

Decision S3 03 025 MAR 2 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA GAS)
COMPANY for Authority to Implement)
a Residential Conservation Service)
(RCS) Program and to Increase)
Rates to Recover the First Year's)
Cost of the Program, and to Include)
the RCS Program Costs in the)
Conservation Cost Adjustment)
Procedure.)

Application 60446
(Filed April 14, 1981)

In the Matter of the Application)
of SOUTHERN CALIFORNIA GAS)
COMPANY for Authority to Implement)
a Zero Interest Weatherization)
Financing and Credits Program and)
to Increase Rates to Recover the)
First Year's Cost of the Program,)
and to Include the Weatherization)
Program Costs in the Conservation)
Cost Adjustment Procedure.)

Application 60447
(Filed April 14, 1981)

(See Decision 82-02-135 for original appearances.)

Additional Appearances

David J. Gilmore, Attorney at Law, for
Southern California Gas Company,
applicant.

Edward Dart, for Dart Air System;
James M. Carr, for Southern
California Weatherization Contractors
Association; and Edwin Shanks, for
Modern Energy Insulation Company;
interested parties.

Carl Oshiro, Attorney at Law, for
the Commission staff.

OPINION AFTER FURTHER HEARINGSummary

This decision evaluates the Weatherization Assistance/Sales Program (WA/SP) submitted by Southern California Gas Company (SoCal) in compliance with Ordering Paragraph 15 of Decision (D.) 82-02-135. SoCal is authorized to continue its Direct Sales Program (DSP) separate from the advice-referral activities of its Weatherization Financing and Credits Program (WFCP). The decision finds that:

- a. WA/SP should be structured and administered to minimize any anticompetitive effect and to make any such effect reasonable.
- b. DSP should bear a fully allocated share of promotional and inspection costs.
- c. DSP should feature all types of insulation and weatherization materials eligible for WFCP.

SoCal is directed to revise its WA/SP to comply with the letter and spirit of this decision.

I. Introduction and BackgroundPurposes

This decision has two purposes--to present the results of the Commission's consideration of:

1. The reasonableness of DSP as proposed by SoCal; and
2. Any potential anticompetitive effects of DSP both by itself and in conjunction with WFCP.

Procedural History

On February 17, 1982, the Commission issued D.82-02-135 in this consolidated proceeding. The Commission directed SoCal to implement a WFCP and found that incorporation of SoCal's DSP into the WFCP and expansion of DSP to include sales of all conservation measures eligible for WFCP financing were reasonable. DSP is a program by which commissioned salesmen employed by SoCal solicit for

and independent contractors install insulation and other conservation material or equipment in the homes of SoCal's customers.

Earlier, in D.92497 (in A.59316), dated December 5, 1980, the Commission had ordered SoCal to continue its DSP only until the Commission had approved a zero interest loan program (ZIP) for SoCal. Subsequent to the issuance of D.92497, SoCal's then existing home insulation program (HIP), with its financing incentive of an 8% interest rate for attic insulation loans and its support from DSP, became overwhelmingly successful with SoCal's ratepayers. Because of the success of HIP, the significantly higher cost of ZIP to ratepayers, and the self-supporting nature of the DSP, the Commission decided in D.82-02-135 to continue both the 8% financing and DSP as features of WFCP.

The Commission found in D.82-02-135 that the incorporation of DSP into WFCP would substantially reduce SoCal's labor costs while providing the additional inducement to weatherization of "closing the sale". Second, the Commission found that both incorporating DSP into WFCP and expanding it to include sales of all the conservation measures made eligible for WFCP were reasonable. The Commission also found that the combined functions of weatherization representatives and direct sales agents could be performed by a single labor force.

Ordering Paragraphs 1.d. and 15 of D.82-02-135 required SoCal to file with the Commission its designs for the weatherization representative and direct sales elements of WFCP. Ordering Paragraph 1.d. reads:

- "d. SoCal shall provide advice to customers about WFCP, contractor referrals, and financing through a weatherization representative who will also have the authority to make direct company sales to customers of all eligible WFCP measures. SoCal shall offer participation in its direct company sales program to all RCS-listed contractors under uniform

standards established by SoCal. SoCal shall develop its own guidelines, consistent with this decision, to implement this combined weatherization advice/sales program and shall file a report within 30 days of the effective date of this order detailing the manner in which the program will be operated and the standards to be required of contractors participating in direct company sales. This filing shall be served on all appearances in these proceedings."

Ordering Paragraph 15 of D.82-02-135 reiterated the requirement for a report and provided for further hearings:

"15. Within 30 days of the effective date of this order, SoCal shall file a report on the details and manner in which it plans to operate its direct conservation sales program. The Administrative Law Judge shall set limited further hearings, to be held as soon as possible thereafter, to consider the reasonableness of the program as it is to be implemented, as well as any potential anticompetitive effects of an ongoing SoCal direct sales program."

Subsequently, D.82-05-043 denied rehearing of D.82-02-135, but modified the order to clarify the manner in which the Commission expected SoCal to carry out its Residential Conservation Service (RCS) program and WFCP. Language was added to Ordering Paragraph 15, requiring SoCal to give widespread notice of the hearings on its direct conservation sales report.

SoCal filed and distributed the required report, entitled "Weatherization Advice/Sales Plan," on March 25, 1982. On June 3, 1982, the Executive Director of the Commission notified the parties and their representatives that a hearing on the program and any

accompanying anticompetitive effects would be held before the presiding administrative law judge (ALJ) on June 28, 1982. SoCal was directed to notify the industry as required by amended Ordering Paragraph 15.

Hearings were held on WA/SP on June 28 and 29, 1982 in San Francisco. The matter was submitted on June 29, subject to the receipt of concurrent briefs on July 30. On September 22, 1982 the Commission issued D.82-09-062, which disposed of the issue of participation in the WFCP and RCS programs by low-income customers (D.82-10-043 was later issued to correct typographical errors).

During the period between the June hearings and the issuance of D.82-09-062, the California Energy Commission (CEC) added a new chapter to the RCS State Plan for California. The chapter, designated Chapter XIV, was added to ensure that the RCS State Plan complies with the National Energy Conservation Policy Act (NECPA) and regulations issued by the Department of Energy (DOE) to implement NECPA. D.82-09-062 therefore required SoCal to conform its plan to Chapter XIV and to submit annual reports to the Commission and the CEC each December 1. These reports will describe SoCal's activities under Chapter XIV, including steps taken to achieve compliance with Section A of Chapter XIV. Section A provides an exemption from NECPA's Supply and Installation Prohibition for energy conservation and renewable resource measures "installed either at no direct charge to the customer or pursuant to PUC Decision 82-02-135".

On August 31, 1982, the Commission issued D.82-08-109, an Order Modifying D.82-02-135 and D.82-05-043. The modification allowed installation of conservation measures under WFCP by any licensed California contractor, rather than limiting such installation to those on the CEC's RCS master list. This modification, however, applies only to contractors retained by the utility customers. Chapter XIV requires contractors participating in SoCal's DSP to be RCS-listed.

Public Hearing

At the June 28 and 29 hearings, SoCal and the Energy Conservation Branch (ECB) of the Commission staff each presented a witness. In addition, the Insulation Contractors Association (ICA), Mineral Insulation Manufacturers Association (MIMA), the Southern California Weatherization Contractors Association, and three insulation contracting firms each presented a witness.

Prior to the hearing, counsel for SoCal submitted a prehearing brief which presented SoCal's legal opinions regarding: (1) The findings and conclusions by the Commission necessary to establish a record on competitive effects and, if required, to support a "state action" defense to a claim for violation of antitrust laws, and (2) the findings and conclusions by the Commission necessary to facilitate SoCal's obtaining the waiver or exemption necessary under NECPA for the direct sales aspects of SoCal's WFCP. The brief also dealt with the establishment of a NECPA exemption; the subsequent adoption of Chapter XIV of the RCS State Plan by the CEC has rendered this portion of the brief moot.

At the hearing SoCal presented proof of widespread dissemination of the notice of hearing by publication in all of the newspapers covering the utility's service area and by two letters, one transmitting the notice to each RCS-listed contractor in the service area and the other to each insulation contractor with whom SoCal has dealt in the past. The two letters provided notice of the hearing directly to over 1,500 southern California contractors.

Following the hearings, concurrent briefs were filed on July 30, 1982 by SoCal, ICA, and MIMA.

II. SoCal's WA/SP Report

The implementation plan submitted to the Commission by SoCal differed in one fundamental respect from the program contemplated by

the Commission in D.82-02-135. SoCal proposed that the advice-referral activities function separately from DSP. SoCal incorporated this approach in its WA/SP by continuing the two activities separately.

The stated objective of WA/SP is to give SoCal's residential customers an opportunity to achieve major reductions in the use of natural gas for water and space heating through the purchase and installation of cost-effective energy conservation measures. SoCal intends to place special emphasis on weatherizing dwellings of low income, elderly, renter, and non-English speaking people through the utility's Low-Income Plan which would be an integral part of this program.

The report was supported at the hearings by Roger E. Embrey, SoCal's Residential Market Services Manager. Embrey testified that SoCal plans to redesign its residential marketing programs and to redirect its promotional activities to support WFCP. The utility intends to utilize two marketing approaches to implement WFCP, which are consistent with current insulation activities that have proven successful. One approach would be through extensive participation of independent contractor and retailer groups who would develop leads and complete sales contracts on their own behalf. The other approach would be through expansion of SoCal's current DSP. Both approaches would include sales and installation of all measures now eligible for WFCP loans and cash credits.

The expenses incurred by SoCal in conducting WA/SP would be accounted for in the Conservation Cost Adjustment (CCA) balancing account. SoCal would follow the accounting requirements, procedures, and review of this plan required by D.82-02-135.

Separation of Advice and Sales Activities

The WA/SP report declares that SoCal cannot avoid anticompetitive effects in program design if it is required to

implement the combined program ordered by the Commission. SoCal believes, however, that it can minimize anticompetitive effects and meet the spirit and intent of D.82-02-135 by separating the advice-referral and DSP functions.

Embrey testified that SoCal had identified a number of areas in which a combined program would entail one individual performing two functions, which would create potential antitrust and anticompetitive situations. SoCal was also concerned that, should one individual represent himself or herself as both a weatherization agent and a direct sales agent, there would definitely be a shift in sales from independent contractors to SoCal. SoCal's proposal for separation of functions was supported by MIMA and was not addressed by any other party, including the Commission staff.

Direct Sales Program

SoCal proposes to expand the existing self-supporting insulation DSP to include the sale and installation of all the measures which are eligible for WFCP. D.82-02-135 defined two classes of eligible measures. The "Big 6" includes measures which are generally cost-effective, and so are eligible for WFCP without an RCS audit. The Big 6 include attic insulation, weatherstripping, water heater blankets, low-flow showerheads, caulking, and duct wrap. A second group of conservation measures would be sold by SoCal only after shown to be cost-effective by an RCS audit.

SoCal would expand its existing attic insulation sales force to meet the increased demand anticipated from WA/SP. To achieve merchandising goals, SoCal's commissioned sales agents would follow leads obtained through bill inserts or other promotions and explain the benefits of installing cost-effective energy conservation measures. They would explain the options of 8% financing or utility cash credits and secure a contract for installation.

SoCal would arrange for installation of the weatherization measures by experienced subcontractors who have entered into a contract with the utility. Subcontractors would supply all material and labor related to the installation at a negotiated price. SoCal would not become involved in the purchase, storage, or handling of conservation products.

The proposed arrangements would have the advantage of tying labor and installation costs directly to productivity. SoCal could expand the work force directly in proportion to the sales. All sales contracts would be processed through SoCal's Weatherization Financing Service Center. When a customer selected low cost financing, an appropriate credit check would be made using SoCal's billing records.

After a subcontractor notified SoCal of a completed installation, a quality assurance inspection would be made to verify that all installed measures met RCS standards. After completion of an inspection, the installing contractor would be paid, the sales agents' commission would be paid, and the customer would receive either monthly billings under the 8% financing option, or cash credit provided by WFCP. All revenues generated by the DSP would be used to support the budget requirements for this program. They would result in a program operating at no cost to SoCal's ratepayers except for those costs associated with loan and cash credits provided for under the WFCP.

SoCal's sales agents would be required to be licensed by the State of California as home improvement salesmen. Additionally, adequate general liability and automobile insurance would be required. Special emphasis would be placed on the recruitment and hiring of bilingual and minority sales agents. All agents would be trained by SoCal.

SoCal's existing subcontractor group would also be expanded to meet the anticipated increased demand. SoCal would enter into

contracts with all RCS-listed contractors willing and able to meet all SoCal contract obligations and standards. Before SoCal would enter into a contract with an installation contractor, the contractor would be required to:

1. Possess an appropriate active state contractor's license;
2. Have an office located in SoCal's serving territory;
3. Be RCS-listed;
4. Demonstrate the ability to install the entire package of conservation measures;
5. Carry adequate insurance;
6. Be adequately equipped and own a minimum of two mineral wool-blowing rigs;
7. Have mineral wool material allocation from a minimum of two manufacturers; and
8. Demonstrate financial stability and a willingness to enter into a contract with SoCal as to installation area and installation standards.

SoCal would give top priority to qualified minority contractors during the expansion of its existing subcontractor group. Subcontractor performance would be evaluated periodically and any contractor failing to meet SoCal's standards for quality, reliability, and business ethics would not have its subcontract renewed. SoCal intends to continue to sell mineral wool insulation products only in order to eliminate the possibility of there being a one product, cellulose market.

Public Announcement and Program
Implementation of WFCP

Once the contractor-retailer and direct merchandising organization and work force have been established, SoCal would

announce WFCP to its customers through a communications program that would include the use of bill inserts, direct mail, newspapers, television, radio, community groups, and SoCal's representatives. Publicity releases would also be prepared and a broad-based public communications effort undertaken to increase awareness and interest in the program by all income and ethnic groups.

SoCal's corporate resources would be utilized to provide customers with information regarding WFCP. Energy efficiency centers, payment offices, payment agencies, a "hotline," and market services representatives and commissioned sales agents would be used to explain the potential benefits of WFCP to SoCal customers. Customers requesting information on SoCal's WFCP, or assistance with selection and evaluation of energy conservation measures, would be informed of the financing and utility credits options, and the procedures for participation.

III. Reasonableness of SoCal's WA/SP

A. General

The Commission in Ordering Paragraph 15 of D.82-02-135 carefully separated the consideration of the "reasonableness" of SoCal's ongoing DSP from consideration of any of the program's potential anticompetitive effects. The Commission made a number of findings to the effect that a weatherization and insulation program by SoCal was not merely reasonable but urgently needed and cost-effective (Findings 1, 2, 10, 12, 14, 24, and 32). The Commission found that the combined WFCP and DSP program would be cost-effective and reasonable (Findings 14 and 24). The Commission, therefore, has considered in these limited hearings only the reasonableness of the manner in which SoCal plans to operate its DSP. Only two of these details appear to warrant consideration: the program's cost and the program's restriction to sales of mineral-based insulation.'

The most important consideration of reasonableness is any cost to the ratepayer resulting from SoCal's proposed DSP over that contemplated by D.82-02-135. SoCal's implementation report unequivocally states that its proposed WA/SP can be supported from revenues generated by the DSP and the level of expenses authorized by that decision. This position was affirmed at the hearing by SoCal's witness Embrey in response to a specific question by the ALJ. The D.82-02-135 cost level found reasonable for WFCP, including DSP, will be maintained. The Commission will find the costs of WA/SP, as a component of WFCP, to be reasonable.

B. Reasonableness of Restriction
of DSP to Mineral-Based
Insulation

Objections

The only expressed objections to the reasonableness of SoCal's WA/SP, as distinguished from anticompetitiveness, pertained to the DSP and were made by a contractor witness Edward Dart, ICA's witness Joseph J. Honick, and staff witness Grayson Grove.

Dart complained that SoCal's salespersons, in promoting mineral-based insulation only, would disparage other forms of insulation, specifically cellulose insulation, as being dangerous. Honick was concerned that, because SoCal's direct sales effort limits the types of products to be used, it implies an institutional lack of confidence in certain products used by many independent contractors, even though those products meet all necessary California and federal standards.

Grove did not object to SoCal's exclusive use of mineral insulation, but he recommended that both independent contractors and SoCal's DSP salespersons should be prepared, should the customer request, to provide samples of different insulating materials. Grove also testified that "the customer should at least have the .

opportunity to examine the advantages and disadvantages, including price, of at least the three traditional types of material. The customer should also have the opportunity to see and feel samples of the actual materials." (Exhibit 57.)

The primary defense of SoCal's restricting its DSP insulation sales to mineral-based products came not from SoCal itself but from MIMA. In its brief, MIMA argued that SoCal, as a participating WFCP contractor, is required by Ordering Paragraph 1.c of D.82-02-135 to provide repair and replacement warranties. In addition, SoCal, as a licensed contractor, is subject to the Contractor's License Law. This statute subjects SoCal to disciplinary proceedings for shoddy workmanship, failure to complete work, and other similar improper business practices. (Business & Professions Code §§ 7090, 7109, 7119, 7162, et seq.) Furthermore, according to MIMA, SoCal has a legitimate interest in preserving its good business reputation. For all of these reasons, MIMA concluded that it is reasonable for SoCal to limit its legal liability and preserve its business relationship by exercising its own judgment with respect to the products which it warrants and installs. According to MIMA, there can be no discriminatory effect from such decisions since the customer solicited by SoCal under the DSP program is free to choose another independent contractor to install differing products and such installations would qualify for the financing and cash incentives authorized by the WFCP.

MIMA opined that staff witness Groves' proposal would only lead to enormous confusion on the customer's part and asked, "Why should a sales agent offer competitive products if he is not prepared to sell them?" Furthermore, MIMA warned, such a provision would most likely lead to consumer questions which would permit SoCal's agents to disparage competing products. Such a result could also be anticompetitive.

MIMA reasoned that, if SoCal is competing as a contractor with other licensed contractors, it should have the same freedom to choose its products. The staff's proposed revision would, according to MIMA, amount to requiring a Chevrolet salesman to display Ford and Plymouth models in the same showroom.

Discussion

Although SoCal's DSP operates in the competitive marketplace, its existence depends on SoCal's status as a public utility. Leads for the DSP come from inserts placed in the gas bill envelopes and from utility advertising. In D.82-02-135 the Commission provided funding for the combined DSP and WFCP. Since the proposed DSP would depend on SoCal's utility status, and on advertising placed in bills for public utility service, it follows that the program is a business affected with a public interest.

(Munn v Illinois (1877) 94 US 113, 125, 24 L ed 77, 81.)

Restricting the material to be sold by a program dependent on the sponsor's status as a utility to mineral-based insulation alone would require a finding by the Commission that the restriction is reasonable. The record contains no evidence that would support such a finding.

There is no indication that sales of cellulose-based insulation or other types of insulation, if the product is properly manufactured to federal, state, and local standards, including fire protection standards, would subject SoCal to any more potential legal liability or damage to its reputation than would the exclusive sales of mineral-based insulation. Further, the Commission has been shown no good reason why a customer answering a SoCal advertisement for insulation should not receive fair and impartial advice as to the advantages, disadvantages, and cost of all three of the traditional forms of insulation, and be afforded freedom of choice to select that which best suits the customer's needs.

The Commission will find the WA/SP reasonable, except that the proposed mineral-based insulation restriction of the DSP will be found unreasonable. SoCal will be required to offer the three traditional types of insulation (rock wool, fireproof cellulose, and fiberglass) as well as other types of insulation and conservation material approved by the Commission in generic decisions or in its resolutions.

IV. Potential Anticompetitive Effects

SoCal's witness Embrey only touched upon the potential anticompetitive effects of the WA/SP in his direct testimony. He testified that SoCal believed its proposal would minimize anticompetitive effects. There is nothing in either SoCal's testimony or briefs supporting the position that the program is altogether devoid of anticompetitive effects. To the contrary, both SoCal's prehearing and concurrent opening and closing briefs seem predicated upon the tacit admission that the program possesses certain inherent anticompetitive features and suggest findings and conclusions intended to overcome anticompetitive impacts.

Under cross-examination by ICA, Embrey said that the 1982 DSP budget provided \$15,600 for bill inserts. Although not specifically stated in the testimony, it is obvious that this figure merely represents the incremental cost of the bill inserts, not the pro rata share of the complete costs of mailing the utility bills. Embrey also conceded that SoCal's institutional advertising benefits DSP, but he contended that it benefits independent contractors as well.

In an answer to a question by staff counsel, Embrey said that only about 15% or 20% of the sales currently being made under WFCP are being made under DSP. SoCal's percentage has declined from about 70% of the sales made under HIP when the program was established in 1980.

Honick presented ICA's position that SoCal's DSP was anticompetitive. He thought that SoCal was to be complimented for its sensitive awareness that the Commission's decision would create an intolerable situation for independent contractors who already find it extremely difficult to compete in the marketplace. Honick asserted that any public utility direct sales activity is by definition anticompetitive.

ICA recognized that cooperative promotional efforts could assist independent contractors. However, ICA asserts that SoCal enjoys an established identity and a continuing relationship with its ratepayers with which independent contractors cannot compete. According to ICA, SoCal is not merely an "ordinary contractor," since no ordinary contractor could reach all of SoCal's ratepayers through the use of inserts in ratepayer funded mailings of bills and other materials. Further, SoCal can enter or withdraw from the marketplace, as dictated by the Commission, without any discernible negative impact on itself. Ordinary contractors with whom SoCal competes, however, rely solely on the insulation or conservation services which they sell.

In ICA's view the competitive advantage to SoCal of its unique relationship with its ratepayers and its diversified operation is further enhanced by SoCal's capacity as a financing medium. The utility will be able to control the flow of funds to independent contractors participating in WFCP while substantially reducing administrative costs and other problems for the select few contractors performing under SoCal's WA/SP.

Although impressed with SoCal's desire to maintain high standards of performance by contractors who would perform the work under DSP, ICA objects strenuously to the program being restricted to RCS-listed contractors. Further, while SoCal has expressed sensitivity in its WA/SP to the standards required of contractors by

consumers, the program description implies that those who do not meet SoCal's standards for direct sales work are less qualified than those who do. ICA postulates that if one could accept SoCal's reasoning that those who meet its own special standards are the truly qualified contractors, then one would have to assume that the greater share of WFCP financing will be for work by less reliable contractors. ICA does not accept the RCS listing requirement as either valid or legal. Additionally, the program's implications regarding quality work create an unfair and unacceptable competitive edge for SoCal to which few if any independent contractors can respond.

ICA also argues that SoCal itself is open to some question with regard to its own direct sales. Other than its own asserted high performance standards, there is little in SoCal's current or previous testimony which addressed how its own commissioned sales agents could be restrained from taking advantage of their direct affiliation with the utility. One need not be a marketing genius, ICA observes, to realize that the public is generally more attuned to the safety implied by the larger institution as opposed to that afforded by smaller businessmen who may be just as reliable.

In its brief, ICA concludes that SoCal is absolutely correct in its own deep concerns about its involvement in direct sales and related activities. ICA believes that SoCal has been required to maintain this activity specifically by actions of the Commission and that the Commission now has an opportunity to correct those actions. ICA believes that the Commission should reinstate its order for SoCal to withdraw from direct sales activities and return to its proper role of helping to educate consumers with respect to the important goal of energy conservation. Continuation of the program would have a definite anticompetitive effect on the marketplace.

Evaluation of Potential
Anticompetitive Effects

In evaluating the potential anticompetitive effects of WA/SP, the Commission will be guided by the direction from the California Supreme Court in Northern California Power Agency v Public Utilities Commission (1971) 5 Cal 3d 370. The court in that decision stated: "The Commission must place the important public policy in favor of free competition in the scale along with the other rights and interests of the general public." (Id. at 379.)

The encouragement of assistance in and financing of the installation of home insulation has been legislated public policy since the addition in 1975 and 1977 of Chapter 6, Home Insulation and Financing, to the Public Utilities Code. The Commission, in D.82-02-135, found an urgent need for public utilities to take aggressive steps to promote energy conservation (Finding 1). Further, we found in D.82-02-135 (Finding 10) and in previous decisions that there are substantial opportunities for highly cost-effective investments by public utilities in providing financial incentives for weatherization retrofit by their residential customers.

SoCal's WA/SP, as part of WFCP, meets the criterion of being an aggressive step to promote energy conservation. The "aggressive step," however, has admitted anticompetitive effects. SoCal's witness Embrey forthrightly testified that the SoCal WA/SP was designed to minimize, not to eliminate, anticompetitive effects, and SoCal's two briefs offer the Commission proposed findings designed to overcome any adverse effects of the program on competition. We must therefore weigh these anticompetitive effects "in the scale along with the other rights and interests of the general public."

In requiring the consolidation of WFCP and DSP in D.82-02-135, we were impressed by the contentions of the CEC that the

consolidation would reduce duplication of effort and provide a substantial cost saving. Aware of the Northern California Power Agency case, however, we were also concerned that the aggressive weatherization effort contemplated by D.82-02-135 might have serious anticompetitive effects and therefore ordered the further consideration of anticompetitiveness. SoCal's serious reservations about the combined program and its assurances that a separated program would not produce an additional burden on regular service persuade us to reverse our directive to combine the two programs.

The Commission has previously considered the issue of direct competition by a public utility with unregulated suppliers, in the Dimension PBX case. (D.87962, (1977) 82 CPUC 725.) The Pacific Telephone and Telegraph Company (PT&T) had applied for authorization of tariffs for a versatile new private branch exchange designated "Dimension PBX". Unregulated manufacturers of similar equipment protested, on anticompetitiveness grounds. The Commission's decision was appealed by protestants to the California Supreme Court, but review was denied. ✓

Although D.87962 involved Dimension PBX, a public utility service rendered under utility tariffs, an analogy to that case is appropriate since installation of insulation and weatherization as an alternative to expansion of utility plant and depletion of natural resources is an activity which now cannot be separated from more traditional utility functions. In the Dimension PBX case, the Commission said:

"We see our regulatory role in this competitive situation as our traditional function of prescribing rates that are just and reasonable, using conventional regulatory concepts that consider the cost to provide the service. If, at the just and reasonable rate levels we establish for utility service, the public utility's competitors can provide more attractive equipment, or can charge

a lower price, or both, they will carve out a share of, or perhaps capture entirely, the market for that equipment. As we understand our duty under the Northern California Power Agency decision, it is to explore the anticompetitive aspects of a proposed utility service offering. If the rates that we establish are just and reasonable, and fully recover the cost of the service offering, yet are not excessively profitable to the utility, we feel that we have complied with the directions of the California Supreme Court in considering 'the important public policy in favor of free competition in the scale along with the other rights and interest of the general public.'"

It is important that the Commission make certain that any weatherization program carried out in private residences, which could also be performed by contractors unaffiliated with the utility, not be subsidized in any way by the utility's regulated operations. SoCal will, therefore, be directed to identify the overhead costs of the program, including all personnel, and charge those costs to DSP. In addition, DSP should bear its fully allocated share of SoCal's bill inserts and other advertising, to the extent that these communications produce leads for DSP.

We will adopt SoCal's proposal that the revenues and expenses associated with DSP be accounted for in the CCA balancing account. We expect SoCal to ensure that fully allocated costs of DSP balance the program's revenues. We will not allow the ratepayers to subsidize DSP; neither will we allow SoCal to reallocate any revenue surplus out of DSP to other uses. ✓

SoCal will be directed to file, within 30 days, a projected first year budget for DSP. This budget should identify the overhead and advertising costs to be allocated to DSP.

SoCal will also be directed to file within 30 days a detailed description of the procedures by which licensed contractors will apply to participate as DSP subcontractors. SoCal must ensure that its selection process is open to any licensed contractor who meets fair and objective standards. While SoCal has an obvious interest in ensuring the quality of work performed by contractors operating as SoCal subcontractors in performing DSP installations, the utility will bear a heavy burden before us in attempting to justify any conditions more restrictive than those presently required for RCS-listing. Of course, SoCal may refuse to renew subcontractors who have performed poorly or unreliably.

We note in this regard that the CEC, on January 12, 1983, amended the RCS State Plan. As part of these "Phase II" amendments, virtually all contractors with relevant state contractor's licenses, and which agree to RCS warranty requirements are eligible for RCS-listing. These modifications should appease ICA's concerns that the RCS-listing requirement would operate to limit contractor participation in DSP.

An important element of SoCal's DSP which was not addressed adequately in this proceeding was the consideration of price in SoCal's selection of and contracts with contractors. In considering the appropriate role for pricing DSP installations, the Commission faces competing motivations. First, the ratepayers have an interest in holding down the price of measures financed through all elements of WFCP, since these prices are reflected directly in program costs.

Second, however, the Commission has a competing obligation to minimize the anticompetitive impacts of DSP. Restrictive pricing requirements could tend to influence unduly the overall market prices of WFCP measures. ✓


As a reasonable balancing of these concerns, SoCal will be directed to solicit price offerings from contractors as part of its subcontractor selection procedure. Potential subcontractors will be

requested to estimate the number of jobs they would be willing to perform for SoCal; and to state the price they would charge. SoCal will accept for participation in DSP the qualified contractors which can, in the aggregate, perform the number of DSP installations which SoCal projects at the lowest total cost. This projected demand must, of course, consider the full range of measures eligible for WFCP.

In this way, individual contractors will compete against one another for participation in DSP, not against a predetermined SoCal target. In order to strengthen further the competitiveness of its DSP contracting procedure, SoCal will be directed to hold new rounds of subcontractor selection at regular, fairly short intervals. SoCal has proposed to solicit proposals once each year; that interval is too long. In its compliance filing, SoCal should select a frequency of solicitation which will allow prompt and flexible response to changes in prices of materials, labor, and other costs of installations, which will allow individual contractors to "try again" reasonably soon if they have priced themselves out of DSP participation, and which will allow SoCal to update projections of DSP participation levels.

We find that the program outlined in this decision minimizes the potential anticompetitive impacts of DSP. In proportion to the public policy to be served, any remaining restraint upon competition occasioned by the WA/SP is reasonable, and that public policy in favor of energy conservation overrides any identifiable potential anticompetitive effects of the WA/SP.

For WA/SP to be upheld if challenged on anticompetitive grounds, the WA/SP must be supervised with reasonable diligence by the state. (California Retail Liquor Dealers Association v Midcal Aluminum (1980) 445 US 97, 63 L ed 2d 233.) The Commission is the California agency charged with the supervision and regulation of public utilities. (PU Code §§ 216(d) and 701.) It is therefore



incumbent upon the Commission to review the prices charged by SoCal for its weatherization products, to regulate the standards established for participating subcontractors, to monitor market conditions to determine SoCal's market share, and to reexamine SoCal's direct sales program periodically to assess the market impact of the program.

The first Commission effort in this supervision will be review of SoCal's compliance filing. If we find SoCal's proposal to be inadequate, we will consider further hearings in this proceeding.¹

On an ongoing basis, we expect SoCal to describe its DSP activities in detail in each of its periodic reports to the Commission concerning the WFCP program. The Commission's Energy Conservation Branch shall review these filings and inform the Commission of any difficulties. DSP will be considered in detail at the time of the annual reasonableness review of SoCal's WFCP program.

With the issuance of this decision, SoCal's motion filed December 31, 1982, for an immediate order on the issues considered herein is now moot and requires no action.

Findings of Fact

1. Notice of the hearings in this phase of these proceedings was given directly to more than 1,500 potentially affected contractors in southern California. In addition, notice was published in all local newspapers serving SoCal's service area.

¹ The provisions of SoCal's WA/SP and the procedure followed in this proceeding to examine the issue of anticompetitiveness (i.e., "one public hearing) qualify the program for the NECPA exemption from its supply and installation prohibition set forth in Chapter XIV of the RCS State Plan. The RCS State Plan requires that all contractors participating in the exempted program be RCS-listed. (See D.82-09-062, issued September 22, 1982, in this proceeding.)

2. Contractors and contractor representatives testified in the hearings about potential anticompetitive effects of SoCal's direct sales program.

3. WA/SP, prepared and submitted by SoCal in compliance with Ordering Paragraph 1.d. of D.82-02-135, and as modified by this decision, meets the criterion of being an aggressive step to promote energy conservation as contemplated by Finding 1 of D.82-02-135.

4. WA/SP, as proposed by SoCal, contemplates that DSP be continued separately from the advice-referral activities of WFCP, rather than combined as required by Ordering Paragraph 1.d. of D.82-02-135.

5. Continued separation of the advice-referral activities of WFCP from DSP would minimize the potential anticompetitive effects of DSP.

6. The DSP proposed by SoCal includes all measures eligible for WFCP financing and credits.

7. The cost to SoCal's ratepayers of the WA/SP authorized by this decision is reasonable.

8. The restriction of the type of insulation sold and installed under SoCal's DSP to rockwool or fiberglass is unreasonable. Instead, all materials eligible for financing under WFCP should be described in WFCP advice-referral activities and available through DSP.

9. SoCal promotes sales and installation of insulation and other weatherization and energy conservation materials by means of bill inserts and by institutional advertising.

10. SoCal's conservation and weatherization promotional activities benefit both SoCal's DSP and independent weatherization contractors by stimulating the insulation retrofit and weatherization market in southern California.

11. SoCal's DSP may have competitive advantages over independent contractors because of:

- a. The market impact of institutional advertising and specific promotion of weatherization products through SoCal's bill inserts.
- b. SoCal's established identity and relationship with ratepayers.
- c. Identification in customers' minds with SoCal's WFCP and RCS.

12. SoCal's DSP may result in better cash flow for those contractors who install weatherization measures under contract to SoCal compared to other contractors.

13. SoCal's DSP will help achieve levels of market penetration that otherwise would not be realized.

14. The DSP will further the goal of maximizing energy conservation.

15. The DSP as authorized by this decision will involve no utility subsidy of that program.

16. The DSP will result in lower overall costs to ratepayers by increasing the penetration of cost-effective energy conservation measures.

17. The requirements for participation by contractors in the DSP authorized by this decision are fair and objective. The DSP will be open to participation by any contractor who meets the standards, including SoCal's WFCP warranty requirements, and opportunities to bid for participation will be offered to all RCS-listed contractors through frequent bidding procedures. The program should be designed to avoid providing any supplier or contractor an unreasonably large share of the market. Any subsequent work financed through WFCP would be required to meet that program's warranty requirements.

18. Price competition among qualified contractors for the opportunity to participate in DSP should reduce the costs of DSP and WFCP without exerting anticompetitive pressures on the markets for insulation and weatherization materials.

19. SoCal should make all reasonable efforts to ensure that contractors installing insulation and weatherization measures do not misrepresent or capitalize unreasonably upon their limited contractual relationship with SoCal.

20. It is unclear at this time whether SoCal's market share will increase or decrease as a result of SoCal's direct sales program.

21. SoCal should charge DSP with its fully allocated share of: advertising costs, including postage, handling, and overhead; and general program overhead.

22. The Commission will engage actively in the scrutiny, supervision, and monitoring of the operation and progress of WA/SP. Specifically: SoCal will be directed to itemize its WA/SP activities within its regular reports to the Commission on WFCP; and WA/SP activities will be reviewed in detail as part of annual reviews of the reasonableness of WFCP.

23. No less restrictive alternative will be as effective an energy conservation measure as SoCal's WA/SP as authorized by this decision.

24. In proportion to the public policy to be served, any restraint upon competition occasioned by SoCal's WA/SP, as authorized by this decision, is reasonable. Public policy in favor of energy conservation overrides the potential anticompetitive effects of the WA/SP.

Conclusions of Law

1. The Commission's policy, and that of the Legislature as expressed in PU Code §§ 2781 through 2789, is to promote energy conservation by means of home insulation and financing.

2. The extent to which the DSP authorized by this decision may have anticompetitive effects on the insulation and weatherization markets or create a market restraint will be minimized by the intended structure of the program.

3. Any remaining anticompetitive effect or market restraint from the DSP are reasonable and no less restrictive alternative will penetrate the insulation retrofit and weatherization markets as well as DSP, as authorized by this decision.

4. The public policy goal of maximizing conservation outweighs the potential anticompetitive effects of DSP, as authorized by this decision.

5. The DSP as authorized by this decision minimizes potential anticompetitive effects, is reasonable, and serves the public interest.

6. SoCal should expand its DSP to demonstrate, sell, and arrange installation of any of the three types of traditional insulation materials, as selected by the customer, namely, rockwool, fireproof cellulose, and fiberglass, as well as other insulation and weatherization materials approved by the Commission in generic decisions or in its EC Series resolutions.

7. SoCal should be authorized to continue the separation of DSP from the advice-referral activities of WFCP.

8. SoCal should revise WA/SP to conform to the letter and spirit of this decision.

ORDER AFTER FURTHER HEARING

IT IS ORDERED that:

1. Southern California Gas Company (SoCal) shall, within 30 days of the effective date of this order, file with the Commission a report containing the details and manner in which it plans to implement its Weatherization Advice and Sales Program, in conformance with this decision. SoCal shall file an original and 12 copies with the Commission's Docket Office.

2. If the plan submitted in compliance with Ordering Paragraph 1 is acceptable to the Commission, SoCal and the parties will be informed by a letter from the Commission's Executive Director.

3. Ten days after issuance of the Executive Director's letter, this proceeding will terminate.

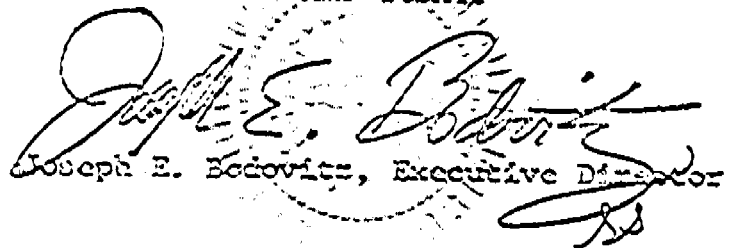
This order becomes effective 30 days from today.

Dated March 2, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bedovitz, Executive Director

and independent contractors install insulation and other conservation material or equipment in the homes of SoCal's customers.

Earlier, in D.92497 (in A.59316), dated December 9, 1980, the Commission had ordered SoCal to continue its DSP only until the Commission had approved a zero interest loan program (ZIP) for SoCal. Subsequent to the issuance of D.92497, SoCal's then existing home insulation program (HIP), with its financing incentive of an 8% interest rate for attic insulation loans and its support from DSP, became overwhelmingly successful with SoCal's ratepayers. Because of the success of HIP, the significantly higher cost of ZIP to ratepayers, and the self-supporting nature of the DSP, the Commission decided in D.82-02-135 to continue both the 8% financing and DSP as features of WFCP.

The Commission found in D.82-02-135 that the incorporation of DSP into WFCP would substantially reduce SoCal's labor costs while providing the additional inducement to weatherization of "closing the sale". Second, the Commission found that both incorporating DSP into WFCP and expanding it to include sales of all the conservation measures made eligible for WFCP were reasonable. The Commission also found that the combined functions of weatherization representatives and direct sales agents could be performed by a single labor force.

Ordering Paragraphs 1.d. and 15 of D.82-02-135 required SoCal to file with the Commission its designs for the weatherization representative and direct sales elements of WFCP. Ordering Paragraph 1.d. reads:

- "d. SoCal shall provide advice to customers about WFCP, contractor referrals, and financing through a weatherization representative who will also have the authority to make direct company sales to customers of all eligible WFCP measures. SoCal shall offer participation in its direct company sales program to all RCS-listed contractors under uniform

Honick presented ICA's position that SoCal's DSP was anticompetitive. He thought that SoCal was to be complimented for its sensitive awareness that the Commission's decision would create an intolerable situation for independent contractors who already find it extremely difficult to compete in the marketplace. Honick asserted that any public utility direct sales activity is by definition anticompetitive.

ICA recognized that cooperative promotional efforts could assist independent contractors. However, ICA asserts that SoCal enjoys an established identity ~~in part~~ and a continuing relationship with its ratepayers with which independent contractors cannot compete. According to ICA, SoCal is not merely an "ordinary contractor," since no ordinary contractor could reach all of SoCal's ratepayers through the use of inserts in ratepayer funded mailings of bills and other materials. Further, SoCal can enter or withdraw from the marketplace, as dictated by the Commission, without any discernible negative impact on itself. Ordinary contractors with whom SoCal competes, however, rely solely on the insulation or conservation services which they sell. K

In ICA's view the competitive advantage to SoCal of its unique relationship with its ratepayers and its diversified operation is further enhanced by SoCal's capacity as a financing medium. The utility will be able to control the flow of funds to independent contractors participating in WFCP while substantially reducing administrative costs and other problems for the select few contractors performing under SoCal's WA/SP.

Although impressed with SoCal's desire to maintain high standards of performance by contractors who would perform the work under DSP, ICA objects strenuously to the program being restricted to RCS-listed contractors. Further, while SoCal has expressed sensitivity in its WA/SP to the standards required of contractors by

consolidation would reduce duplication of effort and provide a substantial cost saving. Aware of the Northern California Power Agency case, however, we were also concerned that the aggressive weatherization effort contemplated by D.82-02-135 might have serious anticompetitive effects and therefore ordered the further consideration of anticompetitiveness. SoCal's serious reservations about the combined program and its assurances that a separated program would not produce an additional burden on regular service persuade us to reverse our directive to combine the two programs.

The Commission has previously considered the issue of direct competition by a public utility with unregulated suppliers, in the Dimension PBX case. (D.87962, (1977) 82 CPUC 725.) The Pacific Telephone and Telegraph Company (PT&T) had applied for authorization of tariffs for a versatile new private branch exchange designated "Dimension PBX". Unregulated manufacturers of similar equipment protested, on anticompetitive ^{ness} grounds. The Commission's decision was appealed by protestants to the California Supreme Court, but review was denied. R U

Although D.87962 involved Dimension PBX, a public utility service rendered under utility tariffs, an analogy to that case is appropriate since installation of insulation and weatherization as an alternative to expansion of utility plant and depletion of natural resources is an activity which now cannot be separated from more traditional utility functions. In the Dimension PBX case, the Commission said:

"We see our regulatory role in this competitive situation as our traditional function of prescribing rates that are just and reasonable, using conventional regulatory concepts that consider the cost to provide the service. If, at the just and reasonable rate levels we establish for utility service, the public utility's competitors can provide more attractive equipment, or can charge

a lower price, or both, they will carve out a share of, or perhaps capture entirely, the market for that equipment. As we understand our duty under the Northern California Power Agency decision, it is to explore the anticompetitive aspects of a proposed utility service offering. If the rates that we establish are just and reasonable, and fully recover the cost of the service offering, yet are not excessively profitable to the utility, we feel that we have complied with the directions of the California Supreme Court in considering 'the important public policy in favor of free competition in the scale along with the other rights and interest of the general public.'"

It is important that the Commission make certain that any weatherization program carried out in private residences, which could also be performed by contractors unaffiliated with the utility, not be subsidized in any way by the utility's regulated operations. SoCal will, therefore, be directed to identify the overhead costs of the program, including all personnel, and charge those costs to DSP. In addition, DSP should bear its fully allocated share of SoCal's bill inserts and other advertising, to the extent that these communications produce leads for DSP.

We will adopt SoCal's proposal that the revenues and expenses associated with DSP be accounted for in the CCA balancing account. We expect SoCal to ensure that fully allocated costs of DSP balance the program's ~~expenses~~ ^{revenues}. We will not allow the ratepayers to subsidize DSP; neither will we allow SoCal to reallocate any revenue surplus out of DSP to other uses. Rk

SoCal will be directed to file, within 30 days, a projected first year budget for DSP. This budget should identify the overhead and advertising costs to be allocated to DSP.

SoCal will also be directed to file within 30 days a detailed description of the procedures by which licensed contractors will apply to participate as DSP subcontractors. SoCal must ensure that its selection process is open to any licensed contractor who meets fair and objective standards. While SoCal has an obvious interest in ensuring the quality of work performed by contractors operating as SoCal subcontractors in performing DSP installations, the utility will bear a heavy burden before us in attempting to justify any conditions more restrictive than those presently required for RCS-listing. *Of course, SoCal may refuse to renew subcontractors which have performed poorly or unsatisfactorily.* *Km*

We note in this regard that the CEC, on January 12, 1983, amended the RCS State Plan. As part of these "Phase II" amendments, virtually all contractors with relevant state contractor's licenses, and which agree to RCS warranty requirements, are eligible for RCS-listing. These modifications should appease ICA's concerns that the RCS-listing requirement would operate to limit contractor participation in DSP.

An important element of SoCal's DSP which was not addressed adequately in this proceeding was the consideration of price in SoCal's selection of and contracts with contractors. In considering the appropriate role for pricing DSP installations, the Commission faces competing motivations. First, the ratepayers have an interest in holding down the price of measures financed through all elements of WFCP, since these prices are reflected directly in program costs.

Second, however, the Commission has a competing obligation to minimize the anticompetitive impacts of DSP. Restrictive pricing requirements could tend to influence unduly the overall market prices of WFCP measures. *Km*

As a reasonable balancing of these concerns, SoCal will be directed to solicit price offerings from contractors as part of its subcontractor selection procedure. Potential subcontractors will be

requested to estimate the number of jobs they would be willing to perform for SoCal, and to state the price they would charge. SoCal will accept for participation in DSP the qualified contractors which can, in the aggregate, perform the number of DSP installations which SoCal projects at the lowest total cost. This projected demand must, of course, consider the full range of measures eligible for WFCP.

In this way, individual contractors will compete against one another for participation in DSP, not against a predetermined SoCal target. In order to strengthen further the competitiveness of its DSP contracting procedure, SoCal will be directed to hold new rounds of subcontractor selection at regular, fairly short intervals. SoCal has proposed to solicit proposals once each year; that interval is too long. In its compliance filing, SoCal should select a frequency of solicitation which will allow prompt and flexible response to changes in prices of materials, labor, and other costs of installations, which will allow individual contractors to "try again" reasonably soon if they have priced themselves out of DSP participation, and which will allow SoCal to update projections of DSP participation levels.

We find that the program outlined in this decision minimizes the potential anticompetitive impacts of DSP. In proportion to the public policy to be served, any remaining restraint upon competition occasioned by the WA/SP is reasonable, and that public policy in favor of energy conservation overrides any identifiable potential anticompetitive effects of the WA/SP.

For WA/SP to be upheld if challenged on anticompetitive grounds, the WA/SP must be supervised with reasonable diligence by the state. (California Retail Liquor Dealers Association v Midcal Aluminum (1980) 445 US 97, 63 L ed 2d 233.) The Commission is the California agency charged with the supervision and regulation of public utilities. (PU Code §§ 216(d) and 701.) It is therefore

Ru

incumbent upon the Commission to review the prices charged by SoCal for its weatherization products, to regulate the standards established for participating subcontractors, to monitor market conditions to determine SoCal's market share, and to reexamine SoCal's direct sales program periodically to assess the market impact of the program.

The first Commission effort in this supervision will be review of SoCal's compliance filing. If we find SoCal's proposal to be inadequate, we will consider further hearings in this proceeding.¹

On an ongoing basis, we expect SoCal to describe its DSP activities in detail in each of its periodic reports to the Commission concerning the WFCP program. The Commission's Energy Conservation Branch shall review these filings and inform the Commission of any difficulties. DSP will be considered in detail at the time of the annual reasonableness review of SoCal's WFCP program.

With the issuance of this decision, SoCal's motion filed December 31, 1982, for an immediate order on the issues considered herein is now moot and requires no action.

Findings of Fact

1. Notice of the hearings in this phase of these proceedings was given directly to more than 1,500 potentially affected contractors in southern California. In addition, notice was published in all local newspapers serving SoCal's service area.

¹ The provisions of SoCal's WA/SP and the procedure followed in this proceeding to examine the issue of anticompetitiveness (i.e., "one public hearing) qualify the program for the NECPA exemption from its supply and installation prohibition set forth in Chapter XIV of the RCS State Plan. The RCS State Plan requires that all contractors participating in the exempted program be RCS-listed. (See SoCal D.82-09-062, issued September 22, 1982, in this proceeding). *KN*

- a. The market impact of institutional advertising and specific promotion of weatherization products through SoCal's bill inserts.
- b. SoCal's established identity and relationship with ratepayers.
- c. Identification in customers' minds with SoCal's WFCP and RCS.

12. SoCal's DSP may result in better cash flow for those contractors who install weatherization measures under contract to SoCal compared to other contractors.

13. SoCal's DSP will help achieve levels of market penetration that otherwise would not be realized.

14. The DSP will further the goal of maximizing energy conservation.

15. The DSP as authorized by this decision will involve no utility subsidy of that program.

16. The DSP will result in lower overall costs to ratepayers by increasing the penetration of cost-effective energy conservation measures.

17. The requirements for participation by contractors in the DSP authorized by this decision are fair and objective. The DSP will be open to participation by any contractor who meets the standards *including So Cal's WFCP warranty requirements* and opportunities to bid for participation will be offered to all RCS-listed contractors through frequent bidding procedures. The program should be designed to avoid providing any supplier or contractor an unreasonably large share of the market.

18. Price competition among qualified contractors for the opportunity to participate in DSP should reduce the costs of DSP and WFCP without exerting anticompetitive pressures on the markets for insulation and weatherization materials.

Any subsequent work financed through WFCP would be required to meet that program's warranty requirements.

19. SoCal should make all reasonable efforts to ensure that contractors installing insulation and weatherization measures do not misrepresent or capitalize unreasonably upon their limited contractual relationship with SoCal.

20. It is unclear at this time whether SoCal's market share will increase or decrease as a result of SoCal's direct sales program.

21. SoCal should charge DSP with its fully allocated share of: advertising costs, including postage, handling, and overhead; and ~~quality assurance inspection costs, including inspectors and overhead.~~ ^{general program} *Ke*

22. The Commission will engage actively in the scrutiny, supervision, and monitoring of the operation and progress of WA/SP. Specifically: SoCal will be directed to itemize its WA/SP activities within its regular reports to the Commission on WFCP; and WA/SP activities will be reviewed in detail as part of annual reviews of the reasonableness of WFCP.

23. No less restrictive alternative will be as effective an energy conservation measure as SoCal's WA/SP as authorized by this decision.

24. In proportion to the public policy to be served, any restraint upon competition occasioned by SoCal's WA/SP, as authorized by this decision, is reasonable. Public policy in favor of energy conservation overrides the potential anticompetitive effects of the WA/SP.

Conclusions of Law

1. The Commission's policy, and that of the Legislature as expressed in PU Code §§ 2781 through 2789, is to promote energy conservation by means of home insulation and financing.

2. The extent to which the DSP authorized by this decision may have anticompetitive effects on the insulation and weatherization markets or create a market restraint will be minimized by the intended structure of the program.

3. Any remaining anticompetitive effect or market restraint from the DSP are reasonable and no less restrictive alternative will penetrate the insulation retrofit and weatherization markets as well as DSP, as authorized by this decision.

4. The public policy goal of maximizing conservation outweighs the potential anticompetitive effects of DSP, as authorized by this decision.

5. The DSP as authorized by this decision minimizes potential anticompetitive effects, is reasonable, and serves the public interest.

6. SoCal should expand its DSP to demonstrate, sell, and arrange installation of any of the three types of traditional insulation materials, as selected by the customer, namely, rockwool, fireproof cellulose, and fiberglass, as well as other insulation and weatherization materials approved by the Commission in generic decisions or in its EC Series resolutions.

7. SoCal should be authorized to continue the separation of DSP from the advice-referral activities of WFCP.

8. SoCal should revise WA/SP to conform to the letter and spirit of this decision.

9. To avoid any further delays in the implementation of SoCal's WFCP, this order should be made effective today.

ORDER AFTER FURTHER HEARING

IT IS ORDERED that:

1. Southern California Gas Company (SoCal) shall, within 30 days of the effective date of this order, file with the Commission a report containing the details and manner in which it plans to implement its Weatherization Advice and Sales Program, in conformance with this decision. SoCal shall file an original and 12 copies with the Commission's Docket Office.

2. If the plan submitted in compliance with Ordering Paragraph 1 is acceptable to the Commission, SoCal and the parties will be informed by a letter from the Commission's Executive Director.

3. Ten days after issuance of the Executive Director's letter, this proceeding will terminate.

revised
This order is effective *30 days from today.* today.

Dated MAR 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

Commissioners