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Decision 97-02-014 February 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	R.94-04-031 (Filed April 20, 1994)
Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	I.94-04-032 (Filed April 20, 1994)

(See Attachment 1 for appearances.)

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INTERIM OPINION ON PUBLIC PURPOSE PROGRAMS--THRESHOLD ISSUES

1.0 Summary

Today's decision addresses certain threshold issues regarding the administration of public purpose programs under a restructured electric utility industry. First, we clarify that our goal for the provision of energy efficiency services is to establish an administrative structure that will facilitate the privatization of those services in the marketplace. We have created a structure that we believe can best accomplish this market transformation goal within the limited period of ratepayer funding under Assembly Bill (AB) 1890, i.e., between now and 2002.[1]

Specifically, we will appoint an Independent Board (Board) consisting of regulatory representatives and members of the public to oversee limited term contracts for the administration of market transformation programs. Among other things, the Board will develop and issue a request for proposal (RFP) articulating policy and programmatic guidelines for one or more administrators, subject to our approval.

We will also establish a Governing Board to oversee low-income programs, including rate assistance and low-income energy efficiency services. This Governing Board will coordinate closely with the Independent Board, particularly with regard to weatherization and education programs, but will have the specific

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[1] Attachment 2 explains each acronym or other abbreviation that appears in this decision.

mission of assisting low-income ratepayers with managing their energy bills. The Governing Board will include representatives from this Commission and the public. The Governing Board will issue an RFP, subject to our approval, to hire an Administrator. The Administrator will be responsible for (1) collecting and disbursing funding for rate discounts, (2) verifying customer eligibility, and (3) making energy efficiency and education services available to eligible low-income ratepayers.

Regulated utilities will be allowed to bid for the administration of these programs, but we will no longer establish shareholder incentive mechanisms to encourage their participation. Our goal is to have the new administrative structure for energy efficiency programs in place by January 1, 1998. For low-income programs, our target is to have the Governing Board and Administrator selected by January 1, 1998. Utilities will continue their stewardship of existing demand-side management and low-income assistance programs until the new administrative structures are fully operational.[2]

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[2] Demand-side management programs focus on the customer side of the utility meter and have included programs for load management, energy efficiency, and fuel substitution, among others. Throughout this decision, we use the term "energy efficiency" to refer to those demand-side management activities that transform the market for energy efficiency services, consistent with our goals. As described in today's decision, we will need to revise our current demand-side management rules to reflect the changes in program focus and administration.

We recognize that gas utilities do not currently have a nonbypassable surcharge available to them in order to collect funding for public purpose activities. We will allow the gas utilities to continue to operate their own energy efficiency and low-income rate assistance programs with the option to transfer funding to the Board, and ultimately to the selected administrators, as we explore development of a gas surcharge. If gas utilities choose not to transfer funding for these programs, the gas utility should work with the selected administrators to ensure coordination of delivery of services. In the future, we intend to establish a gas surcharge mechanism that will fund all public purpose areas and that will ultimately apply to all retail gas customers. We direct our Energy Division to submit a report on implementation issues for our consideration. On the basis of that report, we will take all necessary actions and make appropriate recommendations to the Legislature to implement this policy.

We adopt the minimum funding levels established by AB 1890 initially, but do not preclude consideration of higher levels, as appropriate, in the future. Based on our interpretation of the research, development, and demonstration (RD&D) funding provisions of the statute, we find that the minimum funding levels apply only to public purpose RD&D, and do not include regulated RD&D. Of the $62.5 million in total annual funding, we will allocate $61.8 million to the California Energy Commission (CEC) for public interest RD&D not related to transmission and distribution (T&D). Utilities will retain $700,000 for annual

T&D-related public interest RD&D, consistent with the intent of the statute. Utilities may also apply for an increased revenue requirement to cover regulated RD&D, subject to the rate limitations of AB 1890, or may seek funding from the CEC for such activities, such as reliability-related RD&D, which they believe have become public interest RD&D.

There will be an ongoing need for coordination with the CEC because of the shared responsibilities for public purpose programs and the potential overlap of RD&D, energy efficiency, and renewables activities. In today's decision, we facilitate such coordination by including a representative from the CEC on the new Independent Board for energy efficiency. We also transmit the Working Group reports on RD&D and Renewables to both the CEC and Legislature for their consideration in developing administrative options and evaluation criteria, pursuant to AB 1890. We continue to support the development of a Memorandum of Understanding (MOU) with the CEC on coordination of RD&D and other public purpose program efforts.

We hope that today's clarifications will set the stage for further collaborative efforts among the parties, utilizing informal processes where appropriate, that will assist us in filling out the details of program administration, oversight, and implementation in an expeditious manner. We will address such details in subsequent orders. As soon as practicable after the issuance of today's decision, the assigned Administrative Law Judge (ALJ) will schedule a workshop or other appropriate forum to address the required next steps.

2.0 Background

By Decision (D.) 95-12-063, as modified by D.96-01-009 ("policy decision"), we described our vision of a competitive framework for the electric services industry. This vision acknowledged the continued need for activities performed in the public interest, such as energy efficiency, RD&D, and low-income programs. However, we viewed the role of utilities as the providers of these services as less clear. We found it appropriate to continue ratepayer funding for various public programs as we moved towards a competitive framework, and anticipated that the Legislature would also provide guidance with respect to appropriate modification of these programs. For low-income, RD&D and energy efficiency programs in the broader public interest, we called for a nonbypassable surcharge to recover those costs. For renewables, we suggested a minimum purchase requirement.

In early 1996, we requested participants in California's electric industry restructuring process to form Working Groups to address various issues related to our vision of a restructured industry. Working Groups met during 1996 to discuss RD&D, energy efficiency, renewables, and low-income assistance programs and presented their reports for our consideration. At the request of the assigned Commissioners, a separate integration report concerning energy efficiency and RD&D activities was also

prepared.[3] Each report contained consensus and nonconsensus positions on policy and implementation issues related to the administration of these programs in a restructured environment. A list of Working Group participants is presented in Attachment 3.

On September 23, 1996, AB 1890 was signed into law. (Stats 1996, Chapter 854.) AB 1890 addresses electric restructuring in California, including the continued provision of public purpose programs through the imposition of a nonbypassable charge on local distribution service. The sections of AB 1890 that specifically discuss public purpose programs are appended to this decision. (See Attachment 4.)

Parties were directed to comment on the Working Group reports in light of the provisions of AB 1890. (See Joint Assigned Commissioners' Ruling dated September 4, 1996.) Opening comments were filed on October 7, 1996 by: Appliance Recycling Centers of America, Inc. (Appliance Recycling Centers), Bay Area Quality Management District, CEC, California Department of General Services (DGS), Center for Energy and Economic Development (CEED), Environmental Defense Fund (EDF) and the Center for Energy Efficiency and Renewable Technologies (CEERT),

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[3] See Funding and Administering Public Interest Energy Efficiency Programs: The Report of the Energy Efficiency Working Group, August 16, 1996; Renewables Working Group Report to the CPUC, August 23, 1996; Working Group Report on Public Interest RD&D Activities, September 6, 1996; Low-Income Working Group Report, October 1, 1996; Working Group Report Concerning the Integration of Certain Public Purpose Programs, October 4, 1996.

Electric Power Research Institute (EPRI), National Association of Energy Service Companies (NAESCO), Natural Resources Defense Council (NRDC), Office of Ratepayer Advocates (ORA), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Sierra Club, Southern California Edison Company (SCE), Southern California Gas Company (SoCal), and University of California (UC). In addition, joint comments were filed by the following parties: CES/Way, Enova Energy, EDF, Latino Issues Forum, NAESCO, NRDC, Onsite Energy Corporation, PG&E, Proven Alternatives, Rocky Mountain Institute, SDG&E, and SCE, hereinafter referred to as "the Coalition."[4]

On October 24, 1996, reply comments on energy efficiency, renewables, and RD&D issues were filed by Appliance Recycling Centers, CEC, California Solar Energy Industries Association, Coalition Parties, DGS, Environmental Marketing Group (EMG), NAESCO, NRDC, ORA, PG&E, SDG&E, SCE, UC, and jointly by SESCO, Inc. (SESCO), Residential Energy Services Companies' United Effort (RESCUE) and Insulation Contractors' Association.

Opening comments on low-income and integration issues were also filed on October 24, 1996 by Appliance Recycling Centers, CEC, ORA, PG&E, SCE, SDG&E, NRDC, and jointly by The Utility Reform Network, formerly Toward Utility Rate Normalization (TURN), California/Nevada Community Action Association (Cal-

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[4] Subsequent to the filing of comments, the California Retailers Association and the U.S. Department of Energy joined these parties in supporting the Coalition's administrative proposal.

Neva), Latino Issues Forum, and Utility Consumers Action Network. Reply comments on these issues were filed November 4, 1996 by PG&E, SCE, SDG&E, SoCal, TURN, SESCO/RESCUE, Cal-Neva, Sacramento Municipal Utility District, and jointly by the Greenlining Institute and the Latino Issues Forum.

A prehearing conference (PHC) was held on November 7, 1996 to discuss procedural and scheduling options for addressing public purpose issues. A list of threshold policy issues were identified for early resolution. Oral argument was held on November 19, 1996 before assigned ALJ Meg Gottstein and Commissioners Josiah L. Neeper, Jessie J. Knight, Jr., and Henry M. Duque. The oral argument was conducted in a panel format with questions directed to panelists by the assigned ALJ and attending Commissioners. Brief opening statements were submitted prior to the oral argument by 25 parties.

Before turning to the issues, we wish to commend all Working Group participants for their valuable contributions to the Working Group reports. (See Attachment 3.) These reports have greatly enhanced our understanding of the issues and options before us. We are particularly appreciative of the role played by Cal-Neva for the low-income working group, and by the CEC for the energy efficiency renewables and RD&D working groups. Without their dedication to the effective functioning of the Working Groups and the production of the reports, we are doubtful that the process would have been so successful.

3.0 Threshold Issues

Today's interim decision resolves key funding, administration, and coordination issues surrounding the administration of public purpose programs in a restructured industry environment. These include:

(1) What role, if any, should utilities play in administering public purpose programs? How should these programs be administered in the future? Should gas programs be included under the administrative structure we adopt today?

(2) What level of funding should be adopted for each public purpose area and how much RD&D funding should be transferred to the CEC under the requirements of AB 1890?

(3) How should potential overlap among the public purpose program areas and agency responsibilities be best coordinated?

(4) Should a public goods surcharge be applied to gas customers?

We discuss these issues in the following sections. Our discussion is designed to highlight the range of debate, rather than present a comprehensive description of all points raised by commenters or each commenter's specific position.

4.0 Energy Efficiency

In our policy decision, we determined that the focus of publicly funded energy efficiency programs should shift to those programs in the broader public interest, which may include programs with market transformation efforts and education efforts that would not otherwise be provided by the marketplace. We established that such costs should no longer be embedded in

electric rates and would instead be identified as a line item on customer bills no later than January 1, 1998.

We asked the Energy Efficiency Working Group to develop information to allow us to (1) establish the types of energy efficiency activities to be funded through the surcharge and (2) explore how utility expertise can be utilized as we shift to independent administration of these funds. (D.96-03-022, mimeo. p. 28.) The Working Group also addressed initial annual funding levels and surcharge collection issues in its report.

The Working Group reached consensus that the new administrator should have the discretion to decide, within adopted guidelines on a case by case basis, whether or not proposed program designs are consistent with our market transformation objectives. The Working Group recommends that all current energy efficiency program activities administered by utilities should be initially eligible for funding, but the strategies used to promote efficiency investments and the design of these programs will need to shift to meet the Commission's stated goal of market transformation.

There was no consensus on other issues, including the need for specific definitions, policies or funding guidelines at this time, the type of administrative structure, initial funding levels or surcharge design. Some of these issues were addressed by AB 1890. For example, the statute establishes that funding for all public purpose programs will be accomplished through a nonbypassable rate component of the local distribution service collected on the basis of usage. The statute also specifies that

whatever funds are authorized for collection via this nonbypassable rate component must fall within the rate level freeze and reduction requirements of Public Utilities (PU) Code § 368. (See PU Code § 381.)

In addition, AB 1890 establishes minimum annual funding levels for energy efficiency, commencing January 1, 1998 through December 31, 2001. For SDG&E and PG&E, the minimum level is $32 million and $106 million per year, respectively. For SCE, the minimum level is $90 million for 1998, 1999 and 2000, and $50 million for 2001. (PU Code § 381(c)(1).)

In the following sections we address the threshold policy issues that are left to our discretion, namely, the administrative structure for both electric and gas energy efficiency programs and initial funding levels.

4.1 Administrative Options

As discussed in the Energy Efficiency Working Group Report and filed comments, parties fundamentally disagree on the future role of utilities in the administration of energy efficiency programs. Various proposals were presented for our consideration, ranging from utilizing the utility in a manner very similar to the status quo to precluding utility participation in program administration.

Some background on how energy efficiency funds are currently administered is helpful in reviewing the proposed approaches. Currently, the Commission is responsible for adopting funding levels and developing guidelines, utility shareholder incentives (including penalty provisions), and measurement protocols that

relate to the Commission's priorities for utility energy efficiency activities. The utilities are responsible for developing energy efficiency programs consistent with the funding levels and Commission guidelines and implementing those programs. The utilities also consult with advisory committees when designing their programs and developing their goals for each program year.

Below we briefly describe the range of proposals, starting with those proposing the least modification of current practices. Attachment 5 presents a side-by-side comparison of who performs each function (policy setting, administration and management, implementation, market barrier assessment, and program evaluation) under each proposal.

4.1.1 Retain Current System (SoCal)

SoCal recommends that any changes in administration of energy efficiency funds be limited to the electric industry. However, SoCal presents an option closely based on current energy efficiency delivery mechanisms. SoCal's proposal would maintain region-specific policies for use of energy efficiency funds based on utility service territory. Each service territory would have an Advisory Board with specified membership and voting rights that would provide direction to the local utility administrator. Under SoCal's proposal, the local utility would have four of eight voting seats on the Board.

The local utility administrator would report to the Advisory Board. The Advisory Board would have responsibility for approval of program designs proposed by the local utility administrator.

SoCal's proposal would have the Commission establish the allocation of funds between third party and utility-provided energy efficiency services, a transparent bidding process for selecting third party energy efficiency services, and a process to allow disputes to be linked to the Commission's existing dispute resolution mechanisms.

4.1.2 Energy Efficiency Board (Coalition)

The Coalition presents an option that utilizes much of the existing energy efficiency delivery framework. A statewide Energy Efficiency Board (appointed by the Commission) would establish guidelines for administering energy efficiency funds, with the utilities serving as the administrators subject to Board oversight. The Board would recommend guidelines for administering energy efficiency funds, or revisions to guidelines, for Commission approval. The Board's budget would be limited to ½ of 1% of energy efficiency funds. Voting Board members would consist of consumer group representatives, state regulatory agencies' staff, public interest group representatives, and an academic expert. Utilities and energy service providers would be non-voting members of the Board.

The utilities would be responsible for developing program plans, administering the standard offer program, proposing market transformation initiatives, and reporting on results. The Coalition proposal would have the Commission establish and approve budgets, approve program plans, rule on conflicts, and approve a new standard offer for energy efficiency services. A review for market power would be initiated if utility affiliates

win 15% of the standard offer contracts available in a given year.

4.1.3 California Energy Efficiency and Public Interest Research Board (CEC)

The California Energy Efficiency and Public Interest Research Board (CEEPIRB) would be a statewide board that is a public agency, for example, a joint powers authority consisting of Commission and CEC representation, that sets policy guidelines and hires local administrators on a competitive basis. This proposal specifically incorporates public interest RD&D functions into its responsibilities and could include municipal utility participation. Staff for the board would be drawn from agencies that are represented on the board. This proposal would not guarantee a continuing utility administrative role, but would allow utilities to compete for this function. The board and its staff would perform strategic assessment functions, similar to the market assessment functions recommended in ORA's proposal described below. Funding would be focused on market transformation activities and conducting pilot testing on programs designed to break down market barriers.

4.1.4 California Energy Efficiency Exchange (ORA)

The California Energy Efficiency Exchange (CEEX) proposed by ORA consists of four entities: a Governing Board, an Independent Administrator for Energy Efficiency (IAEE), Customer Protection and Decision-Making, and Market Assessment. The Governing Board could be the Commission, or a Commission or legislatively designated Board that include Commission representatives. The

Board is responsible for setting policy guidelines, funding levels for energy efficiency surcharge collection, general allocation principles, and selecting the private, nonprofit IAEE through a competitive solicitation.

The IAEE would administer energy efficiency funds consistent with Board guidelines and have its own staff or board of directors. Although it is not specified, it appears that the IAEE would administer energy efficiency funds on a statewide basis, rather than having regional administrators. Utilities would not be involved in administering the funds. Staff or directors of the IAEE can have no financial interest in companies seeking funds from the IAEE.

Market assessment would be performed by existing public agency staff who review trends and patterns in energy consumption and energy efficiency. Market assessment would be intended to influence guidelines established by the Board. Customer protection and decision-making would be performed by Commission staff in conjunction with other customer protection requirements. Special attention would be given to information needs, privacy rights, and information on providers.

The CBEX proposal leaves for future resolution the details about the composition of the Board and whether utilities or their affiliates would be allowed to compete for access to energy efficiency funds from the IAEE.

4.1.5 Energy Efficiency Fund Of California (Sierra Club)

The proposal put forth by Sierra Club contains elements of several proposals with a limited utility role. Under Sierra Club's proposal, the independent administrator would be a nonprofit corporation governed by a board representing consumer and environmental advocacy groups. The independent administrator would hold a contract with the Commission that establishes the guidelines for administering funds. Similar to the relationship between ORA's Governing Board and the IABE, the independent administrator would make program implementation decisions based on those guidelines. The Commission would also be responsible for establishing the appropriate allocation of funding between customer classes as part of its contract with the administrator. In the long run, the Commission's role could be replaced by another public entity. Ultimately, the Sierra Club proposes that control of the funds be assigned to the California Alternative Energy and Advanced Transportation Financing Authority.

The independent administrator would make funds available on a competitive basis for administrative services and procurement. Utilities would have the option for competing to become a procurement agent or serving as a delivery agent for selected procurement agents; however, they could not compete for administrative function except under a temporary variation described in Sierra Club's comments.[5] Sierra Club also

[5] This variation would allow for a transition period during which the utilities would retain administrative

recommends that the Commission undertake an audit of utility energy efficiency assets and liabilities, including existing program commitments, in order to determine who should assume these commitments in the future.

4.1.6 Independent Administration (SESCO/RESCUE)

The SESCO/RESCUE proposal is based on the ORA proposal but contains elements of the DGS, Sierra Club, and CEC proposal. For example, the Governing Board appears to be constituted similarly to the CEC proposal. The Board would be responsible for selecting several private, nonprofit Independent Administrators through a competitive solicitation. This proposal would allow entities, including government agencies (like DGS) not affiliated with regulated electric or gas utilities, to compete to serve as Administrators. Several Administrators would be selected to ensure competition within a given region occurs. Utilities and other providers can compete to implement programs in response to standard offers and pay-for-performance bidding initiated by the Administrators. The Board would be responsible for market assessment activities and consumer protection.

4.1.7 Public Energy Goods Board (DGS)

DGS proposes a Public Energy Goods Board made up of three full-time appointees, two selected by the Commission and one selected by the CEC. The Commission would establish the scope of

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oversight for funds allocated to the standard offer program proposed by the Coalition.

activities and objectives for the Board, and the Board would design programs, execute contracts, determine eligibility standards, and perform strategic assessment of operating programs. The Board would sign an interagency agreement with DGS to administer the energy efficiency funds. Eligible providers would receive funds disbursed by DGS. DGS would be responsible for all accounting and fund management, dispute resolution, statewide customer service and quality assurance, and reporting requirements. DGS believes that rebates are most successful at transforming the market and would focus its attention on those activities

4.1.8 Ratepayer Responsible Boards (EMG)

EMG's proposal calls for a two-stage process whereby program decisions about energy efficiency are transferred to local ratepayer-elected boards. EMG's proposal includes a Regulatory Oversight Office within the Commission. Among other things, this office would perform "Inspector General" functions for all elected boards, including reviewing measurement and evaluation standards and verification practices, reviewing audits of financial and management performance, publishing annual reports of audits, monitoring anti-corruption and conflict of interest measures, monitoring budgets to assure conformance with Commission targets and requirements, making recommendations regarding boundaries for local boards, and allocating funding to customer classes.

The EMG proposal contains an independent administrator whose primary responsibilities relate to accounting for and disbursing

funds, and maintaining information resources. EMG's proposal is focused on improving information assets in order to minimize transactions costs in customer procurement of energy efficiency services. The proposed two-stage process would begin with the Commission appointing initial local board and statewide board members. In the second stage, ratepayer boards would be elected locally and the local board would elect statewide board members. In addition, EMG's proposal has different program approaches for residential and nonresidential market sectors.

4.2 Discussion

Any consideration of administrative options must begin with a clear understanding of what we intend to accomplish. Much of the debate over the future role of utilities in energy efficiency administration stems from a more fundamental debate over our vision for energy efficiency services in a restructured electric industry. The comments in this phase of the proceeding along with the recent passage of AB 1890 have helped us further clarify that vision.

In our policy decision, we articulated our general views which bear repeating:

> "The focus of publicly funded energy efficiency programs should shift to those programs that are in the broader public interest, for example, programs with market transformation effects and education efforts that would not otherwise by provided by the competitive market."
> (D.95-12-063, Conclusion of Law 82. See also Conclusion of Law 84.)

> "It may also be appropriate to continue to provide financial incentives for energy efficiency

> products and services. Any such financial incentives should be focused on transforming the market for energy efficient products and services; some examples of these activities are the Super-Efficient Refrigeration Program, and manufacturer rebates for compact fluorescent light bulbs and high-efficiency motors. We expect that public funding would be needed only for specified and limited periods of time, to cause the market to be transformed." (Ibid., pp. 156-157.)

Today, we reaffirm our commitment to ratepayer funding for energy efficiency as a transitional step towards the development of a fully competitive market in energy efficiency services. In our view, the mission of market transformation is to ultimately privatize the provision of cost-effective energy efficiency services so that customers seek and obtain these services in the private, competitive market.

This will require a two-pronged approach. First, we need to promote a vibrant energy efficiency services private industry that can stand on its own. This will require programs that encourage direct interaction and negotiation between private energy efficiency service providers and customers, building lasting relationships that will extend into the future. Second, we need to promote effective programs that will simultaneously transform the "upstream" market (e.g., manufacturers and retailers) so that energy efficient products and services are available and advertised by private vendors and builders.

The Legislature has mandated only a limited time period, commencing January 1, 1998 through December 31, 2001, during

which ratepayer funds are earmarked for energy efficiency activities.[6] After this four-year period, continued funding of these programs is not guaranteed. It would be up to future policy makers, at both this Commission and in the Legislature, to determine the future existence and form of these programs, along with appropriate funding levels. As described above, energy efficiency programs will be designed to transform the marketplace in order to reduce and eventually eliminate barriers to energy efficient solutions being adopted by providers and consumers of energy. Over the next four years, substantial money will be spent in support of this market transformation process. If these programs are successful in eliminating market barriers, they will no longer be needed. We choose to leave to future Commissions the determination as to whether market barriers remain, whether continued efforts to transform the market are required and whether continued ratepayer funding is warranted. Today, we establish the policies that will govern these programs for the four years beginning January 1, 1998.

With this vision as our starting point, we turn to the specific administration proposals. SoCal and Coalition members argue that utility administration is the most effective and efficient approach to meeting our objectives, based on the record to date of utility accomplishments. We do not dispute the fact

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[6] This limitation does not apply to low-income programs, and today's decision does not impose one. See Section 382 of AB 1890 and also Attachment 7, page 6.

that utilities have been very successful in deferring and replacing some of their more costly supply-side options over the last few years through energy efficiency. However, we do not believe that these accomplishments make them, de facto, the most qualified to facilitate the privatization of energy efficiency services.

In fact, as ORA, DGS, Sierra Club, and SESCO point out, electric utilities are entering a period where their interest in increasing sales volumes (as opposed to decreasing them via energy efficiency) has never been greater. As a result of the rate cap and competition transition charge (CTC) provisions of AB 1890, customer actions that reduce electrical usage will threaten utility profits by reducing the revenues collected to pay for transition costs (e.g., uneconomic generating assets). Conversely, customer actions that increase electric usage will accelerate or facilitate the full recovery of transition costs during in the transition cost recovery period.[7]

This environment does not give utilities any motivation, and in fact provides greater disincentives than in the past, to

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[7] This is because AB 1890 provides a limited period of time (1998-2001) during which utilities can recover transition costs via a nonbypassable CTC. Moreover, the utilities may not raise rates (and must decrease rates to some customers) during that same period. Thereafter, shareholders are at risk for any unrecovered transition costs. The CTC is applied to each customer based on the amount of electricity purchased by the customer, so that increases in those sales will increase CTC revenues. Conversely, decreases in sales due to energy efficiency will reduce CTC revenues. (See § 371.)

develop an independent industry which will directly compete with the electricity services they provide. With the enactment of AB 1890, utilities are motivated to promote their own relationship with customers, rather than that of their competitors in the private market. In view of these structural conflicts, we disagree with SoCal and Coalition members that utilities are the clear choice for energy efficiency administrators of the future.

Coalition members and SoCal argue that these disincentives can be addressed by continuing shareholder incentives and some form of sales adjustment mechanism. This argument presumes that we are willing to assume our past regulatory role. Since 1990, we have been willing to experiment with various incentive mechanisms in order to achieve the benefits of avoiding more costly utility supply-side investments. This experimentation has required considerable regulatory oversight, the expenditure of significant public and private resources, and ongoing administrative fine-tuning. As NRDC and others point out, the benefits to this approach have warranted such efforts. Instead of investing solely in supply-side options, utilities have diversified their resource base by encouraging cost-effective energy efficiency, thereby saving ratepayers millions of dollars in avoided costs.

However, our goals for future energy efficiency activities in California are now quite different. No longer is our primary focus to influence utility decisionmakers, as monopoly providers of generation services. Rather, we now seek to transform the market so that individual customers and suppliers in the

competitive generation market will be making rational energy service choices. In our view, continuation of an administrative structure dependent upon utility shareholder incentives is incompatible with these objectives, particularly when we have the option of vesting responsibility for these programs in entities that can embrace our articulated mission without conflict.[8]

Moreover, with the rate freeze and rate decrease provisions of AB 1890, the future funding of such shareholder incentives is called into question. Funding would either need to come from the funds dedicated to energy efficiency programs, as SoCal recommends, or else from "other sources" outside the dedicated energy efficiency fund established in the bill, as the Coalition proposes. The former approach would significantly diminish the funds available for the program. The latter approach would take funds away from utility transition cost recovery. As the CEC points out, this poses a conflict that provides no gain or incentive to shareholders. (Reporter's Transcript (RT) Volume 36, pp. 4943-44.)

For the above reasons, we will not adopt any administrative structure that automatically continues a utility monopoly over the administration of energy efficiency programs. On the other

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[8] We do not mean to imply that there will be no oversight or performance standards for the selected administrator(s). However, this type of oversight is considerably different than establishing financial rewards to offset regulatory disincentives, as we have done in the past for utility administration of these programs.

hand, we will not, as ORA and others propose, prevent utilities from competitively bidding for administrative functions. Completely precluding utilities from bidding for these functions would, in our view, inappropriately preclude the Board from even considering utilities as potentially competent and efficient providers of administrative services. As described further below, the Board will contract out administrative functions via competitive bidding. As part of that process, the Board will establish appropriate safeguards regarding potential conflicts of interest, market power abuse, and self-dealing for all potential bidders, including any regulated utility that submits a bid.

At the same time, we will not authorize shareholder incentives for any winning utility bidder. It is up to the utility to assess the value of bidding for energy efficiency administrative functions, in light of its competitive interests in a restructured industry. Any future refinements or wholesale changes to sales adjustment mechanisms that we consider in our restructuring or performance-based ratemaking proceedings should reflect this changing role of utilities in energy efficiency.

The other administrative proposals before us, with the exception of EMG's Ratepayer Responsible Boards, share more similarities than differences. They all recommend that we appoint an independent board to oversee the program and, in most cases, competitively bid out the administrative functions. We note that DGS differs from other proposals in that it would select itself as that administrator, without competitive bid. We agree with Sierra Club and others that DGS may qualify to bid for

providing administrative services, but should not be given such a preference at the outset.

EMG's proposal diverges significantly from others. It focuses on creating a system of locally elected boards to oversee the expenditure of funds for what EMG terms its "information architecture." (RT at 4918.) While we agree that access to customer data and other information is important, we believe that it can be accomplished more effectively and efficiently in an administrative structure that addresses our broader market transformation goals. EMG's approach adds layers of governmental oversight (albeit on a more localized level), without clear advantages to meeting our stated objectives. It also adds a substantial staffing requirement to this Commission without addressing the source of funding for such expansion.

Having described what aspects of parties' proposals we do not accept, we turn now to those attributes we seek in an administrative structure: (1) a statewide Independent Board[9] to oversee the administrative process, with a Technical Advisory Committee available for assistance; (2) program administrator(s) selected through competitive bidding; and (3) a procurement

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[9] Our use of the term "Independent" refers to a board that is independent from utilities or other entities that have a vested interest in the provision of energy services. It does not refer to an entity that is independent from Commission oversight.

process that taps the private market (via competitive bids) as much as possible for the delivery of market transformation services.

We agree with SESCO/RESCUE, SDG&E and others that both gas and electric energy efficiency programs should be administered under the same structure. Economic efficiency requires saving electricity and gas together, rather than running independent programs for each fuel. We have recognized this advantage in the past by requiring SoCal and Edison to jointly administer their demand-side management competitive bidding pilot in the residential sector. Accordingly, the functions and responsibilities we describe below will ultimately apply to both gas and electric energy efficiency activities, including those currently administered by SoCal. Funds currently in rates for the gas demand-side management programs of SDG&E, PG&E and SoCal will need to be transferred to the Board, and ultimately to the selected administrator, in each respective service territory.

However, we recognize that gas utilities do not currently have a nonbypassable surcharge available to them to in order to collect funding for these activities. We will allow the gas utilities to continue to operate their own energy efficiency program with the option to transfer funding to the Board, and ultimately to the selected administrator, as we explore development of a gas surcharge. If gas utilities choose not to transfer funding for these programs, the gas utility should work with the selected administrator to ensure coordination of delivery of services. Consideration of gas surcharge issues will

be part of the Energy Division workshops described in Section 8.0 below.

Within 120 days from the effective date of this decision, the utilities, including SoCal, shall identify 1996 gas demand-side management program funding levels, by program category, which will ultimately be transferred to the new administrator. We encourage the utilities to work informally with interested parties in the development of this information, which should be filed at the Commission's Docket Office and served on all appearances and the state service list on the Special Public Purpose service list in this proceeding and on all appearances and the state service list in our DSM Rulemaking/Investigation (R.91-08-003/I.91-08-002).

4.2.1 Function and Membership of the Independent Board

The Independent Board will develop and oversee limited term contracts for the administration of market transformation programs. The Board will develop and issue a RFP articulating policy and programmatic guidelines for the administrator(s), consistent with our discussion above and subject to our approval. The Board may offer performance-based compensation features that include both rewards and penalties, as part of its contract with the administrator (or administrators). Any such features should be developed as part of the RFP and subject to our review and approval.

As part of the RFP development process, the Board will propose, for our consideration, the scope of energy efficiency activities that are eligible for funding consistent with our

market transformation objectives. Among other things, the Board will need to develop definitions that delineate the scope of the projects receiving energy efficiency surcharge funding. In its comments, ORA offers a definition of the scope that includes self-generation technologies, including nonrenewables. We agree with PG&E and others that if ORA's definition is to be considered, much more thought and discussion needed. The Board should initiate this discussion with broad input from the Technical Advisory Committee described below. As in the case of RD&D and Renewables, there will be an ongoing need for coordination with the CEC because of the potential overlap among these activities. With the CEC represented on the new Board (see below), along with our efforts to establish open information channels via a Memorandum of Understanding (MOU) between our agencies, we believe that effective coordination can be achieved.

The RFP will include guidelines for allocation and accounting of money in the fund, including applicable cost-effectiveness criteria. We do not intend to commingle funding from different utility service territories such that, for example, SoCal customers are paying for energy efficiency services that solely benefit PG&E's customers. At the same time, we recognize that there are certain upstream market transformation programs whose benefits cannot be easily attributed by service territory, and these programs should probably be funded by all customers. We leave it to the Board to propose funding allocation rules that fairly balance these considerations.

The RFP will also specify how administrative performance shall be monitored and evaluated. It will specify the process by which the contract can be amended and a method for settling disputes between the administrator(s) and the Board. In addition, the RFP will establish rules governing potential conflicts of interest, market power abuse, and self-dealing. Regulated utilities will not be prohibited from bidding on administrative contracts, but will be subject to these rules. As discussed above, no shareholder incentives will be associated with these contracts. The RFP will also address the circumstances (if any) under which affiliates of selected administrators, utility or otherwise, may bid for contracts associated with program implementation. As part of the RFP development process, we intend that the Board propose appropriate modifications to our existing DSM rules, subject to our approval. Such rules must be consistent with the market transformation policies and objectives described above, and the RFP itself must be based on the revised rules.[10]

Subject to our approval, the Board will establish their voting and conflict of interest rules, staffing, and other

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[10] Our rules governing the evaluation, funding and implementation of demand-side management were developed in R.91-08-003 and companion I.91-08-002, which remain open for future consideration of modifications to those rules. The most recent copy of our rules is contained in D.94-10-059, as corrected by D.95-05-027 and D.95-06-016. DSM rules 7 and 8 were further modified by D.95-12-054.

operating requirements. We expect the Board's oversight role to require only minimal staff, once the RFP is developed and the administrator(s) are established. The Board will also specify what services might be made available by the Commission or by other state agencies. For example, the Commission might make its customer protection staff available to the Board when called upon. The Board may choose to rely on the CEC for strategic assessment of energy markets and administrative performance. The Board will also appoint a Technical Advisory Committee. We expect participation in advisory committee activities to be as open as possible, and public participation should be encouraged.

While the Independent Board has been given much responsibilities, and we do not intend to micromanage its activities, the Board will be subject to Commission jurisdiction and oversight. Such oversight will include the determination and naming of Board membership, approval of the Board's charter, by-laws, and articles of incorporation, as appropriate, as well as approval of RFPs for administration. Board decisions may be appealed to the Commission via our complaint process, and we may open an investigation into its operations at any time.

Given the functions of the Board, we believe that the voting members should be regulatory and public representatives. We intend to appoint a Board of up to 9 members, composed as follows: two representatives from this Commission, one representative from the CEC, and up to six members of the public. Board members must be willing and able to commit the time necessary for the tasks outlined above, and cannot be employed by

any entity that plans to bid for an administrative function. Board members should have experience with the development of energy efficiency policies or the provision of energy efficiency programs or services. We will designate one member as acting chairperson for an interim period. Board members may hire a consultant to draft the RFP under their direction. Board members will be reimbursed for expenses and paid a reasonable per diem, but no salaries. The utilities will front these RFP development costs and be reimbursed from surcharge funds, including interest.[11]

The Board may need to draw on the expertise of a broader community, such as utilities and private energy service companies. However, it is more appropriate to have that expertise available via the Technical Advisory Committee, rather than on the Board itself. Since utilities and private ESCOs are potential recipients of administrative and program implementation funds under our administrative structure, which is under the direct oversight of the Board, it is best not to create the potential for conflict of interest or self-dealing by including their employees or representatives as Board members. Within 30 days from the effective date of this decision, interested parties should submit recommendations for the public representatives to the Board, with a discussion of their qualifications. We will

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[11] Interest will accrue at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release, G-13.

make a selection of Board representatives no later than two Commission meetings thereafter.

4.2.2 The Administrator(s)

As described above, the Board will conduct competitive bidding to select one or more administrators for market transformation programs. We leave it to the Board to determine the number of administrators for the program. However, bidders should be capable of administering both gas and electric programs. Moreover, it is our intent that funds collected from ratepayers in a given utility service territory be directed to programs within that same geographic area, to the extent practicable.

We expect the RFP process to elicit various proposals on how to procure services that will meet our market transformation goals. Some parties propose very specific approaches, such as establishing minimum funding levels for standard offer contracts (Coalition), or publishing market transformation prices as a basis for contract payments (SESCO/RESCUE). We will not spell out any specific preferences at this juncture. However, we do envision a significant role for competitive procurement and pay-for-performance contracts, consistent with our mission to privatize the provision of energy efficiency services in the future.

Additional expectations concerning the role and function of the administrator(s) should be articulated by the Board, as part of the RFP development process. We encourage the Board to solicit broad input on these and other implementation issues,

perhaps by reconvening the Working Group or holding informal workshops. Generally, we expect the Administrator(s) to perform the following functions:

1. Assists the Board in selecting various projects.

2. Pays monies to and verifies program milestones/performance indicators.

3. Manages any Standard Offers.

4. Collects the funds and manages the bank account.

5. Provides administrative support to EBB.

6. Will not deliver energy efficiency solutions.

4.2.3 Funding Levels

As discussed above, AB 1890 establishes minimum funding levels for each electric utility. SCE, California Manufacturers Association (CMA), and others argue that funding should be limited to these minimum levels in light of the rate freeze/rate reduction requirements of AB 1890. Appliance Recycling Centers argues that the initial funding should be greater than this minimum. Other parties, such as PG&E, ORA, Sierra Club and NRDC propose that initial funding be established at the minimum levels, with some provisions for reassessing these levels in the future.

The plain language of AB 1890 states that § 381(c)(1) annual dollar amounts represent a minimum, not an absolute ceiling, to funding energy efficiency programs over the 1998-2001 period. We may establish higher levels in the future, should circumstances

warrant. However, we will establish the initial funding at minimum requirements under AB 1890 until funding guidelines and administrative structures are set. As discussed above, we also establish initial funding for gas programs at 1996 levels. Our oversight of these programs will include an opportunity for increases over the 1998-2001 period, as appropriate. We will establish the appropriate procedural forum for reassessing funding levels as part of the implementation phase of this proceeding.

4.2.4 Transition To New Structure

Once selected, the Board will need to develop an RFP for our approval, issue the RFP, and select an administrator (or administrators). Our goal is that most if not all of these steps will be completed by January 1, 1998. However, we recognize that a full transition to this new administrative structure may not be completed by that date. Accordingly, energy efficiency programs will continue under the stewardship of utilities during the transition. The Board will ensure that adequate surcharge funds are retained by the utilities in order to continue energy efficiency services and programs while the new structure is becoming operational. Existing shareholder incentive mechanisms will continue to apply to prior program years and to the demand-side management programs under utility administration during this transition. Potential shareholder incentives associated with these activities will continue to be evaluated in Annual Earnings Assessment Proceedings, as long as necessary. However, funding

for these shareholder incentives will not come from the levels authorized today for § 381(c)(1) energy efficiency programs.

The Board will determine the pace and schedule for the transfer of energy efficiency functions, funding, assets and program commitments to the new administrator(s) and phase-down of utility programs, as appropriate. At the direction of the Board, the utilities shall provide a description of current utility programs and staffing to identify relevant assets and program commitments. This accounting shall be subject to audit, as determined by the Board.

5.0 RD&D

We found in our policy decision that the public goods charge should collect funds only for public interest research, not for regulated or competitive research.[12] We also determined that the monopoly utility should no longer collect ratepayer funds for generation-related research as of January 1, 1997. Funds for research in support of regulated functions would remain part of regulated rates.

We asked the RD&D Working Group to develop information on how to differentiate between competitive, regulated, and public interest research. We also asked the group to develop reliable

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[12] In our policy decision, we used the term "public goods research" in describing the types of activities to be funded via a nonbypassable surcharge. As recommended by the RD&D Working Group, we will instead use the term "public interest" in our discussion, in order to avoid confusion with regard to the strict economic definition of the term "public good."

cost estimates for public interest RD&D costs and to discuss requirements for making the transition to an independent administrator.

RD&D Working Group participants reached consensus on several key points, which are summarized in Attachment 6. In particular, they agreed on certain boundary definitions for competitive, regulated, and public interest RD&D that are relevant to our discussion of the issues:

> Competitive RD&D activities are directed toward developing science or technology, the benefits of which can be appropriated by the private sector entity making the investment.
>
> Regulated RD&D activities are directed toward developing science or technology, the benefits of which are related to the regulated functions of the entity making the investment.
>
> Public Interest RD&D activities are directed toward developing science or technology, (1) the benefits of which accrue to California citizens and (2) that are not adequately addressed by competitive or regulated entities.

The Working Group stated its support for future funding of public interest RD&D (as defined above) via a public goods charge. (RD&D Working Group Report, p. 2-9). However, no consensus was reached on funding levels or administrative options for the research organization.

Parties agree that several nonconsensus issues raised in the RD&D Working Group Report were addressed directly by the requirements of AB 1890. As for other public purpose programs,

AB 1890 establishes that funding for RD&D will be accomplished through a nonbypassable rate component of the local distribution service collected on the basis of usage. Funds authorized for collection via this nonbypassable rate component must fall within the rate level freeze and reduction requirements of the statute.

AB 1890's amendments to the Public Utilities Code also establishes the following minimum annual funding levels for RD&D: $4 million for SDG&E, $28.5 million for SCE, and $30 million for PG&E. (§ 381(c)(2).) The statute also states that only certain RD&D activities and associated funding will remain with the regulated utilities, under the supervision of the Commission. The rest will be transferred to the CEC pursuant to administration and expenditure criteria to be established by the Legislature. (§ 381(f).)

The threshold controversy relates to the interpretation of what types of RD&D activities are to be funded by the nonbypassable surcharge and subject to the minimum funding levels established by § 381(c)(2). The question before us is whether the $62.5 million in electric RD&D funding identified in § 381(c)(2) includes only funds that are not otherwise adequately provided by the competitive and regulated markets, or includes all electric RD&D funds for both T&D and public interest RD&D. CEC, UC, NRDC, and Union of Concerned Scientists support the former interpretation, while PG&E, SCE, SDG&E, and ORA support the latter. Accordingly, there is considerable disagreement over how much of these funds should be retained by the utilities for RD&D activities and how much should be allocated to the CEC.

Depending on the interpretation, there is also disagreement over the appropriate funding level for RD&D.

The assigned ALJ requested that interested parties file supplemental briefs on the statutory construction of § 381 with regard to this issue. Concurrent briefs were filed on November 26, 1996 by PG&E, CEC, UC, ORA, EPRI, and jointly by SCE and SDG&E.

CEC and UC argue that the language of AB 1890 clearly supports their interpretation, i.e., that the $62.5 million specified in AB 1890 does not include regulated RD&D. In their view, to interpret the statute otherwise would violate basic principles of statutory interpretation, the clear language of AB 1890 and the stated intent of the Legislature. CEC and UC also contend that allocating $62.5 million for public interest RD&D is entirely consistent with historical annual funding. (RT at 4979, 4983, 4992-4993.) NRDC supports this interpretation. (NRDC Reply Comments, p. 5.)

The utilities argue that excluding regulated RD&D from this funding would leave no electric RD&D funds available for the regulated market. They contend that the $62.5 million figure was provided by them to the Legislature, and that this figure represented estimated 1996 electric RD&D budgets, including regulated RD&D. (RT at 4976, 4982, 4989-4992.) SCE and SDG&E argue that the language of the statute permits this interpretation, and that it is consistent with statements of individuals that testified on AB 1890 before the Legislature. ORA supports this interpretation and recommends allocating 25% of

the RD&D funding identified in AB 1890 to the public interest surcharge.

EPRI argues that whatever interpretation is adopted, the Commission has broad authority to define the boundaries of public interest research and should do so in an expansive manner.

5.1 Interpretation of § 381

Clearly, a threshold issue in this proceeding is the intent of the Legislature in enacting § 381. To determine that intent, we first turn to the language of the statute. (Delaney v. Superior Court (1990) 50 Cal. 3d 785, 798.) The United States Supreme Court stated this principle as follows:

> "[I]n interpreting a statute, [one] should always turn to one cardinal rule before all others. We have stated time and again that [one] must presume that the legislation says in statute what it means and means in statute what it says there." (Connecticut National Bank v. German (1992) 503 U.S. 249, 253-254; 112A S.Ct. 1146, 1149.)

The California Supreme Court explains this fundamental principle more expansively:

> "Pursuant to established principles, our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purposes of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided." (Dyna-Med Inc. v. Fair Employment and Housing Commission (1987) 43 Cal. 3d 1379, 1386-1387, 241 Cal. Rptr. 67, 70.)

With these principles in mind, we turn first to the specific provisions of § 381, and then to extrinsic aides, as appropriate.

5.1.1 Statutory Language

First, § 381(a) establishes a nonbypassable charge on local distribution service, collected on the basis of usage. Section 381(a) states that these funds are not to be commingled with other utility revenues and directs each electric utility to identify a separate rate component for the funds.

Second, § 381(b) specifies the purposes for which the funds collected under the nonbypassable distribution charge established in § 381(a) are to be used:

> "(1) Cost-effective energy efficiency and conservation activities.
>
> "(2) Public interest research and development not adequately provided by competitive and regulated markets.
>
> "(3) In-state operation and development of existing and new and emerging renewable resource technologies...."

Third, § 381(c) provides the specific funding levels to be collected under the nonbypassable distribution charge. In the area of RD&D, § 381(c) directs:

> "Research, development and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels...." (Emphasis added.)

Finally, § 381(f) discusses the transfer of certain RD&D funds to the CEC:

> "The Commission shall determine how to utilize funds for purposes of paragraphs (1) and (2) of subdivision (b), provided that only those research and development funds for transmission and distribution functions shall remain with the regulated public utilities under the supervision of the commission. The commission shall provide for the transfer of all research and development funds collected for the purposes of paragraph (2) of subdivision (b) other than those for transmission and distribution functions and funds collected for purposes of paragraph (3) of subdivision (b) to the California Energy Resources Conservation and Development Commission pursuant to administration and expenditure criteria to be established by the Legislature." (Emphasis added.)

Based on the plain language of the statute, we find no ground upon which we would be warranted in interpreting these provisions along the lines proposed by the utilities and ORA. The statute sets forth funding via the nonbypassable charge for public interest RD&D, which the statute also clearly defines as excluding regulated or competitive RD&D activities. The language that discusses the transfer of funding to the CEC also clearly refers back to that same definition, by referencing Paragraph (2) of subdivision (b). Adopting the interpretation put forth by the utilities would render that language superfluous, a practice to be avoided in statutory construction. (Delaney v. Superior Court (1990) 50 Cal. 3d 785, 799; City and County of San Francisco v.

Farrel (1982) 32 Cal. 3d 47, 54.)[13] Moreover, the utilities' interpretation would conflict with other provisions of the statute by rebundling that which the Legislature expressly stated it intended to unbundle:

> ". . . It is the further intent of the Legislature to continue to fund low-income ratepayer assistance programs, public purpose programs for public goods research, development and demonstration, demand-side management and renewable electric generation technologies in an unbundled manner." (AB 1890 § 1(d), emphasis added.)

In sum, we believe that the statutory language supports a plain and common sense interpretation. The Legislature understood that RD&D would continue to be funded at some level through regulated and competitive sectors. It was concerned, however, that these sectors would not adequately provide for the public interest. Therefore, the Legislature dictated that the

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[13] SCE's and SDG&E's argument that the proviso clause relating to "transmission and distribution functions" contained in § 381(f) supports their interpretation is an unreasonable construction. (See SCE/SDG&E Brief at 5.) Where an enacting clause is general in its language and objects, and a proviso is afterward introduced, that proviso must be "construed strictly" so as to take no case out of the enacting clause which does not fall fairly within its terms. (San Francisco Bay Conservation and Development Commission v. Emeryville (1968) 69 Cal.2d 533, 543.) SCE/SDG&E's arguments expand the proviso clause far beyond the scope of the enabling clauses themselves. The Supreme Court has made it clear that courts will not sanction interpretations which lead to such absurd consequences. (Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142, 1165-1166.)

special nonbypassable charge it established must be used, in part, to support public interest RD&D. There is no hint in the statutory language that the Legislature also wanted the special charge to support regulated RD&D.

As the courts have repeatedly stated, when the language of a statute is clear and unambiguous, there is no need to beyond the words of the statute to extrinsic aids:

> "To do so would violate the principle that, 'When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.'" (Delaney v. Superior Court Id. at 800, quoting Solberg v. Superior Court, 19 Cal. 3d 182, 198.)

Legislative history can be a legitimate guide to a statutory purpose obscured by ambiguity:

> "[I]n the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive. (United States v. James (1986) 478 U.S. 597, 606.)

Unless exceptional circumstances dictate otherwise, "[w]hen we find the terms of a statute unambiguous, judicial inquiry is complete." (Rubin v. United States (1981) 449 U.S. 424, 430; See also, Graham v. State Board of Control (1995) 33 Cal. App. 4th 253, 260.)

Even assuming, arguendo, that the statute language is ambiguous on the issue of what RD&D activities should be funded via the surcharge, the legislative history is not. The courts have expressly sanctioned the use of materials such as statutory history, committee reports and legislative debates to provide

guidance on legislative intent, where appropriate. (Perez v. Smith (1993) 19 Cal. App. 4th 1595, 1598.) We discuss these extrinsic aids as further confirmation of our interpretation.

5.1.2 Legislative History

Prior to the establishment of the Joint Senate and Assembly Conference Committee on Restructuring in early July of 1996, the major legislative vehicles for addressing the future of so-called "public goods" programs were AB 1123 (introduced in 1995 by then Assemblyman Byron Sher) and AB 1890 (introduced in 1995 by Assemblyman James Brulte). We present below the relevant legislative history of these bills, as described in CEC's brief.

AB 1123 (Sher) was amended for the last time on June 10, 1996, by its author, now Senator Byron Sher. At that time, Section 3 was added to the bill providing for a "nonbypassable, usage-based charge on local distribution service" to fund (among other things) those RD&D activities concerning "research and development programs for regulated transmission and distribution services." (AB 1123, proposed new Public Resources Code § 25450(a)(3), emphasis added.). Elsewhere, in Section 4 of the bill, an amendment gave this Commission authority to determine what RD&D "public goods" programs could be conducted with these funds "provided that these funds are not (to be) used to pursue research that the competitive market is likely to provide on its own." (Ibid., § 453.2(e)(3), emphasis added.). This entire bill died in the Senate Energy, Utilities and Commerce Committee after a "testimony only" hearing on June 12, 1996. Focus then shifted

to AB 1890, which became the omnibus bill for all electric industry restructuring legislation.

The last amendment to AB 1890 (Brulte) prior to establishment of the Joint Senate-Assembly Conference Committee on Restructuring, occurred on June 19, 1996. At that time Section 1 of the bill was amended to provide the following:

> "...[It] is the intent of the Legislature that the following policy issues shall be addressed as part of the restructuring process: . . . (d)(1) the future of all state-mandated policies that are related to electric energy and the manner in which they will be continued as part of electric industry restructuring, including programs dealing with...electrical energy research and development...." (Emphasis added.)

However, this language was completely deleted from the final bill, and was replaced with the Section 1(d) language we refer to in our earlier discussion:

> "Section 1.(d) It is the intent of the Legislature...to fund...public purpose programs for public goods research, development and demonstration...in an unbundled manner." (Emphasis added.)

The courts have made it clear that the evolution of legislation after its introduction can offer significant enlightenment regarding legislative intent. Rejection of specific provisions which appeared in prior versions supports the conclusion that the legislation which was finally enacted should not be construed to include those provisions which were deleted. (People v. Goodloe (1995) 37 Cal. App. 4th 485, 491.) In this

situation, "regulated" RD&D activities were expressly embodied within the restructuring language contained in AB 1123 and within the broad language of AB 1890 which existed before the Joint Conference Committee on Restructuring was established. However, neither of these earlier RD&D provisions survived after the final language of AB 1890 was adopted, and it would be contrary to the Legislature's intent for us to now attempt to read such language back into the law.

One other piece of legislative history confirms our reading of the statute. That document is the final Conference Committee Report on AB 1890, dated August 28, 1996. (A complete copy is appended as Attachment 7.) With regard to RD&D, the report specifically states the following:

> "The Bill preserves California's commitment to developing diverse, environmentally sensitive electricity resources which enhance system reliability by continuing support consistent with historic levels for...public goods research, development and demonstration (RD&D) that would not otherwise be provided by [regulated and competitive] electricity markets....
>
> The Public Utilities Commission is authorized to determine how best to utilize funding for...public goods RD&D directed towards transmission and distribution. The California Energy Commission is...authorized to administer the remainder of the RD&D funds...." (Conference Committee Report, p. 5, emphasis added).

This report reinforces the plain language interpretation of the statute that the RD&D funds authorized in AB 1890 are for

"public goods" activities only, not for "regulated" functions. Consistent with that language, the Conference Committee Report reserves to the Commission the authority to determine how best to utilize funds for "public goods RD&D directed towards transmission and distribution." All other public interest RD&D funds authorized by the bill are allocated to the CEC. We believe this allocation is perfectly logical. Because the utilities, under our supervision, will continue to have monopoly responsibility for the entire T&D system, it makes sense from an efficiency standpoint to give them continued responsibility for all forms of T&D research.

There was considerable debate during the oral argument over the specific derivation of the $62.5 million minimum funding level contained in § 381. When construing the purpose and intent of a statute, the California Supreme Court has clearly stated that it is of little assistance to consider the motives or understandings of single individuals, because such views may not reflect the views of other Legislators who voted for the bill. (Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board (1993) 6 Cal. 4th 821, 831.) This admonition is particularly apt in this instance, where lobbyists and private proponents of legislation are relying upon their own views and intentions in arguing for a particular interpretation of AB 1890.

Moreover, the clear language of the statute, as reinforced by the legislative history, renders such speculation moot. However, for our own consideration of the statute's implications for RD&D funding, we note that the $62.5 million minimum level

for public interest RD&D appears reasonably consistent with estimates of aggregate historical spending prior to a steep decline in 1995. This can be seen both from the CEC's table presented at oral argument (RT at 4979) as well as from the "traditional scope" RD&D budget developed in the RD&D Working Group Report. (Appendix III-31.)

The utilities claim that the Legislature could not have intended any additional RD&D spending beyond that specified in the § 381 nonbypassable distribution charge because to do so would put the utility at risk for stranded cost recovery. First and foremost, the clear meaning of the statute, as described above, cannot be set aside by arguments that the Legislature cannot have meant what it said. This is true irrespective of whether stakeholders, or courts, agree or disagree with the result. As discussed above, the statute does not provide for regulated RD&D under the nonbypassable distribution charge or minimum funding level provisions of § 381. Instead, AB 1890 maintains our ability to fund regulated RD&D activities in precisely the same manner we would continue to fund all other regulated utility activities--through rates above and beyond the § 381 nonbypassable distribution charge.

With regard to the utilities' arguments concerning the added recovery risk associated with this interpretation, we note that the statute provides utilities with an opportunity, but not a guarantee to recover stranded costs. (See § 330(s).) In creating such an opportunity, the Legislature chose to allocate certain types of recovery risks, but not others, to the

utilities. For example, the statute limits the time frame for stranded cost recovery and the rates during the cost recovery period. (§§ 367, 368(a).) It also requires expenditures for various programs (such as public interest RD&D) within the rate cap. (§ 381(a).)

On the other hand, the statute shields utilities from certain risks by excluding specific costs from the limited transition cost recovery period. In particular, the statute excludes those costs associated with nuclear decommissioning, those necessary to implement direct access as well as those required to establish the independent system operator and the power exchange structure. (§§ 376, 379.) All other costs associated with regulated functions are subject to the rate cap provisions, included regulated RD&D. While the utilities might prefer a different allocation of risk, we cannot construe the statute to mean other than what it plainly says.

At the same time, we clearly did not anticipate these statutory minimum funding requirements for public interest RD&D when we authorized the overall RD&D funding levels currently in rates. There are three methods by which utilities can ensure that sufficient funds will be available to perform their regulated RD&D projects now and in the future. First, utilities always have the option to expend funds for regulated RD&D which are currently budgeted for other purposes. If utility management believes it is in the interest of the company to continue to perform RD&D projects, especially in light of their public utility obligations for system safety and reliability, then

utility management has the incentive to fund such cost-effective RD&D. Indeed, the definitional difference between "regulated" and "public interest" RD&D implies that the former expenditures would be in the self interest of utilities given their regulated responsibilities. On the other hand, AB 1890 does not preclude us from increasing funding authorizations for regulated RD&D, as long as rates remain within the limits established by the statute. Thus as a second option, we will let the utilities decide whether they wish to file the appropriate application, since they are best situated to assess the tradeoff between additional authorizations for regulated RD&D versus additional funds for the recovery of transition costs.[14]

Accordingly, within 90 days from the effective date of this decision, PG&E, SCE, or SDG&E may file an application to increase 1998 authorized revenue requirements to cover the reasonable costs of regulated RD&D. We expect any such requests to reflect a realistic expectation of the utilities' involvement in regulated RD&D activities in the future under restructuring. In reviewing any such request, we will also consider the historical funding levels for regulated RD&D, as appropriate.

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[14] This tradeoff arises because of the positive gap between currently authorized revenue requirements and the collected revenues resulting from the rate freeze provisions of the statute. Clearly, any increase in authorized revenue requirements will leave less of that gap available to the utilities for potential recovery of transition costs.

We will also suggest another opportunity for utilities to gain funding for what is currently considered to be "regulated" RD&D. AB 1890 provides that the CEC is to decide how to allocate public interest RD&D funds, subject to Legislative input on administrative and expenditure criteria. At this point, nothing precludes the CEC from determining that certain RD&D efforts should more properly be considered "public interest" than "regulated." We believe that the utilities may legitimately argue before the CEC that electric restructuring has changed the character of some previously monopoly T&D functions to common carrier functions. Therefore, certain RD&D efforts related to T&D may provide benefits to the broader public above and beyond the private benefits to the utility, for example, research which improves system reliability. If the CEC, subject to Legislative direction, decides that utility T&D RD&D functions are in fact public interest functions, the CEC may provide funding to utilities for such functions out of the funds allocated to the CEC for RD&D under its jurisdiction.[15] We believe that the CEC should seriously consider utility requests for funding for reliability-related T&D research within the public interest classification. Reliability is a paramount concern of both this Commission and the Legislature as we move ahead with

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[15] If such funding is considered, we must coordinate closely with the CEC to prevent utilities from both receiving CEC public interest funds and receiving revenue requirement increases for the same RD&D projects.

restructuring the electricity industry. Although this Commission will no longer control the funds at issue in this decision, we are confident that our sister agency shares our concerns about reliability and will allocate sufficient public interest funds for reliability-related RD&D in order to ensure the future integrity of the system. As there is no record in this proceeding to show the levels of T&D RD&D funding necessary to retain and improve reliability, we cannot allocate public interest funds for this purpose. We defer to the CEC to make the proper allocations. This process is consistent with AB 1890's guidance that public interest T&D RD&D funds remain with the utility.

5.2 Funding Levels and Allocation to CEC

Given the statutory interpretation set forth above, there is general agreement that initial public interest RD&D funding should be set equal to the minimum funding requirements under § 381(c)(2). The plain language of the statute identifies these levels as minimums, not as absolute ceilings, as ORA and other parties would prefer. We will adopt the minimum levels as our initial annual funding authorization, i.e., $4 million for SDG&E, $28.5 million for SCE, and $30 million for PG&E. We are not precluded from considering future increases to this funding level based on actual unmet need for public interest RD&D and other considerations, as appropriate.

Our next task is to identify the appropriate funding split between public interest RD&D that is T&D related and that which is non-T&D related, as required by the statute. That split will

dictate the level of funds to be transferred to the CEC, pursuant to § 381(f). It will also determine the level of funding that each utility should retain for T&D-related public interest RD&D, which should continue to be accounted for in a separate utility balancing account. These funds should not be commingled with funding for regulated functions (such as regulated RD&D) that are subject to performance-based ratemaking.

The utilities estimate expenditures of $700,000 for T&D related public interest RD&D for 1996. For the 1992 through 1995 time period, the utilities estimate an annual average of about $1 million for these activities. (RT at 4976.) For the same time period, the CEC estimates a lower combined annual average of $450,000; however, the CEC includes only electromagnetic field projects in this category. (RT at 4979.) The CEC indicates that its estimates closely approximate the utilities' estimates for the same activities. (CEC Brief p. 14.) UC states that it would be willing to stipulate to the utility allocation of less than $1 million for public interest RD&D directed towards T&D activities. (UC Brief, p. 17.)

Due to the relatively close range of the parties' estimates, and their apparent willingness to agree to funding levels within that range, we believe it is reasonable to adopt the utilities' 1996 estimate of $700,000 for annual T&D-related public interest RD&D expenditures. We will authorize the utilities' breakdown of this amount as follows: $300,000 for PG&E, $300,000 for SCE, and $100,000 for SDG&E.

The remaining $61.8 million of the public interest funds should be allocated to the CEC for non-T&D related public interest RD&D. By utility, the minimum annual funding levels should be: $29.7 million for PG&E, $28.2 million for SCE, and $3.9 million for SDG&E.

5.3 RD&D Administration and Coordination

Section 381(f) specifies that the CEC will administer non-T&D related public interest RD&D programs pursuant to "administration and expenditure criteria to be established by the Legislature." The RD&D Working Group did not reach consensus on these issues. Some parties propose that we support a particular administrative approach for public interest RD&D in this decision. For example, PG&E and SDG&E support an approach that envisions the CEC as primarily a contract manager, whereas UC supports a joint powers authority model consisting of the CEC, this Commission and UC.

With regard to expenditure criteria, ORA recommends that we further delineate the scope of eligible RD&D activities to exclude commercialization projects and include advanced self-generation from nonrenewables. UC prefers that any commercialization activities be of limited scale and for technologies already being addressed by the RD&D program. Neither position represents a consensus among stakeholders.

We believe that the most constructive input from us at this time is to officially transmit the RD&D Working Group Report to the CEC and the Legislature for their consideration. In particular, we recommend that the consensus recommendations of

the Working Group, as summarized in Attachment 6, serve as the basis for the Legislature's further development of criteria. We note that the CEC has initiated a public interest RD&D planning process that seeks input from a wide range of parties concerning the various ways to efficiently administer public interest RD&D. We expect that parties' views on this and other nonconsensus issues will be well aired and debated in that forum.

As discussed above, public interest RD&D activities related to T&D functions remain under our oversight. Hence, both this Commission and the CEC will have a continuing role in developing administrative and expenditure criteria for public interest RD&D. In addition, because of the close linkages between RD&D, commercialization and energy efficiency programs, coordination in developing administrative and expenditure criteria will be crucial to ensure successful adoption of technologies and practices resulting from RD&D activities. We are confident that the CEC will acknowledge the need for ongoing coordination as it develops recommendations of administration and evaluation criteria for the Legislature. To this end, the staffs of both agencies are currently assisting in the development of a MOU on coordination of RD&D and other public purpose program efforts. We continue to support these efforts to ensure that there is efficient and effective implementation of public purpose programs for California ratepayers.

6.0 Low-Income Assistance Programs

We currently implement two types of assistance to low-income residents: rate assistance and energy efficiency services. Rate assistance is provided consistent with §§ 739.1 and 739.2 under the California Alternate Rates for Energy (CARE) program.[16] Under this program, eligible low-income households and group living facilities receive a discounted rate for their electric and gas consumption. Specifically, eligible customers receive a 15% discount on volumetric gas, electric, and monthly customer charges. CARE parallels the existing Universal Lifeline Telephone Service (ULTS) program, using the same income guidelines of approximately 150% of the federal poverty levels, updated annually. Costs associated with the rate discount are currently collected as a cents-per-kWh component of rates. For electric low-income assistance programs, these costs were approximately $106.9 million in 1996.[17]

The investor-owned utilities also provide income-eligible households with no-cost weatherization and other energy efficiency services. These services, including energy education, have traditionally been funded as part of utility demand-side management programs, consistent with the provisions of PU Code

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[16] In January 1995, the name of the low-income rate assistance (LIRA) program was changed to California Alternate Rates for Energy (CARE). Throughout this discussion, the rate assistance program will be referred to as CARE.

[17] Low Income Working Group Report, Table III-8, page III-17 and Table III-5, page III-9.

§ 2790. They are currently administered by the utilities but generally implemented by a variety of community-based organizations or through competitive bidding.

In our policy decision, we determined that utilities should continue to administer low-income assistance programs in the near term, but noted the appeal of moving the administration of these programs outside of the utilities. We indicated our preference for a statewide surcharge to fund these activities, but recognized that some transition period might be necessary to reach this goal. We supported establishment of a separate charge specifically for funding low-income assistance programs. We expressed the desire to see a more detailed analysis of the need for low-income efficiency services before deciding whether the amount of funds collected for these services should be capped or uncapped. (D.95-12-063, as modified by D.96-01-009, mimeo. pp. 164-168.)

We asked the Low-Income Working Group for additional information on the necessary level of funding and on developing the details of administering these funds. The Working Group did not reach consensus on most issues, although there was clear agreement on the need to continue both the CARE rate discount and the energy efficiency programs for low-income customers. The report presents several administrative options for our consideration, as discussed further below. For any alternative chosen, the Working Group recommends using an income eligibility guideline set at 150% of the federal poverty level for enrollment, and a uniform process to determine initial

eligibility of applicants and to re-certify participants. The Working Group Report discusses low-income consumer protection issues and principles, but there was no consensus on the need for a program specific for low-income customers.

Section 382 provides that "[p]rograms provided to low-income electricity customers, including, but not limited to, targeted energy efficiency services and the California Alternative (sic) Rates for Energy Program shall be funded at not less than 1996 authorized levels based on an assessment of customer need." The statute also establishes that this funding will be collected as a nonbypassable rate component of local distribution service collected on the basis of usage.

In today's decision, we provide policy direction on the administration and funding of these low-income services in a restructured industry environment. As discussed further below, several implementation issues still need to be addressed in this proceeding and in our pending rulemaking on low-income rate assistance, R.94-12-001.

6.1 Administrative Options

The Low-Income Working Group presented specific administrative options for the low-income programs; some of them addressed both CARE and low-income efficiency services, while others addressed only one of the programs. Below, we briefly describe the alternatives presented for our consideration.

The Department of Community Services and Development (CSD) proposes to provide central, statewide administration of funding collected for low-income rate assistance and energy efficiency

and education activities. CSD is a department within California's Health and Welfare Agency that currently administers certain federally funded weatherization programs and maintains a network of energy efficiency service providers statewide. CSD also provides income eligibility and verification services to utilities. CSD believes that its experience delivering these programs and ability to leverage funds makes it uniquely qualified to administer low-income assistance programs statewide.

By interagency agreement, the Commission would retain policy oversight and budget approval authority. CSD would administer and implement programs subject to that oversight. CSD would be responsible for marketing the availability of CARE, serving as a clearinghouse for all customer applications for CARE and performing income eligibility and verification, consistent with Commission policies. CSD would issue RFPs to select qualified organizations to deliver low-income efficiency services. CSD's proposal is supported by the Association of Southern California Environmental and Energy Programs.

EMG recommends an administrative structure that adds a "Low Income Energy Efficiency Council" to its Ratepayer Responsible Board proposal described in Section 4.1.8. EMG proposes that budgeting authority over the collected low-income funds be transferred incrementally to the Council, so that full responsibility begins in 2000. EMG's proposal focuses on low-income efficiency services rather than CARE, but identifies an approach to provide discounts to eligible households that have not applied for the CARE discount.

SBSCO/RESCUE recommend that low-income programs be implemented by independent administrators under a similar approach proposed by ORA for energy efficiency programs. They propose a governing board made up of public officials to address policy matters regarding the use of low-income surcharge funds. A low-income advisory committee would support the governing board's efforts. Independent administrators would be selected through a competitive RFP process. This option would preclude the utility distribution companies from serving as the administrators. The CEC and TURN support variations on this model.

Latino Issues Forum and the Greenlining Institute propose an administrative structure for CARE that is based on the ULTS model. Under this approach, surcharge funds would be administered by a nonprofit administrative committee whose officers would be appointed by the Commission in consultation with low-income and minority groups. Initially, utility distribution companies would be both the collectors of the surcharges and providers of CARE services, as well as retaining the responsibility for outreach. Over time, other providers would be eligible to apply to the CARE trust to provide these services, comparable to the ULTS model.

PG&E, SDG&E, and Edison propose a model that would retain utility administration of low-income programs. Under this model, a statewide low-income board would review proposed utility program plans for conformance with Commission policies. The board would have voting (the Commission, utilities, and regional

low-income representatives) and nonvoting membership. The utilities would be responsible for verifying eligible customers, implementing Commission-authorized activities within their service territories, and overseeing third-party providers. The board would rely on a technical advisory committee for advice and recommendations regarding program plans and program design issues.

6.2 Discussion

As in the past, our goal is to provide low-income ratepayers with assistance in managing their energy bills. Currently, the two elements of low-income assistance programs, CARE rate discounts and energy efficiency services, are generally operated independently of one another within the utilities. Low-income customers requesting applications to qualify for CARE discounts are not uniformly given information on low-income energy efficiency services, and vice versa.

We believe that an administrative structure which integrates the provision of CARE and low-income efficiency services, including education, will best meet our objectives. In this way, eligible customers receive rate assistance for their basic energy requirements along with the information, education, and referrals to energy efficiency service providers to help them manage their energy bills.

In creating this integrated approach, we must look to the future when energy services will be available to low-income customers from non-utility providers. In that environment, it will be important to ensure that low-income customers have

uniform access to rate assistance and low-income efficiency services irrespective of who provides energy services or who bills for those services in the future.

To this end, we favor a structure that moves away from utility administration of low-income programs over time. Requiring the utility to determine eligibility for rate assistance and low-income efficiency programs makes far less sense in a restructured industry. For example, why should a low-income customer that elects service from a non-utility provider be required to seek an application for rate assistance and eligibility approval from the utility? Moreover, as we discussed in Section 4.2 above, the utilities are more motivated than ever to increase sales and customers, rather than encourage reductions in energy use. For these reasons, we will not retain the current administrative structure except during the necessary transition to our preferred approach.

Our preferred approach draws on the administrative options described above, but does not mirror any specific option. Like the SESCO/RESCUE proposal, we will select a Governing Board to oversee the administrative process. As discussed in Section 4.2 above, we believe that EMG's proposed system of locally elected boards is without clear advantages to meeting our stated objectives. We envision the Governing Board consisting of up to seven members, including two representatives from this Commission, and up to five members of the public. We will designate one member as acting chairperson for an interim period. Board members should have experience in the development of

policies or in the provision of services to low-income people, in particular the provision of energy efficiency and educational services to eligible low income energy customers. Within 30 days from the effective date of this decision, interested parties should submit nominations for the public representatives, to be appointed to the Governing Board, with a discussion of their qualifications. We will make a selection of Board representatives within 45 days thereafter.

Given the different goals of energy efficiency and low-income assistance, we agree with CEC and others that CARE and low-income energy efficiency services should be administered separately from, but in close coordination with, the energy efficiency programs discussed in Section 4.0. The Boards of both administrative structures should develop appropriate coordination procedures. While the Governing Board has been given much responsibilities, and we do not intend to micromanage its activities, the Governing Board will be subject to Commission jurisdiction and oversight as described in Section 4.2.1 above.

The Governing Board will issue an RFP, subject to our approval, to hire an Administrator in a competitive bidding process. Board members may hire a consultant to draft the RFP under their direction. Board members will be reimbursed for expenses and paid a reasonable per diem, but no salaries. The utilities will front these RFP development costs and be reimbursed from surcharge funds, including interest.

The Administrator will be responsible for (1) collecting and disbursing CARE funds, (2) verifying customer eligibility, and

(3) making energy efficiency and education services available to eligible customers. The RFP will include guidelines for allocation and accounting of money in the fund for low-income rate assistance and energy efficiency services, including education. The RFP will also specify how administrative performance shall be monitored and evaluated. It will specify the process by which the contract can be amended and a method for settling disputes between the Administrator and the Board.

As part of the RFP development process, we intend that the Board propose appropriate modifications to our existing DSM rules with respect to low-income energy efficiency programs, subject to our approval. The RFP itself must be based on the revised rules.

As in the ULTS program, there will need to be a method for tracking and forecasting incoming CARE surcharge amounts and dispersing funds to energy service providers. The Administrator will also be responsible for processing applications for CARE discounts, verifying customer eligibility based on Commission guidelines, and maintaining an eligibility database.[18] Having a central certification process will allow customers to switch to a new energy provider without submitting a new application. The

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[18] We are currently reviewing income eligibility guidelines and the issue of self-certification for both energy and telephone low-income rate assistance in R.94-12-001. (See Order Instituting Rulemaking, dated December 7, 1994.) In establishing customer eligibility for CARE and low-income energy efficiency services, the Administrator should incorporate our determinations in that rulemaking. In the meantime, we will continue to utilize current eligibility guidelines and criteria.

Administrator may elect to perform these functions itself, or contract them out via competitive bid. However, these functions should be performed on a centralized, statewide basis.

When a low-income customer requests service from an energy provider, the customer should receive both a rate assistance application form (to be submitted to the Administrator) and a standard packet of information that discusses services available to low-income customers (e.g., energy education and efficiency services). The Administrator is responsible for developing the standard packet as well as administering program funds to ensure that those services are available in the customer's vicinity. There are several options for making energy efficiency (including education) services available, such as contracting to energy service companies, community-based organizations and education specialists directly or developing a referral service with lists of qualified providers and specialists by geographic area. We will leave the consideration of these and other options to the RFP development process. However, all funds disbursed by the Administrator for low income energy efficiency or education services should be allocated by competitive procurement.

Subject to our approval, the Governing Board will establish voting and conflict of interest rules, staffing and other operating requirements. We expect the Governing Board's oversight role to require only minimal staff, once the RFP is developed and the Administrator is established. The Governing Board will also specify what services might be made available by the Commission or by other state agencies. The Board will

appoint a Low-Income Advisory Committee. We expect participation in advisory committee activities to be as open as possible, and public participation should be encouraged.

As in the case of energy efficiency programs, we do not preclude any investor-owned utility from responding to the RFP for an Administrator or from competing to win contracts for energy efficiency (including education) services. However, the Governing Board will need to establish appropriate safeguards regarding potential conflicts of interest, market power abuse, and self-dealing for all potential bidders, including any regulated utility that submits a bid.

Consistent with our policy decision, we will treat gas and electric utilities consistently "to ensure that low-income residents receive comprehensive assistance in managing their electric use." (D.95-12-063, as modified by D.96-01-009, mimeo., p. 164 footnote 68.) Accordingly, once the transition to our new structure has been completed, the functions and responsibilities for the Governing Board and Administrator will apply to both gas and electric low-income assistance programs, including those currently administered by SoCal. As discussed in Section 4.2 above, we recognize that gas utilities do not currently have a nonbypassable surcharge available to them in order to collect funding for these activities. We will allow the gas utilities to continue to operate their own low-income rate assistance programs with the option to transfer funding to the Board, and ultimately to the selected administrator, as we explore development of a gas surcharge. If gas utilities choose not to transfer funding for

these programs, the gas utility should work with the selected administrator to ensure coordination of delivery of services. Consideration of gas surcharge issues will be part of the Energy Division Workshops described in Section 8.0 below.

Our goal is to select a Governing Board as soon as possible and address key implementation issues during the remainder of 1997 so that the Administrator can be selected by January 1, 1998. Between now and full operation of the new administrative structure, we will continue to vest responsibility for low-income assistance programs with the utilities.

6.3 Program Design Options

The Low-Income Working Group Report described several program design options for the low-income assistance programs. For CARE programs, Working Group members discussed fixed percentage discount options that would apply the discount to transportation (or transmission and distribution) charges only, to the fixed charges only, or to the entire bill. They also described the possibility of changing to fixed dollar discounts, a ULTS or lifeline rates model, energy stamps, a sliding scale discount based on income and aggregating all low-income customers so that one entity could bid to provide services to them.

The Working Group also presented several broad approaches for determining the nature and mix for installing energy efficiency measures and making repairs in low-income residences. They also discussed guiding principles, evaluation criteria, and design proposals for education services. However, the Working Group did not have enough time to address the funding impact and

cross-subsidization effects of alternative program designs, the relative equity (among low-income customers) afforded by the different options, as well as other issues they identified as important in considering program design options.

Further consideration of program design options for CARE and low-income energy efficiency services, including education, should also be undertaken by the new Governing Board, with assistance from the Low-Income Advisory Committee. During the implementation phase, we will establish an appropriate schedule for the Governing Board's review of options and reporting requirements to this Commission.

The Working Group Report also outlines low-income consumer protection principles and presents nonconsensus recommendations on how to best protect low-income customers from potential market abuses. We note that this section of the report mirrors the discussion presented for our consideration in the Direct Access Working Group Report on Consumer Protection and Education, filed on October 30, 1996 in this proceeding. Initial comments on this report were filed November 26 with reply comments filed on December 11, 1996. Consistent with our updated Roadmap decision, all interested parties will have additional opportunity to file comments on suggested rules for consumer protection and education programs as part of direct access implementation. (D.96-12-088, pp. 18-19.) We will address all consumer protection issues in that forum.

6.4 Funding Levels and Needs Assessment

As we have discussed in early sections, the provisions of AB 1890 establish funding minimums, rather than limits, for funding public purpose programs. In the case of low-income programs, § 382 states that funding should be established at "not less than 1996 authorized levels based on an assessment of customer need."

At issue is whether 1996 authorized levels are sufficient at this time to meet current customer needs for low-income assistance programs. We agree with the Greenlining Institute, Latino Issues Forum, and others that they are sufficient for now. On average, only 58% of income eligible households participated in the CARE program in 1996. The saturation rate for basic low-income weatherization programs averaged 56% in 1996. (Working Group Report, pp. I-5 to I-9.) While Working Group members generally agree that these statistics do not reflect the penetration potential of these programs, most of them also agree that there is no need for additional needs analysis in the short-term.

Accordingly, we will initially set 1998 funding at 1996 levels while the new administrative structure is being developed. For CARE, funding levels will vary depending on the number of customers receiving the discount, the level of the discount and other programmatic factors. We will not at this time impose a specific cap on CARE funding. Any such increased costs associated with the program will be collected through the surcharge, subject to the rate limits imposed by AB 1890. We

note that AB 1890 provides for potential offsets to CARE costs, i.e., from penalties collected pursuant to Section 364(c). However, the more data obtained about the need for low-income assistance and how programs provide value to low-income households, the better future programs will become. The new Governing Board, with input from the Low-Income Advisory Committee, should design and undertake a needs analysis as part of its program development and evaluation functions. We will discuss the schedule and scope for such efforts during the transition.

7.0 Renewables

The Renewables Working Group Report presented comprehensive program proposals for implementing our renewables policy. Five of the proposals presented strategies for implementing a program based on a minimum renewables purchase requirement, which was the approach recommended in our policy decision. One of the proposals addressed a surcharge-funded program that distributes renewable production credits on the basis of competitive bidding.

AB 1890 resolved some key issues in this area and directed the CEC to prepare a follow-up report for the Legislature by March 31, 1997, addressing other concerns specified in the legislation. (§ 383(b).) In particular, the statute calls for a nonbypassable surcharge-based funding approach, similar to the other public purpose areas, specifies minimum funding levels, and directs that those funds shall be transferred to the CEC. (§ 383(a).) Among other things, the CEC is to submit

recommendations to the Legislature regarding market-based mechanisms to allocate available renewables funds.

Section 381(c)(3) provides an aggregated level of funding for renewables of $540 million over the 1998-2001 period. The statute establishes a minimum of $109.5 million in annual funding for the years 1998-2000 (SDG&E--$12 million, SCE--$49.5 million, and PG&E--$48 million) and $136.5 million for 2001 (SDG&E--$12 million, SCE--$76.5 million, and PG&E--$48 million). An additional amount, not to exceed $75 million, is to be allocated from funds collected by a three-month extension of the competition transition charge. (See § 381(d)).

ORA argues that the Commission should bar utilities from owning incremental generation for any application without prior Commission approval and from receiving renewables surcharge funds for existing renewables projects or power purchase contracts. ORA also proposes that the Commission promptly adopt specific definitions for terms such as "renewables," "direct access transactions," "distributed generation," and "self generation."

We agree with ORA that policies in the renewables area should be consistent with the market structure policies we have adopted, and continue to refine, in our electric industry restructuring proceeding. However, we prefer to address overlap issues regarding renewables and market structure through close coordination with the CEC and the Legislature, rather than by issuing orders at this juncture. Similarly, we plan to work closely with the CEC in developing definitions that appropriately delineate the scope of various surcharge activities, rather than

adopt specific definitions at this time. We may revisit these issues, as appropriate, in the future.

In the meantime, we will officially transmit the Renewables Working Group Report to the CEC and Legislature for their consideration. It contains valuable work and a diversity of points of view which should facilitate the development of market mechanisms to promote renewable energy.

With regard to funding levels, ORA proposes to set the Renewables surcharge level at $135 million per year for 1998 and 1999, which ORA argues would support a policy of cost minimization. (ORA's Opening Comments, p. 46.) The Union of Concerned Scientists argues that the funding levels in AB 1890 will not be sufficient to maintain the present aggregated level of non-hydro renewables in California. (Oral Argument Statement, pp. 3-4.)

Nothing in AB 1890 prevents us from providing for funding for renewables above the mandatory minimum funding levels provided for in § 383(c)(3). At this time, we will establish funding levels at the minimums established by the statute. However, as CBERT, EDF, and others point out, additional investment in renewables resources may be required to mitigate any significant environmental effects of restructuring and to preserve the current levels of resource diversity. Accordingly, we may need revisit today's adopted funding levels, after the Legislature's consideration of program options and implementation mechanisms, and once the program is underway.

8.0 Application of Public Goods Surcharge To Gas Customers and Other Design Issues

Most parties take the position that the nonbypassable charge for public purpose programs should be levied on both retail electricity and gas customers connected to the distribution grids. A surcharge on gas customers is not supported by SoCal. SoCal argues that the gas industry has already experienced restructuring for over four years and public purpose programs for gas customers are successfully continuing in their present forms. Thus, in SoCal's view, there is no demonstrated need for change.

We believe that the need for comparable treatment of electricity and gas consumption overrides SoCal's arguments for differing treatment of gas and electric public purpose programs. A broader surcharge scope would mitigate concerns regarding cross-subsidies and promote a level playing field between electricity and gas suppliers in a competitive market.

As discussed above, we have already directed that SoCal transfer current funding for demand-side management to the new administrator so that gas and electric market transformation activities can be coordinated under one structure. Similarly, SoCal will need to transfer current funding for low-income gas assistance programs to the new administrative structures for those programs, once we complete the transition described in Section 6.0.

We intend to establish a gas surcharge mechanism that will apply to all public purpose areas and ultimately to all gas

customers. To this end, our Energy Division will hold workshops to address implementation issues, including the following:[19]

(1) How can the Commission ensure that the costs of these programs are borne equitably by natural gas customers regardless of their natural gas provider?

(2) Which class of customers should bear the cost for these programs?

(3) What funding level should be established?

(4) What further Legislative action is needed to implement these changes?

By April 1, 1997, the Energy Division should file a report on these and other implementation issues and serve its report on the Special Public Purpose service list. The report should include a summary of consensus and nonconsensus positions, and present specific Energy Division recommendations for Commission and Legislative action. The assigned ALJ will solicit further comment from interested parties before making final recommendations to the Commission and the Legislature.

In the Working Group reports and comments, several parties expressed positions on how the public goods surcharge should be identified on the customers' bill and allocated to customer groups, as well as who should be exempt from those charges. We

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[19] We note that SB 678 (Stats 1996, Chapter 285) specifically requires a report to the Legislature on these issues for low-income public policy programs. This report is due by June 1, 1997.

agree with ORA that such details regarding the structure and collection of the public goods surcharge should be deferred and coordinated with CTC collection and other revenue allocation/rate design issues associated with restructuring. As we move forward with implementation, we will direct these issues to the appropriate procedural forum in this proceeding.

9.0 Transition and Implementation Issues

By today's order, we begin the transition to a new administrative framework for public purpose programs. To facilitate the next steps taken by the Legislature in these program areas, our Executive Director shall transmit the RD&D and Renewables Working Group reports to the CEC and Legislature as soon as practicable. We have already begun discussions with the CEC concerning a coordination MOU, and will continue these efforts throughout the transition.

Our first implementation task is to select Board members for the new administrative structures described in Sections 4.2 and 6.2. Within 30 days from the effective date of this decision, interested parties should submit nominations for the public representatives to the energy efficiency Independent Board and the low-income assistance Governing Board, with a discussion of their qualifications. We encourage parties to meet informally to discuss potential candidates and reach consensus on nominees if possible. We will select the Board members shortly thereafter and establish a schedule for the approval and issuance of the RFPs and selection of administrators.

By April 1, 1997, the Energy Division will submit its report on implementation issues related to a gas surcharge mechanism that will apply to all public purpose areas and, ultimately, to all gas customers. Consistent with the provisions of SB 678 (Stats 1996, Chapter 285), we intend to submit a report to the Legislature on these issues for low-income public policy programs by June 1, 1997.

As discussed in Section 5.2, regulated RD&D will be funded through rates above and beyond the § 381 nonbypassable distribution charge. Within 90 days from the effective date of this decision, PG&E, SCE, and SDG&E may file an application to increase currently authorized revenue requirements to cover reasonable costs of regulated RD&D, as long as rates remain within the limits established by AB 1890.

Within 120 days from the effective date of this decision, PG&E, SDG&E, and SoCal shall identify the 1996 authorized funding levels for gas demand-side management and for gas and electric low-income assistance programs, by program category, to be transferred to the new energy efficiency and low-income program administrators. This information shall be filed at the Commission's Docket Office and served on all appearances and the state service list on the Special Public Purpose Service List in this proceeding, and on all appearances and the state service list in R.91-08-003/I.91-08-002.

As discussed in Section 6.2, we will also explore design options for the low-income assistance programs. To this end, the Governing Board (with assistance from our Energy Division, if

necessary) will hold workshops and file a workshop report on CARE program design no later than September 1, 1997. The workshop report should be served on all appearances and the state service list on the Special Public Purpose Service List in this proceeding. During 1997, we will establish an appropriate schedule for the Governing Board's review of design options for low-income energy efficiency programs and appropriate reporting requirements to this Commission. We will also need to address the schedule and scope for the needs analysis discussed in Section 6.4.

During the transition to our new administrative structures, it will be important to maintain public purpose program funding and related activities until the new structures are fully operational. As discussed in today's decision, we will retain the current utility administrative structure for energy efficiency and low-income programs during this transition, thereby utilizing the utilities' experience and expertise in the interim. However, there will need to be ongoing exchange of information and a smooth transfer of functions and assets during this transitional period. The energy efficiency and low-income boards should separately report to the Commission by July 1, 1997 on the status of the development of the administrative structures described in this decision. Specifically, they should each report whether they believe the ir respective structures will be operational by our goal of January 1, 1998. If either of the Boards report that additional time is required, in order to reduce utility program planning uncertainty, the Commission will

act to formally extend the current structure for a fixed period of time.

We will also need to establish fund transfer mechanisms for RD&D and renewables activities that will facilitate the start up of CEC functions on a timely basis. As discussed in this decision, we will need to establish an appropriate procedural forum for reassessing the initial funding levels for energy efficiency, RD&D and renewables, as appropriate. For illustrative purposes, in 1998, funding associated with public purpose programs will total approximately $506 million, based on the funding level set forth in AB 1890 and estimates of 1996 funding levels for low-income programs. This represents approximately 3.1% of the combined 1996 authorized electric revenue requirements for the 3 electric utilities. These funding levels will be utilized in the unbundling proceeding (A.96-12-009,et. al) to develop public purpose charges. These surcharge design and collection issues will need to be coordinated with CTC collection and other revenue allocation and rate design issues associated with industry restructuring.

With parties' input, we will map out the various steps that will make the transition to new administrative structures for public purpose programs as smooth as possible. We encourage collaborative efforts among the parties, utilizing informal processes where appropriate, to assist us in filling out the details of program administration, oversight, and implementation in an expeditious manner. The assigned ALJ will hold a workshop

or other appropriate forum for developing this procedural roadmap as soon as practicable.

Findings of Fact

1. Our focus for energy efficiency programs has changed from trying to influence utility decisionmakers, as monopoly providers of generation services, to trying to transform the market so that individual customers and suppliers in the future, competitive generation market will be making rational energy service choices.

2. Given the provisions of AB 1890 and the restructured industry environment, utilities face greater disincentives than in the past to develop an independent industry which will directly compete with the energy services they provide.

3. Continuation of an administrative structure dependent upon utility shareholder incentives is incompatible with our goals for energy efficiency.

4. The rate freeze and rate decrease provisions of AB 1890 call into question the future funding of utility shareholder incentives for demand-side management programs.

5. An administrative structure which integrates the provision of CARE and low-income energy efficiency services, including education, will best meet our goal to provide low-income ratepayers with assistance in managing their energy bills.

6. Continued utility administration of low-income programs is not necessarily the preferred approach for the future, when such energy services will also be available to low-income customers from non-utility providers.

7. Completely precluding utilities from bidding for administrative functions in energy efficiency or low-income assistance programs would inappropriately preclude the respective new boards from even considering utilities as potentially competent and efficient providers of these services.

8. The administrative proposals presented by DGS and CSD give preference to their respective agencies at the outset.

9. EMG's administrative proposal adds layers of governmental oversight without clear advantages for meeting the program objectives described in this decision.

10. The program design options presented by the Low-Income Working Group did not address important issues, such as the funding impact and cross-subsidization effects of alternative program designs, the relative equity (among low-income customers) afforded by the different options and other issues identified in the Working Group report.

11. Economic efficiency requires saving electricity and gas together, rather than running independent programs for each fuel.

12. Gas and electric low-income assistance programs should be administered together to ensure that low-income residents receive comprehensive assistance in managing their energy use.

13. AB 1890 establishes annual dollar levels that represent minimums, not absolute ceilings, for funding public purpose programs over the 1998-2001 period.

14. Because of the shared responsibilities for public purpose programs and the potential overlap of RD&D, energy

efficiency,and renewables programs, there will be an ongoing need for coordination with the CEC.

15. The RD&D Working Group reached consensus on several key points, including certain boundary definitions for competitive, regulated, and public interest RD&D, which are summarized in Attachment 6.

16. AB 1890 authorizes specific funds for public interest RD&D activities not adequately provided by the competitive and regulated markets. These specific public interest RD&D funds are not intended to provide for the utilities' regulated RD&D functions.

17. Under AB 1890, the Commission is authorized to allocate to the utilities only that portion of the public interest RD&D funds contained in AB 1890 which is needed to perform T&D-related public interest functions not adequately provided by the competitive and regulated markets.

18. The utilities and ORA's interpretation of AB 1890 with regard to RD&D funding is not consistent with the language of the statute or legislative history.

19. The $62.5 million minimum level for public interest RD&D funding required by AB 1890 appears reasonably consistent with estimates of aggregate historical spending prior to a steep decline in 1995.

20. The utilities' estimates for T&D related public interest RD&D are within close range of the estimates presented by CEC and supported by UC.

21. AB 1890 provides utilities with an opportunity, but not a guarantee, to recover stranded costs. In creating such an opportunity, the Legislature chose to allocate certain types of recovery risks, but not others, to the utilities.

22. In establishing current funding levels for RD&D in utility rates, we did not anticipate the AB 1890 statutory minimum funding requirements for public interest RD&D.

23. AB 1890 does not preclude us from increasing funding authorizations for regulated RD&D, as long as rates remain within the limits established by the statute.

24. AB 1890 does not preclude the CEC from determining that certain RD&D efforts should be considered "public-interest" rather than "regulated" and, accordingly, from providing utilities with funding out of the public interest RD&D surcharge monies to pursue such activities.

25. A public goods surcharge that also applies to gas customers would mitigate concerns regarding cross-subsidies and promote a competitive level playing field between electricity and gas suppliers in a competitive market.

Conclusions of Law

1. It is reasonable to establish administrative structures for energy efficiency and low-income assistance programs that allow utilities to compete for administrative services, but do not automatically continue a utility monopoly over administration of these programs. The administrative structures for energy efficiency and low-income assistance programs described in this decision are reasonable and should be adopted.

2. The administrative structures for energy efficiency and low-income assistance should apply to both gas and electric programs. Funds currently in rates for gas demand-side management programs and low-income rate assistance programs of SDG&E, PG&E, and SoCal should ultimately be transferred to the respective boards, and ultimately to the selected program administrator(s) in each respective service territory.

3. Given the different goals of energy efficiency and low-income assistance, it is reasonable to administer these two programs separately, but in close coordination with each other.

4. Just like any other potential bidder for administrative functions, utilities should assess the benefits of administering energy efficiency and low-income ratepayer assistance programs in light of the potential margin, without the prospect of a shareholder incentive mechanism.

5. Any future refinements or wholesale changes to sales adjustment mechanisms that we consider in our restructuring or performance-based ratemaking proceedings should reflect the changing role of utilities in energy efficiency.

6. The respective boards for energy efficiency and low-income assistance programs should determine the pace and schedule for the transference of functions, funding, assets, and program commitments from utilities to the new administrators and phase-down of utility programs, as appropriate. During this transition, utilities should retain their stewardship of demand-side management programs funded in prior years and continue to implement the adopted measurement and evaluation protocols.

During this transition, the existing shareholder incentive mechanisms should continue to apply to utility DSM programs. At the direction of the boards, the utilities should provide a description of current utility programs and staffing to identify relevant assets and program commitments. This accounting should be subject to audit, as determined by the Board.

7. Existing shareholder incentive mechanisms should continue to apply to prior program years and to demand-side management programs under the utility administration during the transition to new administrators. Potential shareholder incentives associated with these activities should continue to be evaluated in the Annual Earnings Assessment Proceeding. However, funding for these shareholder incentives should not come from the levels authorized today for PU Code § 381(c)(1) energy efficiency programs. Shareholder incentives should not apply to any winning utility bidder under the new administrative structure for energy efficiency and low-income assistance programs described in this decision.

8. As described in this decision, utilities should front the costs incurred in developing request for proposals for the energy efficiency and low-income administrative functions. The utilities should be reimbursed from surcharge funds, including interest that will accrue at the rate earned on prime, three-month commercial paper.

9. It is reasonable to establish initial funding levels for public purpose programs provided by SCE, PG&E, and SDG&E at the minimum levels required by AB 1890.

10. Initial funding for gas energy efficiency and low-income assistance programs should be established at 1996 authorized levels for demand-side management and CARE. SoCal, SDG&E, and PG&E should ultimately transfer these funds to the new administrative structures, as described in this decision.

11. Our oversight of public purpose programs should include an opportunity to increase funding over the 1998-2001 period, as appropriate.

12. Most of the steps required to establish the administrative structure for energy efficiency described in this decision should be completed by January 1, 1998. The steps required to establish the administrative structure for low-income programs should be completed by January 1, 1999.

13. Further consideration of program design options for low-income energy efficiency services, including education, should be undertaken by the new Governing Board with assistance from the Low-Income Advisory Committee. The Governing Board should also design and undertake a needs analysis as part of its program development and evaluation functions, with input from the Low-Income Advisory Committee.

14. The new Governing Board should hold workshops and file a report on program design issues and options for the CARE program no later than September 1, 1997. The report should be served on the Special Public Purpose service list.

15. Based on the statutory language and legislative history, it is reasonable to interpret Public Utilities Code § 381 as (1) authorizing RD&D funds for public interest activities only,

and not for regulated or competitive functions, and (2) reserving to this Commission the authority to determine how best to utilize funds for public interest RD&D directed towards T&D. All other public interest RD&D funds authorized by AB 1890 are allocated to the CEC.

16. It is reasonable to adopt the utilities' 1996 estimates of $700,000 for annual T&D-related public interest RD&D, broken down as follows: $300,000 for PG&E, $300,000 for SCE, and $100,000 for SDG&E. The remaining $61.8 million of public interest funding for RD&D adopted by this decision should be allocated to the CEC for non-T&D related interest RD&D as follows: $29.7 million from PG&E, $28.2 million from SCE, and $3.9 million from SDG&E.

17. It is reasonable to let SDG&E, PG&E, and SCE decide if they wish to apply for an increase in authorized revenue requirements for the reasonable costs of regulated RD&D. Such a request should comply with the rate limits established by AB 1890 and should reflect a realistic expectation of the utilities' involvement in regulated RD&D activities in the future under restructuring. Historical funding levels for regulated RD&D should also be considered, as appropriate.

18. It is reasonable to allow SDG&E, PG&E, and SCE to seek funding from the CEC for RD&D functions which they believe have become public interest RD&D, and that would otherwise be funded outside of the nonbypassable public purpose surcharge.

19. As soon as practicable after the effective date of this decision, our Executive Director should officially transmit the

Working Group reports on RD&D and Renewables to the CEC and Legislature for their consideration.

20. The consensus points reached by the RD&D Working Group, as presented in Attachment 6 of this decision, should serve as the basis for the Legislature's further development of RD&D administration and expenditure criteria, pursuant to AB 1890.

21. Policies in the renewables area should be consistent with the market structure policies we have adopted, and continue to refine, in this proceeding.

22. Overlap issues regarding renewables and market structure should be addressed through close coordination with the CEC and the Legislature, rather than by issuing directives on these issues at this time. Similarly, the potential overlap in scope and agency responsibilities for all public purpose areas should be addressed through coordination with the CEC, to the extent possible.

23. Our Energy Division should hold workshops to address implementation issues regarding a gas surcharge mechanism for all public purpose areas and submit its report by April 1, 1997.

24. Details regarding the structure and collection of the public goods surcharge should be deferred and coordinated with CTC collection and other revenue allocation/rate design issues associated with restructuring.

25. As part of the RFP development process for program administrators, the energy efficiency and low-income boards should propose revisions to our existing DSM rules, as appropriate. Such revisions should be consistent with the policy

objectives discussed in today's decision and the RFP itself must be based on the revised rules. The revised rules and RFPs should be subject to our approval.

26. In order to proceed with implementation of today's decision as expeditiously as possible, this order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. Energy efficiency and low-income assistance programs shall be administered in the future under a new structure that will require independent boards and administrative entities selected through a competitive bidding process. The new administrative structure shall apply to both electric and gas programs. During the transition to this new structure, San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), Southern California Gas Company (SoCal) and Pacific Gas and Electric Company (PG&E) shall continue to administer demand-side management and low-income rate assistance programs until the new administrative system is operational. The Commission shall appoint representatives to the Boards within 45 days thereafter.

2. Funding for electric utility public purpose programs shall be accomplished through a nonbypassable rate component of the local distribution service consistent with the requirements of Public Utilities (PU) Code § 381. Commencing January 1, 1998

through December 31, 2001, initial annual funding for public purpose programs shall be established at the levels presented below. These initial levels may be reassessed in the future, as appropriate.

a. Energy Efficiency Programs. For SDG&E and PG&E, the funding levels shall be $32 and $106 million per year, respectively. For SCE, the funding level shall be $90 million for 1998, 1999, and 2000, and $50 million for 2001.

b. Low-Income Assistance. The annual funding levels for programs provided to low-income electricity customers, including targeted energy efficiency services and the California Alternate Rates for Energy program shall be funded at 1996 authorized levels. For CARE, funding levels shall vary depending on the number of customers receiving the discount, the level of the discount and other programmatic factors. CARE funding shall not be capped at this time. Any such increased costs associated with the program will be collected through the surcharge, subject to the rate limits imposed by AB 1890. CARE costs shall be offset by any money collected pursuant to PU Code Section 364(c).

c. Public Interest Research, Development and Demonstration (RD&D). The annual funding levels shall be $4 million for SDG&E, $28.5 million for SCE, and $30 million for PG&E. The utilities shall retain the following annual amounts for transmission and distribution (T&D) related public interest RD&D: $300,000 for PG&E, $300,000 for SCE, and $100,000 for SDG&E. The remaining $61.8 million in annual funding shall be allocated

to the California Energy Commission (CEC) for non-T&D related public interest RD&D, consistent with the provisions of AB 1890, as follows: $3.9 million from SDG&E, $28.2 million from SCE, and $29.7 million from PG&E.

d. Renewables. An aggregated level of funding of $540 million pursuant to PU Code § 381(c)(3) of AB 1890 shall be collected as follows: For the years 1998-2000, a total of $109.5 million in annual funding from SD&GE ($12 million), SCE ($49.5 million), and PG&E ($48 million). For 2001, a total of $136.5 million in annual funding from SDG&E ($12 million), SCE ($76.5 million) and PG&E ($48 million). Pursuant to PU Code § 381(d), an additional $75 million shall be allocated from funds collected by a three-month extension of the competition transition charge beyond its otherwise applicable termination of December 31, 2001. These funds shall be transferred to the CEC pursuant to § 383(a).

3. As soon as practicable after the effective date of this decision, our Executive Director shall transmit the RD&D and Renewables Working Group reports to the CEC and Legislature for their consideration.

4. Within 30 days from the effective date of this decision, interested parties shall submit nominations for the public representatives to the energy efficiency Independent Board and the low-income program Governing Board, together with a discussion of their qualifications. These nominations shall be filed at the Commission's Docket Office and served on (1) all

appearances and the state service list on the Special Public Programs service list in this proceeding and (2) all appearances and the state service list in Rulemaking (R.) 91-08-003 and companion Investigation (I.) 91-08-002.

5. By April 1, 1997, the Energy Division shall hold workshops and file a report containing its recommendations on implementation issues related to a gas surcharge mechanism that may apply to all public purpose areas and, ultimately, to all gas customers. The report shall be served on the Special Public Purpose service list.

6. No later than 90 days from the effective date of this decision, PG&E, SCE, and SDG&E may file applications to increase 1998 authorized revenue requirements to cover reasonable costs of regulated RD&D, as long as rates remain within the limits established by AB 1890. These applications shall be served on all appearances and the state service list in this proceeding, including those listed on the Special Public Purpose service list.

7. Annual funding for gas energy efficiency and for both gas and electric low-income assistance programs shall be established initially at 1996 authorized levels. Within 120 days from the effective date of this decision, PG&E, SDG&E, SCE, and SoCal shall identify 1996 authorized funding levels for gas demand-side management and for gas and electric low-income rate assistance programs, by program category, to be transferred to the new energy efficiency and low-income program administrators. This information shall be filed at the Commission's Docket

Office and served on all appearances and the state service list on the Special Public Purpose service list in this proceeding, and on all appearances and the state service list in R.91-08-003/I.91-08-002.

8. As soon as practicable after the effective date of this decision, the assigned Administrative Law Judge shall hold a workshop or other appropriate forum for developing a procedural roadmap to implement today's decision.

9. The energy efficiency and low-income boards shall separately report to the Commission by July 1, 1997 on the status of the development of the administrative structures described in this decision. Specifically, they should each report whether they believe the irrespective structures will be operational by our goal of January 1, 1998. If either of the Boards report that additional time is required, in order to reduce utility program planning uncertainty, the Commission will

act to formally extend the current structure for a fixed period of time.

This order is effective today.

Dated February 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH J. NEEPER
RICHARD A. BILAS
Commissioners

I will file a concurring opinion.

/s/ P. GREGORY CONLON
President

SPECIAL PUBLIC PURPOSE SERVICE LIST
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(END OF ATTACHMENT 1)

Abbreviations and Acronyms

AB	Assembly Bill
ALJ	Administrative Law Judge
Appliance Recycling Centers	Appliance Recycling Centers of America, Inc.
Board	The Independent Board
Cal-Neva	California-Nevada Community Action Association
CARE	California Alternate Rates for Energy
CEC	California Energy Commission
CEEPIRB	California Energy Efficiency and Public Interest Research Board
CEERT	Center for Energy Efficiency and Renewable Technologies
CEEX	California Energy Efficiency Exchange
CMA	California Manufacturers Association
CSD	Department of Community Services and Development
CTC	Competition transition charge
D.	Decision
DGS	California Department of General Services
EDF	Environmental Defense Fund
EMG	Environmental Marketing Group
EPRI	Electric Power Research Institute
IAEE	Independent Administrator for Energy Efficiency
I.	Investigation
MOU	Memorandum of Understanding
NAESCO	National Association of Energy Service
NRDC	Natural Resources Defense Council
ORA	Office of Ratepayer Advocates

Abbreviations and Acronyms

PG&E	Pacific Gas and Electric Company
PHC	Prehearing Conference
PU Code	Public Utilities Code
RD&D	Research, development, and demonstration
RESCUE	Residential Energy Services Companies' United Effort
RFP	Request for Proposal
RT	Reporter's transcript
R.	Rulemaking
SCE	Southern California Edison Company
SDG&E	San Diego Gas & Electric Company
SESCO	SESCO, Inc.
SoCal	Southern California Gas Company
T&D	Transmission and distribution
TURN	The Utility Reform Network
UC	University of California
ULTS	Universal Lifeline Telephone Service

(END OF ATTACHMENT 2)

Active Working Group Organizations
Energy Efficiency

Appliance Recycling Centers of America
California Energy Commission
California-Nevada Community Action Association
California Energy Coalition
California Public Utilities Commission/Division of Ratepayers Advocates
California Legislative Conference
California Municipal Utility Association
CES/Way
City of Palo Alto
California Department of General Services/Office of Energy Assessment
Electric Utility Research, Inc.
Environmental Marketing Group
Enova Energy
Environmental Defense Fund
Insulation Contractors Association
Johnson Controls, Inc.
Lawrence Berkeley National Laboratory
Los Angeles Department of Water and Power Company
National Association of Energy Service Companies
National Resources Defense Council
Onsite Energy Corporation
Pacific Gas & Electric Company
Proven Alternatives, Inc.
Richard Heath and Associates
RESCUE
Sacramento Municipal Utilities District
San Diego Gas & Electric Company
Schiller Associates
Sierra Club
Southern California Edison Company
Southern California Gas Company
Southwest Gas Corporation
Toward Utility Rate Normalization

ACTIVE WORKING GROUP ORGANIZATIONS
RESEARCH, DEVELOPMENT, AND DEMONSTRATION

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California Energy Commission Staff
Office of Ratepayer Advocates (CPUC)
Electric Power Research Institute
Natural Resources Defense Council
Pacific Gas and Electric Company
Pacific Lumber Company
Sacramento Municipal utility District
San Diego Gas & Electric Company
Solar Turbines, Inc.
Southern California Edison Company
Southern California Gas Company
Union of Concerned Scientists
University of California
Weinberg Associates

ACTIVE WORKING GROUP ORGANIZATIONS - LOW-INCOME PROGRAM

Appliance Recycling Centers of America
Association of Rural Northern California Energy Providers
Association of Southern California Environmental and Energy Programs
California Energy Coalition
California Energy Commission
California Legislative Conference
California Public Utilities Commission, Commission Advisory & Compliance Division
California Public Utilities Commission, Division of Ratepayer Advocates
California/Nevada Community Action Association
Chase Shannon
Community Action Commission of Santa Barbara
Community Enhancement Services
Community Resource Project
East San Gabriel Valley Consortium
Economic Opportunity Commission of San Luis Obispo
Environmental Marketing Group
Home Improvement Center
Insulation Contractors Association
J. Lawrence Communications
Jones, Day, Reavis & Pogue
Ladson Associates
Latino Issues Forum
Los Angeles Department of Water and Power Company
MAAC Project
Maravilla Foundation
National Consumer Law Center
Natural Resources Defense Council
Pacific Gas & Electric Company
Project Go, Inc.
Redwood Community Action Agency
Richard Heath & Associates
Sacramento Municipal Utilities District
San Diego Gas & Electric Company
Save Energy
SESCO, Inc.
Sierra Business Consultants
Sierra Club
Sierra Pacific Power
Sonoma County People for Economic Opportunity
Southern California Edison Company
Southern California Gas Company
Southern California Water Company
State of California Department of Community Services and Development
The East Los Angeles Community Union (TELACU)
The Greenlining Institute
Toward Utility Rate Normalization
Utility Consumer Action Network
Ventura County Commission on Human Concerns

ACTIVE WORKING GROUP ORGANIZATIONS
RENEWABLES

A. Participating Organizations Submitting/Supporting Proposals

American Wind Energy Association

California Solar Energy Industries Association

Cambrian Energy Development LLC

City of Sacramento

City of San Diego Metropolitan Wastewater Department

California Integrated Waste management Board

Environmental Defense Fund

Energy Technology Development Division Staff, California Energy Commission

Geothermal Energy Association

Genesis Energy Systems

Institute for Environmental Management

Independent Energy Producers Association

International Power Technology

Los Angeles County Sanitation Districts

Laidlaw Gas Recovery Systems, Inc.

Landfill Energy Systems

Monterey regional Waste management District

Northern California Power Agency

NEO Corp.

Natural Resources Defense Counsel

Orange County

Pacific Gas and Electric Company

Science Applications International corporation, Material and Structures Division

Southern California Edison Company

San Diego Gas & Electric Company

Solar Energy Industries Association

Sacramento Municipal Utility District

ACTIVE WORKING GROUP ORGANIZATIONS
RENEWABLES

Sonoma County

Solar Thermal Energy Alliance

Solid Waste Association of North America

Union of Concerned Scientists

B. Other Participating Organizations

Bechtel

Burney Forest Products

Byrne Associates

Calpine Corporation

Center for Energy Efficiency and Renewable Technologies

City of Palo Alto

Consumers Utility Brokerage Inc.

Corporation for Solar Technology & Renewable Resources

County of Sacramento

California Public Utilities Commission/Division of Ratepayer Advocates

Cummins Power Generation

Energy Forecasting and Resource Assessment Division Staff, California Energy Commission

ESI energy, Inc.

Exergy, Inc.

Future Resource Associates Inc.

Independent Power Providers

KJC Consulting Company

(END OF ATTACHMENT 3)

ATTACHMENT 4
Page 1

Excerpts From AB 1890

Article 7. Research, Environmental, and Low-Income Funds

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs which enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the

meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars ($32,000,000) per year; for Southern California Edison Company a level of ninety million dollars ($90,000,000) for each of the years 1998, 1999, and 2000; fifty million dollars ($50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars ($106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998 through December 31, 2001: for San Diego Gas and Electric Company a level of four million dollars ($4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars ($28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars ($30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars ($109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars ($136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars ($12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars ($49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars ($76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars ($48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars ($75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars ($540,000,000).

(4) Up to fifty million dollars ($50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars ($90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(d) Notwithstanding any other provisions of this chapter, entities subject to the jurisdiction of the Public Utilities Commission shall extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars ($540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) The commission shall determine how to utilize funds for purposes of paragraphs (1) and (2) of subdivision (b), provided that only those research and development funds for transmission and distribution functions shall remain with the regulated public utilities under the supervision of the commission. The commission shall provide for the transfer of all research and development funds collected for purposes of paragraph (2) of subdivision (b) other than those for transmission and distribution functions and funds collected for purposes of paragraph (3) of subdivision (b) to the California Energy Resources Conservation and Development Commission pursuant to administration and expenditure criteria to be established by the Legislature.

(g) The commission's authority to collect funds pursuant to this section for purposes of paragraph (3) of subdivision (b) shall become inoperative on March 31, 2002.

(h) For purposes of this article, "emerging renewable technology" means a new renewable technology, including, but not limited to, photovoltaic technology, that is determined by the California Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

382. Programs provided to low-income electricity customers, including, but not limited to, targeted energy-efficiency services and the California Alternative Rates for Energy Program shall be funded

at not less than 1996 authorized levels based on an assessment of customer need. The commission shall allocate funds necessary to meet the low-income objectives in this section.

383. (a) Moneys collected pursuant to paragraph (3) of subdivision (b) of Section 381 shall be transferred to a subaccount of the Energy Resources Programs Account of the California Energy Resources Conservation and Development Commission to be held until further action by the Legislature for purposes of:

(1) Supporting the operation of existing and the development of new and emerging in-state renewable resource technologies.

(2) Supporting the operations of existing renewable resource generation facilities which provide fire suppression benefits, reduce materials going into landfills, and mitigate the amount of open-field burning of agricultural waste.

(3) Supporting the operations of existing, innovative solar thermal technologies that provide essential peak generation and related reliability benefits.

(b) The California Energy Resources Conservation and Development Commission shall review the purposes described in this section and report to the Legislature by March 31, 1997, with recommendations regarding market-based mechanisms to allocate available funds. The programs should be based on market principles and include options and implementation mechanisms which:

(1) Reward the most cost-effective generation meeting the purposes of subdivision (a) through mechanisms such as the establishment of a clearinghouse or a marketing agent to identify the most competitive renewable resource providers while fostering a market for renewable resources.

(2) Implement a process for certifying eligible renewable resource providers.

(3) Allow customers to receive a rebate from the fund through mechanisms such as a reduction in their electricity bill or a direct payment from the fund for the transition charges that would otherwise apply to their purchases from renewable resource providers.

(4) Allocate moneys between (A) new and emerging and (B) existing renewable resource technology providers, provided that no less than 40 percent of the funds shall be allocated to either category.

(5) Utilize financing and other mechanisms to maximize the effectiveness of available funds.

(c) The report described in this section shall also include consideration of:

(1) The need for mechanisms to ensure that cogeneration facilities that utilize energy from environmental pollution in its process, or microcogeneration facilities with a total generating capacity of less than one megawatt remain competitive in the electric services market.

(2) Whether fuel cells should be treated as fuel switching for purposes of application of the competition transition charge as specified in Section 371.

Article 8. Publicly Owned Utilities

385. (a) Each local publicly owned electric utility shall establish a nonbypassable, usage based charge on local distribution service of not less than the lowest expenditure level of the three largest electrical corporations in California on a percent of revenue basis, calculated from each utility's total revenue requirement for the year ended December 31, 1994, and each utility's total annual expenditure under paragraphs (1), (2), and (3) of subdivision (c) of Section 381 and Section 382, to fund investments by the utility and other parties in any or all of the following:

(1) Cost-effective demand-side management services to promote energy-efficiency and energy conservation.

(2) New investment in renewable energy resources and technologies consistent with existing statutes and regulations which promote those resources and technologies.

(3) Research, development and demonstration programs for the public interest to advance science or technology which is not adequately provided by competitive and regulated markets.

(4) Services provided for low-income electricity customer, including but not limited to, targeted energy efficiency service and rate discounts.

Article 9. State Agencies

388. (a) Notwithstanding any other provision of law, any state agency may enter into an energy savings contract with a qualified energy service company for the purchase or exchange of thermal or electrical energy or water, or to acquire energy efficiency and/or water conservation services, for a term not exceeding 35 years, at those rates and upon those terms that are approved by the agency.

(b) The Department of General Services or any other state or local agency intending to enter into an energy savings contract may establish a pool of qualified energy service companies based on qualifications, experience, pricing or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in such a pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

(c) For purposes of this section, the following definitions apply:

Comparison of Proposals For Energy Efficiency Administration

Identification of Who Performs what Functions in Each Proposed EE Administration and Delivery System

Function	Subcategory What gets done	(1) CEEX DRA, TURN and SESCO	(2) EEFC Sierra Club	(3) Energy Efficiency Board*	(4) Current System SoCal Gas	(5) CEEPIRB CEO Staff	(6) Independ. Admin. DGS	(7) Elected Boards (EMG)
Policy Setting	Select/Define Members of Governing Board/ Establish PGC Scope & Broad Policy	CPUC or Legislature	CPUC or Joint Powers Agreement if Statewide	CPUC	CPUC is Governing Board	CPUC or Joint Powers Authority	CPUC/CEC Staff	CPUC in stage 1 ratepayers and directors in stage 2
	Oversight of Administration of PGC funds	Governing Board	CPUC or JPA if Statewide	Statewide Energy Efficiency Board (EE Board)	UDC, DSM Advisory Com with CPUC Approval	Governing Board	Governing Board	State and Local Boards
	Establish Program Guidelines & or Budgets	Governing Board	Energy Efficiency Fund Corp.	EE Board	CPUC and UDC	Governing Board	Governing Board	CPERB - State Board
	Adjudicate Policy Disputes & enforce Board decisions	Governing Board	EEFC with Limit Appeals to CPUC	EE Board with limited appeals to CPUC	CPUC	Governing Board	Governing Board	CPUC&Regulatory Oversight Office (ROO)
Administration and Management	Develop Specific Programs/Activity Budgets	Independent Administration of Energy Efficiency (IAEE)	Market Participants & EEFC Consultants	UDCs with oversight EE Board	UDC with DSM Advisory Committee Input	Statewide or Local Administrators (LA's)	Governing Board	CPERB for General; Local Boards for Specific Activities
	Procure Services (Develop RFPs and or Std Performance Contracts)	IAEE *DGS or competitive bidding in the SESCO	EEFC Contractors & UDCs	UDCs with EE Board oversight	UDC & 3rd Party Providers	Local Administrator (UDCs, non profit, or local govt.)	DGS - Office of Energy Assessments	Independent Administrator
	Track and Report on PGC Spending	IAEE *DGS or competitive bidding in the SESCO Variant	EEFC Staff	UDCs with EE Board oversight	UDC & 3rd Parties	Statewide or Local Administrators	DGS - Office of Fiscal Services	Independent Administrator

Comparison of Proposals For Energy Efficiency Administration

Identification of Who Performs what Functions in Each Proposed EB Administration and Delivery System

Function	Subcategory What gets done	(1) CEEX- DRA, TURN & SESCO	(2) EEFC Sierra Club	(3) Energy Efficiency Board*	(4) Current System SoCal Gas	(5) CEEP/RB CEC Staff	(6) Independ Administ. DGS	(7) Elected Boards (EMG)
Implement ation of Market Transform-ation Activities	Deliver Statewide or National Upstream Activities: Non-customer Specific	IAEE Contracts with ESPs	EEFC & Contractors	UDCs with EE Board oversight	UDC with DSM Advisory Committee Input	Statewide Administrators under Board guidelines	As the Board Determines	CPERB- State Board
	Deliver Local or Regional Programs: Non-customer Specific	IAEE Contracts with ESPs	EEFC & Contractors	UDC and ESCOs with EE Board oversight	UDC with DSM Advisory Committee Input	Local Administrators Under Board Guidelines	DGS	Facilitators and Local Boards
	Deliver Customer-Specific Energy Services and or Equipment	Energy Service Providers (ESPs)	Energy Service Providers (ESPs)	Energy Service Companies and Customers	UDC & Third Party Providers	Local Administrator Contracts with Qualified ESPs	Energy Service Providers through Voucher System	Qualified Servic Providers Per CPERB Guidelines; Facilitators
Market Barrier Assessment and Program Evaluation	Assess Progress in Meeting Market Objectives/Reducing Market Barriers	Market Assessmen Group	CPUC Advisory Committee	EE Board with UDC Input	UDC, DSM Advisory Comm with CPUC Approval	State Level Assessment Group (SAG)	Board, CEC Staff, DGS, Othe Stakeholders	CPERB:ROO
	Recommend New Designs/ Pilot Tests Based on Research & Evaluation	Market Assessmen Group	CPUC Advisory Committee	UDCs, EE Board Staff and other stakeholders	UDC, DSM Advisory Comm (DAC) and CPUC	Strategic Assessment	Board	CPERB and Local Boards
	Verify Specific Program Energy Savings or Program Effectiveness	ESPs and Assessment Group	EEFC & Consultants	ESCOs, UDC and Customers	UDC & DAC with CPUC Approval	Strategic Assessment	DGS	CPERB:ROO

* Members supporting the Statewide Energy Efficiency Board include CES/Way, EDF, Enova Energy, NRDC, NAESCO, PG&E, Proven Alternatives, Onsite Energy, SCE, SDG&E and Rocky Mountain Institute. These names are not listed on the top row due to space limitations. Hereafter this Group of Parties is referred to as the Coalition.

(END OF ATTACHMENT 5)

R.97-07-031, I.97-07-032

RD&D WORKING GROUP CONSENSUS POINTS

Chapter I: Introduction To RD&D Report

Public interest RD&D activities should be funded and administered in a manner which:

- is efficient and socially responsible;
- is equitable;
- avoids or minimizes unfair competition; and
- is flexible and encourages collaboration.

Chapter II: Defining The Boundaries For RD&D Activities

- Boundary definitions for competitive, regulated and public interest RD&D should be broad and flexible;
- RD&D boundary definitions are:

  Competitive RD&D activities are directed toward developing science or technology, the benefits of which can be appropriated by the private sector entity making the investment.

  Regulated RD&D activities are directed toward developing science or technology, the benefits of which are related to the regulated functions of the entity making the investment.

  Public Interest RD&D activities are directed toward developing science or technology, 1) the benefits of which accrue to California citizens and 2) that are not adequately addressed by competitive or regulated entities.

- There is a continuum between the boundaries of RD&D and commercialization activities; and
- Collaborative RD&D efforts should be encouraged.

RD&D WORKING GROUP CONSENSUS POINTS

Chapter III: Funding Of Public Interest RD&D Activities

- Surcharge RD&D activities should focus on energy efficiency, renewable technologies and environmental issues;
- Surcharge funds should not support RD&D activities for nuclear decommissioning;
- Surcharge funds should not support RD&D activities in direct support of ISO or PX operations;
- Surcharge funds should focus on RD&D activities, but these activities should be connected to market;
- The research organization should not be precluded from considering some technology commercialization activities, primarily related to RD&D activities undertaken using surcharge funds;
- If a surcharge is imposed on both electricity and natural gas consumption, then all retail consumers (e.g., retail customers of IOUs, munis, IPPs, and gas pipelines) should pay the public goods charge for public interest RD&D; and
- Details of surcharge assessment, collection and inflation adjustment methods are broader restructuring implementation issues.

Chapter IV: Administration Of Public Interest RD&D Funds

- Research organization goals: serve the broad public interest, support state energy policy, and address the needs of consumers;
- Research organization functions to be discussed in organizational options are: policy making, planning, conducting RD&D, and RD&D administration;
- Research organization performance criteria: open planning process; effective and efficient program implementation; maintaining public accountability; and collaborating to effectively leverage funds and enhance RD&D infrastructure; and
- There are three basic governance options (with potential variations and combinations): an integrated, multi-purpose statewide entity; and independent, single-purpose RD&D entity; and a utility administrator option.

Chapter V: RD&D Transition And Implementation Issues

- Failure to collect surcharge funds prior to January 1, 1998, could delay implementation of the public interest RD&D program;
- Utilities should be allowed to continue public interest RD&D activities until the RO is functional;
- Utilities and the RO should coordinate to ensure an orderly transition for public interest RD&D activities.

(END OF ATTACHMENT 6)

CONFERENCE REPORT COMMITTEE ANALYSIS

Bill No: AB 1890

Author: Assembly Member Brulte
(Principal Assembly Coauthors: Assembly Members Conroy, Kuykendall, and Martinez)
(Principal Senate Coauthors: Senators Leonard, Peace and Sher)
(Assembly Coauthors: Assembly Members Ackerman, Alby, Alpert, Baca, Baldwin, Battin, Baugh, Boland, Brown, Bustamante, Cunneen, Davis, Ducheny, Escutia, Frusetta, Gallegos, Goldsmith, Harvey, Hauser, Hawkins, House, Kaloogian, Katz, Knowles, Machado, Margett, Mazzoni, McPherson, Miller, Morrissey, Morrow, Kevin Murray, Willard Murray, Napolitano, Olberg, Poochigian, Pringle, Rainey, Richter, Rogan, Takasugi, and Woods)
(Senate Coauthors: Senators Alquist, Ayala, Calderon, Costa, Craven, Dills, Haynes, Hughes, Johannessen, Johnston, Kelly, Killea, Knowles, Kopp, Leslie, Maddy, Marks, Monteith, Petris, Polanco, Rosenthal, Russell and Solis)

RN: 9628401

Report date: August 28, 1996

SUBJECT: Electric Industry Restructuring

Were the Conference amendments heard in committee? Yes.
If yes, were they defeated? No.

SUMMARY:

The restructuring of the California electricity industry has been driven by changes in Federal Law intended to increase competition in the provision of electricity. Through this Bill, the Legislature wishes to ensure that California's transition to a more competitive electricity market structure allows its citizens and businesses to achieve the economic benefits of industry restructuring at the earliest possible date, creates a new market structure that provides competitive, low cost and reliable electric service, provides assurances that electricity consumers in the new market will have sufficient information and protection, and preserves California's commitment to developing diverse, environmentally sensitive electricity resources.

This Bill provides the legislative foundation for transforming the regulatory framework of California's electric industry. Under the current framework, electric energy is to sold to retail customers principally by regulated utilities with exclusive service monopolies. This framework is partially responsible for California's electricity rates being some 50 percent higher than the national average. This Bill would help create a new electricity market structure, ending the utility monopoly on generation and opening the generation market to competition, so that retail customers could choose among alternative electric energy suppliers. The transmission and distribution of electric energy would continue to be regulated monopoly services.

The key issues in the transition from the current regulatory framework to a competitive market structure are: 1) how to handle the recovery of transition costs; 2) how the new market structure should be organized; 3) how system reliability should be ensured, 4) how the funding of current public purpose programs should be continued, and 5) how consumers should be protected in the new electricity market.

Transition Costs

Transition costs, also known as stranded costs, consist primarily of continuing obligations for past utility power plant investments and power purchase contracts that will not be recovered in a competitive generation market. The Bill finds that these costs should be recovered because utilities assumed the original obligations under the previous regulatory structure in which they had the exclusive obligation to provide electric service to all consumers in their territories. These costs are currently included in utility rates.

The Bill provides that such transition costs shall be subjected to accelerated recovery through a nonbypassable charge, called the Competition Transition Charge (CTC), levied on all consumers in proportion to the amount of electricity they use, subject to two broad restrictions. The first restriction is that no customer shall pay a higher rate for electricity than they paid on June 10, 1996. The second restriction is that investor-owned utilities have through December 31, 2001 to complete the accelerated recovery of all but a few of their uneconomic costs. Publicly-owned utilities are also authorized to accelerate recovery of their uneconomic costs within a framework and schedule that comports with their unique governance and fiscal circumstances.

To further safeguard the interests of the residential and small commercial customers of investor-owned utilities, AB 1890 does the following:

(1) Provides for immediate rate savings for residential and small commercial consumers by mandating a no less than 10 percent rate reduction beginning January 1, 1998 and lasting until March 31, 2002.

(2) Makes these rate reductions possible by creating a unique financing mechanism that will permit "securitization" of a portion of the CTC amounts that are already being paid by customers. This portion of CTC will be financed over approximately 10 years, producing immediate savings for residential and small commercial customers without creating a debt or liability for the state of California.

(3) Provides that securitization of the CTC creates significant additional benefits for residential and small commercial customers that could total more than $2 billion by: a) reducing their total CTC costs by at least $500 million; b) providing capital for the restructuring by investor-owned utilities of stranded long-term obligations and funneling savings from such restructurings, conservatively estimated at $600 million, directly to residential and small commercial customers, c) guarding against the imposition of hidden financing, transaction and service fees; d) retaining interest rate float benefits, conservatively estimated at $120 million, and e) providing the opportunity to achieve additional savings of up to $875 million through variable interest provisions and possible federal tax-exempt treatment.

(4) Establishes a "fire wall" that completely protects residential and small business consumers from having to pay for any statewide policy exemptions to the CTC that are necessary for reasons of equity or business development and retention.

(5) Through implementation of this Bill, ensures that residential and small commercial ratepayers will receive a total cumulative rate reduction of no less than 20 percent by April 1, 2002 from rates in effect on June 10, 1996, excluding the costs of energy and monetization.

(6) Protects the interests of utility employees who might otherwise be economically displaced in a restructured industry by allowing the recovery of reasonable employee costs for severance, retraining, early retirement, and outplacement.

Market Structure

Critical to realizing the benefits of electric industry restructuring and the justification for allowing the accelerated recovery of transition costs is the establishment of a competitive market structure, free of monopoly power, with transparent market prices, in which customers are able to readily

choose among competing providers of electric energy while at the same time continuing to receive reliable electricity service. To accomplish this objective, the Bill establishes two new independent, public benefit, non-profit market institutions, an Independent System Operator and a Power Exchange.

The Independent System Operator will be responsible for providing centralized control of the state-wide transmission grid and charged with ensuring the efficient use and reliable operation of the transmission system. The Power Exchange is charged with providing an efficient, competitive electric energy auction, open on a non-discriminatory basis to all providers, to meet the electricity loads of exchange customers. The Power Exchange will provide the results of its auction to the Independent System Operator. The Independent System Operator will combine the results of the Power Exchange auction with schedules for private direct access contracts in a manner that provides for the most efficient and reliable use of the transmission system.

A five-member Oversight Board, comprised of three gubernatorial appointees who are subject to Senate confirmation, a non-voting member of the Senate appointed by the Senate Rules Committee, and a non-voting member of the Assembly appointed by the Speaker of the Assembly, will oversee the two new institutions and appoint governing boards that are broadly representative of California electricity users and providers.

The Bill requires California's publicly-owned electric utilities and investor-owned electric utilities to commit control of their transmission facilities to the Independent System Operator and to jointly advocate a pricing methodology for the Independent System Operator to FERC that provides an equitable return on capital investment to all participants.

The Bill further authorizes direct transactions between electricity suppliers and end-use customers, commencing with the operation of the Independent System Operator and the Power Exchange, but not later than January 1, 1998. Direct transactions are subject to the payment of relevant transition costs and the development by the Public Utility Commission of an equitable phase-in schedule.

System Reliability

(1) The Bill directs the Independent System Operator to seek, and the Public Utilities Commission to support, authorization by FERC to perform its system functions and be able to secure the generation and transmission resources needed to achieve specified planning and operational reliability reserve criteria.

(2) To reduce the potential for system-wide outages such as those that occurred on July 2, 1996 and on August 10, 1996, AB 1890 requires both the Independent System Operator and the Public Utilities Commission to adopt inspection, maintenance, repair and replacement standards for transmission and distribution systems, respectively.

(3) In the event of a major power outage that affects more than 10 percent of the customers in a given service area, the Independent System Operator is required to conduct a review as to the causes of the outage, the response time and effectiveness of the response, and the extent to which an electric utility's operation and maintenance practices enhanced or undermined the timely restoration of service. The Independent System Operator will be authorized to levy appropriate sanctions on non-performing participants.

(4) The Bill requires the Independent System Operator, in consultation with the California Energy Commission, the Public Utilities Commission, and concerned regulatory agencies in other Western states, to conduct an exhaustive reliability study of the interconnected transmission and generation system that provides electricity to California. It is to provide a report to the Legislature, within six months after it receives FERC authorization, recommending cost-beneficial improvements to electric system reliability for the citizens of California.

(5) AB 1890 expresses Legislative intent to enter into a compact with Western Region states that would require the utilities located within those states that sell energy to California retail customers to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution system.

Public Programs

The Bill preserves California's commitment to developing diverse, environmentally sensitive electricity resources which enhance system reliability by continuing support consistent with historic levels for cost-effective energy efficiency and conservation activities, for in-state renewable energy resources, and for public goods research, development and demonstration (RD&D) that would otherwise not be provided by electricity markets. The Bill also extends the provisions covering expenditures for services provided to low-income electricity customers.

The Public Utilities Commission is authorized to determine how best to utilize funding for cost-effective energy efficiency and conservation and public goods RD&D directed towards transmission and distribution. The

California Energy Commission is directed to recommend to the Legislature how best to utilize market-based mechanisms to allocate resources for in-state renewable energy and authorized to administer the remainder of RD&D funds. Publicly-owned utilities retain their authority to collect and direct the expenditure of comparably intended funds. Charges for continued funding for these programs are unbundled on consumer bills in the same manner as are other continuing service charges including those for competitively acquired energy, competition transition charges, transmission charges and distribution charges. All provisions, other than those relating to low-income programs, sunset on December 31, 2001.

Consumer Protection

The restructuring of the electricity industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which may not be readily evaluated by the average consumer. AB 1890 requires that electricity consumers be provided with: 1) sufficient and reliable information to be able to compare and select among available products and services, and 2) mechanisms to protect themselves against unfair or abusive marketing practices.

The Consumer Protection provisions of the Bill require registration of sellers, marketers and aggregators of electricity service to residential and small commercial customers, define information to be provided to consumers and by whom, provide for the compilation and investigation of complaints, extend "anti-slamming" and contract recision protections to electricity consumers, and extend private attorney general entitlements for consumer damages.

Responsibility for Consumer Protection is vested with the Public Utilities Commission and sunsets December 31, 2001 pending legislative review of any continuing need.

By: Conference Committee on Electricity Industry Restructuring
John Rozsa

(END OF ATTACHMENT 7)

R.94-04-031/I.94-04-032
D.97-02-014

PRESIDENT P. GREGORY CONLON, CONCURRING:

Although I still have some concerns with this proposed decision, I will vote for it in order to keep our restructuring program on-track to meet the January 1, 1998 deadline.

I believe that the recent changes made to the proposed decision, in response to concerns raised by the parties, significantly improve the original decision. These changes include:

- Performance-based incentives for the DSM program administrators;
- Safeguards to ensure that there will be a smooth hand-off between the newly-created DSM governing board and existing utility programs. This will include extending utility programs if necessary if the Board is not ready to begin operation by January 1, 1998.

And most importantly;

- Clarifying that nothing in AB1890 was meant to imply that energy efficiency programs would automatically "sunset" after the transition period.

I remain concerned over the decision's split of research and development (R&D) money between the regulated utilities and the California Energy Commission. I want to ensure that R&D that improves system reliability is adequately funded. As the decision notes, the utilities can request funding for these programs from the Energy Commission. I trust that the Energy commission will act favorably on utility requests that meet this goal. I would also support legislative changes if necessary to ensure that this goal is met.

R.94-04-031/I.94-04-032
D.97-02-014

PRESIDENT P. GREGORY CONLON, CONCURRING:

Finally, I am still somewhat concerned over the use of Independent Boards to run utility programs such as R&D and Low-Income programs. This is a new step for this Commission, and one that has never before been undertaken on this large of a scale. I believe today's decision only lays out the broad framework for establishing these independent boards. Additional guidance from this Commission will probably be needed to address such issues as accountability, public participation, and Commission oversight. This may require us to make changes in how we regulate and oversee these newly created boards. It may also require at some point some changes to existing legislation.

San Francisco, California
February 10, 1997

/s/ P. Gregory Conlon
P. GREGORY CONLON, President

R.94-04-031/I.94-04-032
D.97-02-014

PRESIDENT P. GREGORY CONLON, CONCURRING:

Although I still have some concerns with this proposed decision, I will vote for it in order to keep our restructuring program on-track to meet the January 1, 1998 deadline.

I believe that the recent changes made to the proposed decision, in responso to concerns raised by the parties, significantly improve the original decision. These changes include:

- Performance-based incentives for the DSM program administrators;
- Safeguards to ensure that there will be a smooth hand-off between the newly-created DSM governing board and existing utility programs. This will include extending utility programs if necessary if the Board is not ready to begin operation by January 1, 1998.

And most importantly;

- Clarifying that nothing in AB1890 was meant to imply that energy efficiency programs would automatically "sunset" after the transition period.

I remain concerned over the decision's split of research and development (R&D) money between the regulated utilities and the California Energy Commission. I want to ensure that R&D that improves system reliability is adequately funded. As the decision notes, the utilities can request funding for these programs from the Energy Commission. I trust that the Energy commission will act favorably on utility requests that meet this goal. I would also support legislative changes if necessary to ensure that this goal is met.

R.94-04-031/I.94-04-032
D.97-02-014

PRESIDENT P. GREGORY CONLON, CONCURRING:

Finally, I am still somewhat concerned over the use of Independent Boards to run utility programs such as R&D and Low-Income programs. This is a new step for this Commission, and one that has never before been undertaken on this large of a scale. I believe today's decision only lays out the broad framework for establishing these independent boards. Additional guidance from this Commission will probably be needed to address such issues as accountability, public participation, and Commission oversight. This may require us to make changes in how we regulate and oversee these newly created boards. It may also require at some point some changes to existing legislation.

San Francisco, California
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P. Gregory Conlon

P. GREGORY CONLON,
President