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Decision 97-04-088 April 23, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Insulation Contractors Association,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 97-03-046  
(Filed March 28, 1997)

**ORIGINAL**

Patrick J. Power, Attorney at Law, and Robert E. Burt, for  
Insulation Contractors Association, complainant.

Robert B. McLennan, Attorney at Law, for Pacific Gas and  
Electric Company, defendant.

Jerry H. Mann, Attorney at Law, for Richard Heath &  
Associates, interested party.

**O P I N I O N**

**Background**

Pursuant to the provisions of Public Utilities (PU) Code § 2790, since 1989 the Commission, as one of its direct assistance programs, has required California's electric and gas utilities to provide home weatherization services for qualified low-income customers, taking into consideration both the cost effectiveness of the services as well as its policy of reducing the hardships facing low-income households.

Following a pilot program in 1989, each year since Pacific Gas and Electric Company (PG&E) has offered basic insulation and weatherization to such low-income customers at no cost to those customers. The cost of the program is paid by the general body of PG&E customers through Demand-Side Management funding authorized in PG&E general rate cases. PG&E's name for its program is "Energy Partners."

Before 1997, PG&E employed the firm of Richard Heath & Associates (Heath) as its administrator of Energy Partners. Heath put the actual installation of energy efficiency measures and energy education required for the consumer recipients out to bid in designated areas within PG&E's service territory, and both private contractors and community-based organizations bid for specific areas. The winning bidder for each area received a contract to perform the work and educational activity specified in the contract. In the past there was a limit to the number of jobs any one contractor could do. Inspections were made upon completion of the work, most recently by outside independent contractor inspectors, and payment of the contractor's invoice on passed work was supposed to be made within 30 days after submission of the invoice, however that provision was not always observed and practiced.

By Decision (D.) 97-02-014, while affirming that it did not intend to phase out its direct assistance programs, the Commission stated its belief that in the restructured utility industry where customers are free to seek service from both utility providers and non-utility providers, an administrative structure that moved away from utility administration would be its objective, its goal being selection of a Governing Board and to address key implementation issues during 1997, so that an Administrator could be selected by January 1, 1998, in a competitive bidding process. But until full operation of such a new administrative structure is achieved, responsibility for the low-income assistance programs, including Energy Partners, would continue to be vested with the utilities.

In light of the Commission's move toward independent program administration of direct assistance programs, PG&E decided to put the 1997 program out for competitive bid, with bids to administer the program at a fixed price, and placing responsibility for delivery of the program and its administration, except for the inspection process, upon the successful bidder for the program contract. The program was put out for competitive bids, and in a competitive response, Heath was selected and awarded the contract to administer the program at a significant savings, according to PG&E, from previous year's costs. Accordingly, Heath has the 1997 contract and is

obligated to deliver the program requirements at the prices quoted in their contract with PG&E.

This modified 1997 procedure reflects the transition from the former *administrative fee-based contract* with PG&E under which, as PG&E's agent, Heath received a fixed fee to administer the program, with no financial risk to Heath as to its successful completion, to a *performance-based contract* under which Heath as the general contractor must accomplish the program through Heath subcontractors at prices which, aside from installation and education element costs, must also provide for Heath's administrative costs and a profit. Consequently, Heath's operation of the 1997 program contains changes from PG&E's operation in the past. Some of these changes are significant.

The most significant change is that while would-be subcontractors to Heath are being required to bid competitively as in the past, Heath has imposed a ceiling on bids with a maximum allowable bid price for each weatherization measure and for each marketing and education element. Any item priced in a bid above the maximum for that specific item disqualifies the entire bid.<sup>1</sup>

Other changes are that while in the past some contracts would be let for single geographic areas such as Zip Code areas, under the Heath program bids must be made

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<sup>1</sup> Heath's maximum bid price for each weatherization measure and each marketing and education element was established by averaging the corresponding measures and elements bid in 1994 for the 1995 Energy Partners Program by the ten largest winning contractors. Heath then excluded a 3.44% contractors-PG&E negotiated increase in the weatherization measures, and a \$20 increase in education fees, and added an approximate 5% to reflect the consumer-price index increase from 1995 through 1997 to the weatherization measures.

Assertedly, Heath made an analysis to determine that the vendor material and labor prices adopted were acceptable, and that analysis was reviewed by Heath's president, a professor of construction management at California State University at Chico who has developed installation and inspection standards for the state, the Department of Energy, and California public utilities.

Heath's vice president stated that their purpose in setting a maximum bid price was to attempt to bring these prices in line with Heath's contract bid price to PG&E while at the same time creating maximum bid prices that Heath believed would attract sufficient bidders to enable Heath to run the program.

for an entire county area in PG&E's service territory. While would-be subcontractors may bid to provide their services in more than one county, a subcontractor may not be awarded any more than 5,000 units. In the past, inspections were performed by both PG&E and inspection contractors independent of the program administrator, but coordination problems in 1996 caused payment delays. Under the 1997 Heath contract, inspections will be handled by PG&E through a Centralized Inspection Program (CIP) to provide quality assurance, effective coordination, and timely completion. Other changes required a housing unit mix of 65% single family, 5% mobile home, and 30% multiple family dwellings; addition of a 19% mandatory attic installation requirement; and that 50% of the units weatherized must be CARE customers.

Early in 1997, Heath, by a 24-page Request for Proposals, solicited bids from prospective subcontractors, including those who had performed weatherization work under earlier Energy Partners Programs. With the Request, Heath furnished a copy of the 1997 Price Schedule; a 44-page Policy, Procedures, and Operating Manual; a 25-page copy of General Conditions; and the complete 209-page Weatherization Installation Standards.

All would-be bidders were required to attend a prebid conference on March 11, 1997, at which time they were given opportunity to ask questions. PG&E, not wanting to interfere with Heath's administration or the bidding process, did not attend. Numerous questions concerned PG&E's CIP and payment procedures. After the March 11, 1997 conference, Heath twice extended time for prospective bidders to submit written questions to Heath, and the bid-due dates were also extended, first to March 26, 1997, and then to March 31, 1997. After consultation with PG&E on the CIP and review of the submitted written questions, on March 18, 1997, Heath responded to the prospective bidders with 14 pages of written answers, sending copies to all participants. Again, on March 20, 1997, after consultation with PG&E, Heath sent two additional memos to the participants, respectively stating the PG&E-Heath commitments on the CIP, and clarification of the inspection/payment procedure that would be used. And finally, in response to further written questions from bidders and the Insulation Contractors Association (ICA), on March 26, 1997, Heath sent a final six-

page letter to all participants. In this letter, Heath stated that the bid-due date had been extended to March 31, 1997, for all project areas; that the contract award date had been extended to April 2, 1997; that there would be no further extensions; that there would be no second prebid conference;<sup>2</sup> that Heath would respond to no further contacts; and that this letter was Heath's final communication. Finally, the letter answered the last 31 questions submitted to Heath. Heath's view was that, "This is it, this is the final response from us, and that we expect to receive bids on the 31"."

As of the bid-due date, March 31, 1997, Heath had received 25 bids. The price information portion of these bids remains unopened.

**Case (C.) 97-03-046**

On March 28, 1997, the ICA filed C.97-03-046, asserting that Heath's administration of the Energy Partners Program is deficient and contrary to Commission policy because 1) Heath specified unreasonably low maximum prices, 2) Heath refuses to provide sufficient information, particularly as regards PG&E's inspection procedures which procedures could result in delaying payment causing some subcontractors cash flow problems; 3) Heath reserves the right to negotiate with the bid winners concerning

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<sup>2</sup> Heath's vice president, Richard Keyes, who is responsible for Heath's participation in the weatherization program, was repeatedly pressured after the March 11, 1997, prebid conference to hold another conference, assertedly because of a lack of information provided to prospective bidders, the latter concerned particularly about PG&E's CIP inspection/payment program, and what they regarded as inadequate or unnecessary maximum bid prices. Keyes, as the 1991 program administrator for PG&E, was concerned not to be again involved in what might be later considered an "ex parte" communication if he acceded and not all prospective bidders showed up at any further prebid conference. Accordingly, he would not call for another prebid conference unless all those who attended the first would agree to attend. When polled, 33 of those at the March 11, 1997, prebid conference agreed to attend; four did not want another conference; four stated they would not bid; and four could not be contacted. Accordingly, lacking participation by all, Keyes refused to call a further conference and instead allowed submission of written questions with the questions and their answers circulated to all participants of the March 11, 1997 conference.

Keyes' sensitivity as to total participation related to a 1991 situation where, as PG&E's program administrator, he had been charged with improperly withholding "material facts" from other competing bidders, thereby giving an advantage to one participant who already knew that "material fact," and used it to win a contract. (See *Energy Alternatives v. PG&E* (1993) 48 CPUC2d 72.)

noncost elements, rather than leave those to competitive bidding, and 4) General Condition 25 allows for unilateral termination without contractor recourse, a serious risk for subcontractors.

By the complaint, ICA asks that the Commission find that the subcontractors face irreparable harm from receipt of bids and awarding of the contracts by Heath; that the Commission order PG&E to direct Heath to refrain from receiving bids and awarding contracts pending further Commission order; that PG&E reform the program to conform to Commission policy regarding information to bidders and competitive bidding; and that Commission order PG&E to allow contractors to bid reasonable prices.

#### **Motion for Temporary Restraining Order (TRO)**

As part of its complaint, ICA also filed a Motion for TRO, asking the Commission to order PG&E to order Heath to postpone receipt of bids and the awarding of contracts for the 1997 program pending a Commission decision on the ICA complaint. In support of its Motion for a TRO, ICA attached the Declaration of Robert Burt (ICA's executive director and consultant), setting forth information pertaining to the Heath program and asserting that to proceed as scheduled would result in irreparable harm to prospective bidders. Also attached to the Motion for a TRO was ICA's Memorandum of Points and Authorities on the argument that Commission policy has been violated, assertedly in that PG&E denied prospective bidders material information with regard to inspection procedures and policies.<sup>3</sup>

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<sup>3</sup> With specific reference to *Energy Alternatives* (supra) in which the Commission defined the duty of disclosure imposed upon a utility in any bidding procedure in which ratepayer dollars are expended, pointing out that all competitors are entitled to equal and nondiscriminatory access to all "material facts," borrowing its definition of when facts are material from *In Re Cady, Roberts & Co.* (1961) 40 S.E.C. 407, which held that "[a]n omitted fact is material if there is a substantial likelihood that a reasonable bidder would consider it important in deciding whether to submit a bid or in framing the terms of that bid submission."

**Administrative Law Judge (ALJ) Ruling of March 31, 1997**

On March 31, 1997, ALJ John B. Weiss issued an ALJ Ruling setting a hearing on the motion for a TRO for April 4, 1997, and directing PG&E to postpone final receipt of bids and awarding of contracts pending hearing on the motion. The parties of record were notified both by telephone on March 31, 1997, and by mailed copies of the Ruling filed and mailed the same day.

**The April 4, 1997 Hearing**

The motion was heard on April 4, 1997, with appearances by ICA, PG&E, and Heath. After final summation, the matter was submitted.

ICA presented its evidence through six witnesses: Burt; Roger Reaves, general manager of Energy Alternatives; Dale Dawson, executive director of North Cost Energy Services; Steve Long, president of Warner & Sons; Jack Alexander, honorary chairman of Alexander Co.; and Dave Clark, president of American Synergy and also president of ICA. All ICA witnesses except Burt had participated before as contractors in PG&E's Energy Partners Program. Reaves and Alexander did not submit bids; Dawson, Long and Clark submitted bids with exceptions.

PG&E presented evidence through three witnesses: Kim C. Robbins, Manager of Customer Energy Services; Chris Chouteau, Manager of Customer Energy Management; and Frances Thompson, manager of the PG&E 1997 Energy Partners Program.

Heath's evidence was presented through Keyes.

**Discussion**

The motion for a restraining order is framed in the principal context that, by withholding material information, particularly as regards its inspection and payment procedures from prospective bidders, information assertedly crucial to those bidders, PG&E is improperly administering its 1997 Energy Partners Program in violation of Commission policy requiring disclosure of such information where ratepayers are funding the program. It is asserted that if allowed to continue, the bidders face irreparable harm.

Addressing the inspection/payment issue raised by the motion and complaint, we note that the evidence discloses that Heath has committed itself to pay its subcontractors on the program upon (a) completion of the work, (b) inspection by PG&E and notification that the work has passed, and payment of funds by PG&E to Heath. Certainly, the inspection procedures under these conditions would be important to the prospective bidders. And we also note that unlike the situation in *Energy Alternatives* (supra), no "discrimination" is involved here. The same information has been provided to all prospective bidders, at the same time, and in the same manner, and in considerable volume as the record and exhibits indicate. ICA complains that PG&E has refused to provide prospective bidders with "material information" regarding the inspection procedures PG&E through its CIP will employ, and asserts that without this information prospective bidders cannot make an informed decision whether to bid or how much to bid. Correctly, ICA notes that in *Energy Alternatives* (supra) we held that such "material information" must be disseminated to all prospective bidders.

The record discloses that by its March 18, 1997 letter answering all types of questions submitted in writing in response to Heath's invitation, Heath answered in summary form as well as providing considerable detail. Heath stated that inspectors would inspect to the installation standards. These standards were distributed to all prospective bidders with Heath's request for bids. (The standards are set forth in graphic and descriptive detail in the 209-page Weatherization Installation Standards, Exhibit 5 in the proceeding.) And in that same 14-page March 18, 1997 Heath letter with 132 written answers to questions on all aspects of contract expectations, Heath stated that PG&E's CIP inspectors would be ready as of April 1, 1997, trained, tested, and certified, and in such numbers as PG&E deemed necessary. Prospective bidders were also told in response to questions by that letter that the CIP Program had been tested; that grievances with any particular inspector could be appealed to PG&E's designated manager. Answers were also provided as to when an inspection would be considered complete.



In another communication, dated March 20, 1997 to all prospective bidders, Heath stated that PG&E and Heath had agreed to certain commitments, specifically that:

PG&E commits to inspect or waive the inspection no more than 30 calendar days from the date it is received by CIP;

Heath commits to send PG&E/CIP electronically all invoices received from contractor within 7 calendar days of receipt;

PG&E/CIP will notify Heath of hazard fails immediately by phone and fax;

PG&E/CIP will notify Heath on nonhazard fails within 48 hours by fax and phone;

PG&E/CIP has agreed to the following dispute resolution process:

Inspectors will photograph all fails.

Contractor can call the Team Lead directly to schedule an on-site review of the fail.

Contractor and Team Leader meet at the site to resolve the dispute.

Disputes unresolved by on-site review can be forwarded to the PG&E/CIP Field Support Supervisor for resolution.

And by a second March 20, 1997 memo, Heath clarified questions about the timing of the inspection and payment process, stating that PG&E's CIP will have inspected, and will be inspecting, work during the subcontractor's 30 calendar-day period pending the second energy education; these processes to be occurring simultaneously. Heath spelled out the process as follows:

Contractor completes first energy education visit.

Contractor completes weatherization work (30 calendar day minimum clock for second education starts).

Contractor submits invoices (for first education and all weatherization work only) to Data Image System Corporation (DISC) within 5 days of completing all weatherization work.

DISC submits information to CIP for inspection once weekly (within 7 calendar days of receiving invoice from contractor).

CIP's 30 calendar days inspection clock begins on the day they receive the information from DISC.

Contractor completes second energy education 30 calendar days after the Contractor completed weatherization work and submits documentation to DISC.

CIP completes or waives the inspection and returns the information to DISC within their 30 calendar day time period.

Once both second energy education and inspection documentation have been received by DISC, invoices are complete and ready to be billed to PG&E.

Heath bills PG&E at the next semi-monthly billing cycle with backup documentation including information collected from complete contractor invoices.

PG&E pays Heath 30 calendar days after receipt of Heath's invoice.

Heath will pay contractors within 3 calendar days from receipt of payment from PG&E.

The Policy Manual (Exhibit 3) explains the inspections pass/fail codes, explains "completed work," and time limits if work fails in which to correct nonhazardous and hazardous failures.

Heath's final March 26, 1997 letter answered the last 31 questions submitted in the allowed time frame. Obviously, some of the answers did not please all the prospective bidders; but there were relevant answers provided, whether acceptable or not.

As PG&E stated in its Summation, it has taken better control over the inspection process and at the same time, given a guarantee that inspections in the 1997 program will be completed within 30 days, or be waived if not. There will always be interpretations and differences and these can only be resolved on the job site on a case-by-case basis.<sup>4</sup> It is difficult to see how provision of this much material and this

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<sup>4</sup> As for example, noncost exceptions. In one example, differences can arise when the winning bidder checks the housing stock in his county areas. The mandatory 65% single family, 5% mobile homes, and 30% multiple family may not fit (as in Lake County where assertedly there appears to be a 44% mobile home ingredient). Experience will require a negotiated adjustment under the exceptions clause for such problems, and if an acceptable resolution cannot be reached, the winning bidder need not sign the contract. It appears some bidders submitted a bid to "have a place at the table." In the past, this is how this problem was handled. The

*Footnote continued on next page*

many answers can constitute a failure to have provided "material information" on the PG&E CIP inspection and payment process. We cannot conclude that PG&E or Heath should reasonably be expected to provide more. They are already committed to in essence meet and confer with the successful bidders to work out any problems that might arise on specific jobs as regards nonprice terms. In the past, some specifics on contract terms were negotiated with the winning bidders after the contract awards were made so as to tailor the terms to the needs of affected customers.

ICA also complains about inclusion of General Condition 25 in the program. This Condition or its equivalent has always been part of the program. While rarely exercised, it protects PG&E and the ratepayers in the event of subcontractor fraud or abuse. This Condition reads:

If RHA's [Heath] Contract with PG&E to provide project management services for the Energy Partners Program is modified in any way or terminated by order of any governmental entity or by PG&E, Contractor and RHA agree that their obligations under this Contract shall be revised or terminated consistent with such modification without cost to RHA.

While the ICA argues that the provision creates serious risks for subcontractors, as they are without recourse, PG&E responds that subcontractors have never had any expectation other than to be paid their out-of-pocket costs, without anticipation of receiving lost profits. In the past contractors desired to contract with PG&E in that the utility has a reputation for honoring its contracts notwithstanding its reservation of rights. It is to PG&E's benefit to have a successful program. Under the shareholder incentive mechanism last adopted in D.94-10-059 (1994) 57 CPUC2d 1, at 65-68, PG&E earns shareholder incentives from successful Energy Partners Programs. And if PG&E took action detrimental to the program, the Commission has jurisdiction to review PG&E's decisions and to take appropriate action.

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difference this time is that there will be no changes negotiated in the maximum bid price for measures.

We are inescapably drawn to the conclusion that the underlying objections rests not with the policies and procedures for Inspection/Payment, or other provisions in the program, but that the basic objection rests in the change this year to a maximum bid price per program element. ICA asserts throughout that the prices stated are below contractor costs and that some contractors accordingly cannot bid. This means that if this price schedule is to be the marketplace, they have priced themselves out of it.

In the past a contractor could bid low on some measures and high on others while achieving an overall competitive bid on the whole. In implementation, higher priced measures could be installed at a substantially higher than was assumed in the bid evaluation, thereby gaming the bid. We remind all parties that ratepayers as a general group are paying the costs of this program, and if a maximum bid mechanism can result in lower overall costs, ratepayers pay less while the weatherized low-income recipient still gets a bargain. Concerning the maximum bid prices bid on this year's program it is really up to individual subcontractors in a free competitive market to determine whether or not they will bid. Twenty five have bid, and when the bids are open, it will be known if the maximum prices are unreasonably low. If some are willing and able to perform within these limits, the prices are not unreasonably low. This is a feature of the competitive marketplace that the entire energy industry is entering, and this weatherization program being paid for by the ratepayers cannot be a mechanism to support the highest cost contractors.

To hold up the process further will only serve to reduce the time left this year to accomplish the targeted number of installations, and to raise the costs. In addition, it would be unfair to those who submitted bids, even while we recognize that many would endorse delay in the hope of getting out of the maximum bid price aspect.

*A TRO will be denied.* We do not see ICA likely to prevail on the merits of its complaint. We do not see irreparable injury in allowing PG&E and Heath to proceed as planned; the subcontractors with the necessary material information presented made their decisions freely and must expect to abide by them. At the least there is the possibility of substantial harm to those who did bid if the process were reopened—some could lose out in a reopened bidding. And finally, a TRO would be contrary to the

public interest in that it could well result in additional costs to the PG&E ratepayers. We conclude by stating that nothing in the record suggests that PG&E's changes were motivated by anything less than an effort to comply with the Commission's order in *Alternative Energy* (supra) to encourage more competitive bidding and lower costs.

### **The Complaint**

As to the complaint itself, we see nothing to be gained in a further hearing. The arguments and evidence were well presented at the April 4, 1997 hearing, and are applicable not only to the motion for a TRO, but even more particularly applicable to the merits of the complaint. The minor issues not addressed in the TRO analysis would not serve to change our resolution on the merits of the complaint. In a complaint proceeding, the complainant has the burden of showing that the utility defendant has not complied with provisions of law or of Commission orders or rules (PU Code § 1702). ICA has presented no evidence that PG&E or Heath has done or omitted to do anything in violation of law or Commission orders or rules. In the interests of preserving Commission energies and time, we will exercise our discretion not to proceed further with the complaint. The complaint will be dismissed.

### **Findings of Fact**

1. PG&E determined to competitively contract out the 1997 Energy Partners weatherization program while retaining the inspection program which it will administer through CIP.
2. PG&E accordingly solicited bids and Heath was the successful low bidder, receiving the contract.
3. Faced with the necessity as a result of the PG&E contract to change to a performance-based status, Heath had to streamline its operation, and to meet its costs and earn a profit, it had to obtain subcontractor performance at the lowest possible cost.
4. After analysis of potential costs, Heath put the performance of the contract requirements out to be bid by prospective subcontractors to Heath, using maximum bid caps applicable to each weatherization and education element, and required bids by countywide areas.

5. Heath conducted a mandatory prebid conference on March 11, 1997, to answer questions prospective bidders would have, and followed that conference up by allowing submission of additional questions in writing, which questions Heath answered in written form.

6. A substantial amount of printed material including the detailed Installation Standards was provided prospective bidders before the prebid conference.

7. A considerable part of Heath's written answers to submitted written questions dealt with prospective bidders' concerns regarding how PG&E's CIP and payment program would work.

8. There was general dissatisfaction expressed by prospective bidders of the maximum bid caps.

9. As bids were submitted to meet the bid-due dates, despite many requests by prospective bidders for an additional prebid conference, Heath refused to call another prebid conference unless *all* the prospective bidders would agree to participate. Solicited, a small number of prospective bidders refused, and Heath would not call another conference.

10. As of the bid-due date (twice having been extended) of March 31, 1997, 25 bids were received and are held unopened.

11. On March 28, 1997, unable to persuade Heath or PG&E to delay and call a second prebid conference, ICA filed the present complaint as well as the present motion for a TRO.

12. By a ruling issued on March 31, 1997, the ALJ set hearing on the motion for a TRO for April 4, 1997.

13. ICA, PG&E, and Heath appeared at the April 4, 1997 hearing, all with witnesses who presented evidence on all issues set forth in the complaint, motion for a TRO, and supporting documents.

#### **Conclusions of Law**

1. Heath and PG&E through Heath provided all prospective bidders with the material information, including information on the inspection and payment procedures

and policies, reasonably required to enable these prospective bidders to formulate and make bids, including exceptions on noncost items, thereby complying with the Commission's orders in *Energy Associates* (supra) where the Commission defined the duty of disclosure required in a bidding process in which ratepayer financing is involved.

2. Heath's administration of the Energy Partners 1997 home weatherization program has not been deficient nor contrary to Commission policy, nor has any violation of law or of any Commission order or rule been shown.

3. If the 1997 Energy Partners Program is successfully completed using Heath's maximum bid caps, the PG&E ratepayers who pay the costs of the program will be benefited, all in the public interest.

4. The Commission concludes that the real underlying basis for both the complaint and the request for a TRO lies with the dissatisfaction of prospective bidders for the maximum bid caps imposed by Heath.

5. There is nothing illegal or contrary to Commission orders in the use of maximum price bid caps.

6. ICA fails to meet the requirements for issuance of a TRO and accordingly its motion should be denied.

7. The evidence adduced at the April 4, 1997 hearing on the TRO motion is equally applicable to the complaint, having covered the same elements.

8. Further hearing on the complaint would be moot.

9. The complaint should be dismissed.

10. PG&E should be permitted to proceed forthwith with Heath's administration of the program coupled with PG&E's CIP procedures.

11. To avoid further delay in implementation of the 1997 Energy Partners Program, the order that follows should be made effective the date it is signed.

**O R D E R**

**IT IS ORDERED that:**

1. The request of Insulation Contractors Association (ICA) for a temporary restraining order is denied.
2. The complaint of ICA against Pacific Gas and Electric Company (PG&E) is dismissed.
3. PG&E and its contractor, Richard Heath & Associates, may proceed with implementation of the 1997 Energy Partners Program.
4. This case is closed.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

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