommended.

Although SB 693 provides that the LIRA benefit must be used for the direct benefit of the residents, none of the utilities could suggest criteria for this showing or recommend a cost-effective means of ensuring the pass-through of the LIRA benefit. Instead, the utilities generally proposed that the facility annually certify how its residents have received a direct benefit from the LIRA discount. This could be required as part of the annual recertification of eligibility.

The careful consideration that went into each party's comments, particularly PG&E's, enables us to craft a more specific decision to carry out SB 693 than we thought possible at this stage of the proceedings. We find that the public participation hearings and the comment process constitute an adequate record for an interim decision to implement SB 693.

C. Defining the Clear Case

The written and oral comments of the parties and other members of the public enable us to identify a group of facilities that are clearly within the intended scope of SB 693.

At the very least, the applicant must be a non-profit organization. No one has opposed the suggestion that the applicant prove its Section 501(c)(3) status, granted by the IRS, as evidence of its non-profit status.

Given the examples of "direct benefit" listed in the statute, a residential care facility that provides meals, rehabilitation, or other form of treatment required by the residents for day-to-day living would clearly fall within the intent of the statute. If such services are provided, they can be augmented by the energy savings for the benefit of the low-income residents. The fact that these services are being provided should be evidenced by certification from the appropriate state licensing agency. On the other hand, a group living facility that offers its residents only a place to live would not so clearly be able to pass a direct benefit from energy savings on to its tenants. Such facilities are not eligible for the extended LIRA program.

The question whether residents substantially meet the Commission's low-income eligibility requirements need not be addressed if 100% of the residents are required to meet the existing LIRA eligibility standard. Since customers can be "categorically eligible" for the LIRA rate due to their participation in certain public assistance programs, the facility can simply provide proof of every resident's receipt of public assistance (e.g., Medi-Cal card), or in the alternative, fill out, with proper authorization by the resident, one of the verification forms currently used to qualify LIRA applicants.

It is evident that 100% of those who seek lodging at homeless shelters would qualify under the LIRA program, even if the individual is unable to document income. Even if the shelter provides only lodging, it appears that the energy savings would be used to benefit the low-income residents, if only to support operation of the shelter. An exception could occur if the shelter were but a nominal part of the facility's operations, e.g., its primary function is a school or office. To ensure that an organization that operates a homeless shelter on a part-time basis does pass its energy savings on to its low-income lodgers, the

shelter should verify to the utility that it provides at least 10 beds each night for a minimum 180 days out of the year.

The Commission's program of assistance currently discounts the energy rate for qualified residential ratepayers by 15% by assigning them to the LIRA rate. Non-profit group living facilities could obtain the 15% discount if eligibility were determined for each resident as described above because those facilities receive energy under the residential rate schedules. However, homeless shelters must pay the commercial rate for energy. Since the commercial rate is less than the LIRA rate, placing homeless shelters on the LIRA rate would give them no relief.

We recognize that SB 693 amended a section of the PU Code which addresses residential rates. We find that SB 693 was intended to assist non-profit group living facilities that are inherently residential in nature, even if the service to that facility is on a non-residential schedule, as long as the energy taken under the LIRA rate serves residential end-users. In order to assist non-profit group living facilities on the commercial rate to the same degree as other qualified facilities, the LIRA program should be expanded to provide a 15% discount to the commercial rate for homeless shelters.

IV. Interim Extension of LIRA Benefits to Non-Profit Group Living Facilities

A. Description of Interim Program

Based on the comments of the parties and the public, we adopt the following interim program.

1. Benefits

a. Eligible Facilities

In order to qualify for the expanded LIRA program, the facility must be operated by a corporation that has received a letter determination by the IRS stating that the corporation is

tax-exempt due to its not-for-profit status under Internal Revenue Code Section 501(c)(3).

The facility must be either a homeless shelter, transitional housing (e.g., for drug rehabilitation, a half-way house, etc.), short- or long-term care facility (hospice, nursing homes, seniors', or children's homes), or a group home for physically or mentally disabled persons.

Each of the residents must meet the Commission's existing LIRA eligibility standard for a single-person household.

At least 70% of the energy consumed on the LIRA rate must be used for residential purposes.

Government-owned and government-subsidized housing facilities are not qualifying group homes. However, a group living facility which otherwise qualifies for expanded LIRA shall not be ineligible because compensation for room and board is provided by a government agency on behalf of the resident under a disability, Supplemental Security Income (SSI), Social Security Administration (SSA), or other governmental assistance program.

b. Rate Relief

If the qualified group living facility is currently served under a residential rate schedule, it will be eligible for the existing LIRA residential rate. If the qualified group living facility is served under a different schedule, such as a commercial rate schedule, it will be entitled to a 15% discount on all rate elements of its bill.

c. Certification

The utilities should revise the sample application form attached to the January 24, 1992 comments of SoCal Gas and SDG&E to conform with the eligibility criteria adopted by this decision. The applicant shall also submit a copy of the IRS letter determining tax-exempt status of the group living facility and a certification from the appropriate licensing agency showing what services, besides lodging, are provided. Homeless shelters are not

required to certify the provision of services; they must certify that they meet the minimum operational requirements listed herein. In addition, the facility shall provide documentation to show that all of its residents meet the LIRA eligibility criteria. Recertification shall be made on an annual basis.

d. Monitoring of Benefits

At the time of each annual certification, the utility shall require the facility to certify that it has passed on the LIRA discount. Reasonable certification shall include a quantification of the annual LIRA discount and an identification of how those funds have been spent for the benefit of the low-income residents. All participants in expanded LIRA, including homeless shelters, shall provide this annual certification.

e. Verification

The application for expanded LIRA benefits, recertification, and certification of the flow-through of the LIRA discount shall be made under penalty of perjury by the same individual who is responsible for the annual renewal of the facility's license from the Community Care Licensing Division (CCLD) of the State Department of Social Services, except for homeless shelters which are not licensed by the CCLD. The utilities are authorized to verify the accuracy of these self-certifications through random sampling.

2. Implementation

a. Timetable

SDG&E had estimated that outreach and implementation could require a three- to six-month period. We believe that this expanded LIRA program would be most effective if qualified group living facilities were on the discounted rate no later than October 1, 1992. During the intervening months, the utilities will be required to undertake extensive outreach to qualified facilities.

CACD will provide each utility with addresses it has obtained from the CCLD. The utilities are responsible for direct outreach to the qualified group living facilities and homeless shelters within their service territory.

It appears that community-based organizations function as a clearing-house for many, if not all, non-profit organizations within the utilities' service areas. The utilities are encouraged to employ the resources of the community-based organizations as part of their outreach efforts. We believe it is important to foster a working relationship between utilities and these organizations, who are clearly positioned to publicize the LIRA program and to assist ratepayers with LIRA applications.

Revision of utilities' tariffs to expand the LIRA program should proceed expeditiously so that when an application is received and processed, the qualified facility can be placed on the rate immediately. The utilities shall propose tariff revisions consistent with this decision by advice letter filed no later than May 1, 1992, with expanded LIRA rates to be effective on the fortieth calendar day after the filed date. At the suggestion of SoCal Gas, we determine that each utility may use its own discretion whether to offer the LIRA discount through its existing rate schedules or through a new LIRA schedule.

b. Revenue Recovery Mechanism

The LIRA revenue requirement resulting from the expanded LIRA program shall be collected through the existing LIRA surcharge mechanism.

B. Further Proceedings

The assigned ALJ had previously indicated that evidentiary hearings would be scheduled subsequent to the public participation hearings. We find that evidentiary hearings are not needed immediately. The interim program adopted by this order fully complies with SB 693. Its provisions are consistent with our existing LIRA program and will provide energy assistance to group

living facilities serving low-income persons that are squarely within the intent of the statute. The great majority of comments on the expanded LIRA program suggest that benefits might be authorized for a larger class of beneficiaries. We think the class of potential beneficiaries under today's adopted program is large enough that we should evaluate the revenue effects of this LIRA expansion before further modifying the definition of eligible participants. The Commission has always been mindful of the impacts of the LIRA program on non-participants, and this interim order will carry out SB 693 without undue burden on non-participants.

The revenue effects of expanded LIRA can be accurately measured only if the utilities engage in a thorough and aggressive outreach program. The utilities' goal should be the participation of 50% of eligible group living facilities within a year of this decision. While estimates differ from utility to utility, the 1991 annual LIRA report showed a participation rate of 32% by eligible low-income residential customers. Given the availability of CCLD data banks for group living facilities, we expect the utilities' outreach to yield a higher participation rate under the expanded LIRA program.

The annual LIRA report for 1992 shall describe the utilities' outreach efforts. The LIRA report for 1993 shall describe the expanded LIRA program in the same detail as currently employed for the existing LIRA program.

We will examine the impact of today's decision as reported in the utilities' annual LIRA reports. Depending on the participation rate, revenue impacts, and reported benefits to low-income residents of group homes and homeless shelters, we may find it necessary to modify today's expanded LIRA program.

Further proceedings may focus on the issue of whether LIRA program expenditures should include a form of demand-side management assistance as an option. The question of whether a

facility should benefit from the expanded LIRA program when less than 100% of its residents qualify under residential LIRA standards should also be addressed.

However, we find that the utilities must operate the expanded LIRA program over several peak demand seasons in order to realize the long-run participation rate in today's adopted program. The long-run rate is required to assess the revenue impacts on non-participant ratepayers. It would be premature to redesign the benefit or to revisit the definition of an eligible facility before the benefits and burdens of today's adopted program can be analyzed.

We leave it to the assigned ALJ to establish a schedule for considering these issues, after an adequate record of participation rates has been compiled.

V. Conclusion

The expanded LIRA program is an equitable and expeditious response to the direction of SB 693. It provides substantial energy rate relief to those clearly within the intent of the statute without procedural delay. The interests of non-participant energy ratepayers are served by limiting the expanded definition of program participants. As in the case of the existing LIRA program, the interests of the energy utilities are protected by the use of a balancing account which collects the LIRA discount and recovers revenues through a surcharge. For all of the foregoing reasons, the expanded LIRA program should be adopted.

Findings of Fact

1. SB 693 (Ch. 443, Stats. 1991) amends PU Code Section 739 by extending the Commission's program of assistance to non-profit group living facilities.
2. SB 693 requires the Commission's program of assistance to low-income energy ratepayers, as soon as practicable, to include

non-profit group living facilities specified by the Commission, if the Commission finds that the residents in these facilities substantially meet the Commission's low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit, such as improved quality of care or improved food service, of the low-income residents in the facilities.

3. SB 693 authorizes the Commission to grant LIRA relief to non-residential customers who operate eligible facilities.

4. Interested members of the public and parties to this investigation expressed their views at two public participation hearings.

5. On January 24, 1992, extensive written suggestions were received from PG&E, SDG&E, SoCal Gas, and Edison. Representatives of group residential facilities also submitted written comments.

6. Prior to the public participation hearings, representatives of the above-named utilities and community agencies participated in CACD-hosted workshops to discuss the impact of SB 693 and the LIRA program on utilities, community-based organizations, and non-profit community action agencies.

7. The statute's requirement that the LIRA assistance be used for the direct benefit of the low-income resident implies that the assistance should be targeted to non-profit group living facilities that provide a service, such as meals or rehabilitation, in addition to lodging.

8. Even if a homeless shelter provides only lodging, energy savings would be used to benefit the low-income occupants of the shelter, simply by supporting operation of the shelter.

9. Ambiguity in the phrase "facilities whose residents substantially meet the Commission's low-income eligibility requirements" can be avoided by extending LIRA benefits to facilities in which all residents meet the Commission's maximum income standards.

10. It may reasonably be assumed that 100% of those who seek lodging at homeless shelters would meet LIRA income requirements, even if the individual is unable to document income.

11. Assurance that energy savings are being used to benefit low-income occupants of the homeless shelter will be provided by verification that at least 10 beds each night are provided during a minimum 180 days each year.

12. Non-profit group living facilities consisting of homeless shelters, transitional housing, short- or long-term care facilities, or group homes for physically or mentally disabled persons, in which 100% of the residents would meet the LIRA income requirements if they lived independently, are eligible for the expanded LIRA program.

13. Under today's adopted expansion of the LIRA program, eligible facilities may receive the 15% discount in residential energy rates currently available under the utility's LIRA rates.

14. Eligible facilities which are homeless shelters may receive a 15% discount on all rate elements of their bills.

15. Except for homeless shelters, eligible facilities must verify that they are not for profit, that they provide services in addition to lodging to low-income residents, and that all of their residents meet the income requirements of the LIRA program.

16. Homeless shelters shall verify the fact that they are not for profit and that they provide at least 10 beds for 180 days each year for persons who have no alternative residence.

17. Verification by the licensed operator that a reduction in energy expense incurred by the non-profit residence has accrued to the benefit of the residents serves the need for accurate information while not burdening the operator with paperwork that would discourage otherwise eligible facilities from seeking rate relief.

18. This expansion of the LIRA program responds to SB 693's direction to the Commission that it include non-profit group living

facilities in its program of assistance to low-income energy customers "as soon as practicable."

19. This order should be effective today so that SB 693 can be implemented well in advance of the 1992 winter heating season.

Conclusion of Law

It is reasonable to expand the LIRA program to provide assistance in situations that are clearly within the scope of the legislation and to delay evidentiary hearing until operation of the expanded LIRA program provides substantial information about the utilities' outreach and administration, bill effects, and revenue impacts of the program.

O R D E R

IT IS ORDERED that:

1. The respondent utilities shall expand their Low Income Ratepayer Assistance (LIRA) programs to assist non-profit group living facilities as described in this decision.

2. Each utility shall undertake either contracted-out or in-house outreach as necessary to achieve a participation rate of 50% of all eligible non-profit group living facilities within its service territory by April 1, 1993.

3. The annual LIRA report for 1992 shall describe the utilities' outreach efforts. The LIRA report for 1993 shall describe the expanded LIRA program in the same detail as currently employed for the existing LIRA program.

4. Each utility shall propose tariff revisions consistent with this decision by advice letter pursuant to General Order 96-A filed no later than May 1, 1992. The expanded LIRA program rates shall be effective on the fortieth calendar day after the date of filing. Each utility may determine whether to offer the LIRA discount as an amendment to existing rate schedules or through a new LIRA schedule.

5. The utilities are authorized to record the costs of the expanded LIRA program in their existing LIRA balancing accounts.

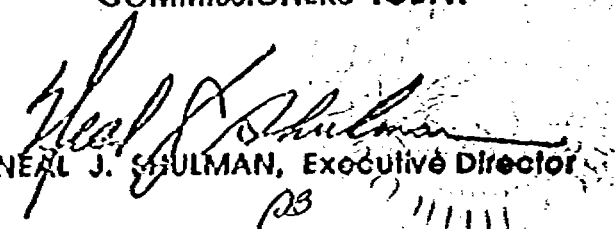
6. This proceeding is held open to accommodate further evidentiary hearing. No evidentiary hearing to implement SB 693 will be scheduled until the assigned administrative law judge determines, after a review of the annual LIRA reports, that such hearing is necessary.

This order is effective today.

Dated April 8, 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. SCHULMAN, Executive Director
PB 11111