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Decision 97-11-022 November 5, 1997

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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.	Rulemaking 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.	Investigation 94-04-032 (Filed April 20, 1994)

INTERIM OPINION: DISPUTED ISSUES ON FUNDING FOR RENEWABLES, RESEARCH, DEVELOPMENT AND DEMONSTRATION

Summary

Today's decision addresses disputed issues related to 1) the transfer of funding from Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) to the California Energy Commission (CEC) for research, development and demonstration (RD&D) and 2) funding responsibilities for renewable energy sources (renewables).

We grant SCE's June 3, 1997 Petition For Modification of Decision (D.) 97-04-044 and Clarification of Commission RD&D Balancing Account Policy. We clarify that beginning January 1, 1998, funding for public interest RD&D will be transferred to the CEC from the utilities' authorized RD&D balancing account funds. We find that this clarification is consistent with the intent of D.97-04-044. We also find that all three utilities are responsible under Public Utilities (PU) Code § 381(d) to contribute a pro rata share of any amounts collected during the first quarter of 2002 in order to provide $540 million in total funding for renewables.

Today's decision also approves the Low Income Governing Board's (LIGB) September 19, 1997 proposal to add two public members, increasing the number of

public members on the LIGB to eight. Within 20 days of the effective date of this decision, individuals interested in serving on the LIGB should submit a letter with a summary of their qualifications to the LIGB and the Commission, as described below.

Background

In D.97-02-014, the Commission determined the level of funding for renewables and for public interest RD&D to be collected in surcharges and transferred to the CEC, pursuant to PU Code § 381(c)(2) and (3).[1] CEC, PG&E, SCE and SDG&E were directed to jointly propose funding transfer mechanisms for these activities that would facilitate the timely startup of CEC functions.

On June 3, 1997, SCE filed a Petition For Modification of D.97-04-044 and Clarification of Commission RD&D Balancing Account Policy (Petition). SCE seeks clarification that public interest RD&D funding would be transferred from its RD&D balancing account and reduce the levels in that account accordingly. SDG&E and PG&E agree with SCE that funds transferred to the CEC for public interest RD&D come from funds currently authorized in their RD&D balancing accounts.

CEC opposes SCE's Petition on procedural and substantive grounds. CEC argues that the Petition represents more than a minor modification of D.97-04-044 and is therefore not in compliance with the Commission's Rules of Practice and Procedure (Rule 43).[2] In CEC's view, SCE's proposed modifications inappropriately reduce base rate revenues for remaining regulated RD&D activities without an adequate consideration of the RD&D roles and responsibilities of regulated utilities after January 1, 1998. Moreover, CEC does not believe that the Commission should

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[1] Our reference to public interest RD&D funding to be transferred to the CEC excludes public interest RD&D related to transmission and distribution (T&D). Those activities continue to be funded by the utilities in the amounts authorized by D.97-02-014.

[2] The Rule on Petitions for Modification was revised and renumbered in revisions adopted in D.95-05-019. The current Rule 47 does not contain the restriction the CEC cites. However, Rule 43 was still being published in Barclays Code of Regulations at the time of these filings and did not contain that restriction.

determine at this time whether future base-rate revenues for the utilities' regulated RD&D activities should remain in a one-way balancing account, as is now the case for SCE. Finally, CEC argues that SCE's proposed transfer of base-rate revenues from its existing RD&D balancing account to the public interest RD&D surcharge account may constitute a commingling of funds, contrary to the directions of PU Code § 381(a). CEC argues that these issues should be addressed in a consolidated manner in a subsequent hearing.

On July 30, 1997, CEC, SCE, PG&E and SDG&E filed a Joint Statement Listing Agreements on Public Purpose Program Funding Transfer Issues on Renewables and Research, Development and Demonstration Funds (Joint Statement). The Joint Statement identifies only one remaining disputed issue, in addition to the disagreement over SCE's Petition. The only unresolved issue is which utilities are responsible for making the $75 million renewables program payment identified in PU Code § 381(c)(3). SCE, PG&E and SDG&E separately briefed this issue on August 11, 1997 and SCE filed reply comments on August 18, 1997.[3] SCE and PG&E argue that each of the three utilities, SCE, PG&E and SDG&E, is responsible for a pro rata share of the final $75 million renewables payment to the CEC. SDG&E asserts that it is not responsible for any part of that payment.

Funding For Public Interest RD&D

SCE's Petition requests clarification of language in D.97-04-044 that addresses SCE's earlier Petition for Modification of D.97-02-014 related to RD&D funding. Since the issues raised by this Petition relate directly to our determinations in D.97-02-014, we refer to this earlier decision in the following discussion.

The utilities and CEC have presented two possible interpretations of D.97-02-014 regarding the funding source for public interest RD&D. Under SCE's interpretation, supported by PG&E and SDG&E, the Commission intended that the $28.2 million

[3] The consensus issues identified in the Joint Statement were addressed in D.97-09-117.

identified as SCE's public interest RD&D funding would come out of the $29.644 million in authorized funding for RD&D currently collected in SCE's base rates and accounted f[illegible]n the RD&D balancing account. The $28.2 million for public interest RD&D would be transferred to the CEC, leaving $1.444 million in SCE's RD&D balancing acco[illegible].

The CEC position is that SCE should continue to collect the $29.644 million annually in base rates until the appropriate level of regulated RD&D activities are determined in a future administrative hearing. In addition, SCE would be required to collect $28.5 million annually over and above that amount through a separate surcharge mechanism for public interest RD&D activities. In effect, CEC contends that funding for regulated RD&D come from the "headroom" otherwise available to the utility to pay off transition costs, i.e., the revenues collected in rates (currently frozen) over and above the utility's authorized revenue requirements.

While this issue was not argued or briefed prior to the issuance of D.97-02-014, we find that the CEC's interpretation of funding sources for public interest RD&D is not consistent with the language of D.97-02-014. In that decision, we indicated that the statutory minimum funding requirements for public interest RD&D (e.g., $28.5 million for SCE) would reduce the funding currently in authorized rates for RD&D, and we identified three options for the utilities to obtain additional RD&D funds for utility ("regulated") RD&D:

> "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.
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> "... AB [Assembly Bill] 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.
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> "... 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...' 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." (D.97-02-014, mimeo., pp. 51-53.)

In view of the above, we believe that SCE's Petition represents a minor clarification of our orders, namely, that to effectuate the policies articulated in D.97-02-014, the utilities should be authorized to transfer the public interest RD&D funding levels adopted in D.97-02-014 to the CEC from their existing RD&D balancing accounts.

We find no basis for CEC's concern that this funding approach may violate the provisions of PU Code § 381(a). The fact that funds are being transferred from base rate revenues instead of being collected from "headroom" does not alter the requirement that these and other public purpose funds be collected via a separate rate component consistent with PU Code § 381(a), thereby avoiding the commingling of funds referred to in that section.

We will clarify D.97-02-014 by adding the following language to the end of Ordering Paragraph 2 (c): "SDG&E, SCE and PG&E shall transfer these amounts to the CEC from their existing RD&D balancing accounts." [4] For utilities under performance-

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[4] In its Petition, SCE does not include specific language modifications that can be incorporated into D.97-02-014 directly. Rather, SCE requests clarifications specific to its own balancing account and residual balances. In the future, SCE and others requesting modifications to our orders should comply with Rule 47(b) and present the specific language changes that they

Footnote continued on next page

based ratemaking, such as SCE, the reduction in funds from these balancing accounts should not in any way increase the availability of funds for other utility expenditures or shareholder profits. We do not address the issue of whether the utility's one-way RD&D balancing account will be necessary in the future. We will be addressing this and other tariff streamlining issues separately in this proceeding.

Funding For Renewables

Assembly Bill 1890 requires utilities to collect ratepayer funds for a renewables program and transfer those funds to the CEC. PU Code § 381 now provides, in relevant part:

> "(b) The commission shall allocate funds..., and any interest earned on collected funds, to programs which enhance system reliability and provide in-state benefits as follows:"
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> * * *
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> "(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."
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> "(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:"
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> * * *
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> "(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

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propose, including changes to decision text, findings of fact, conclusions of law and ordering paragraphs.

> 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)."
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> * * *
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> "(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)...of subdivision (c) are collected."

In D.97-02-014, we reviewed the renewable funding requirements under PU Code § 381 and found that utility customers should not be required to fund more than the minimum amounts provided in PU Code § 381(c)(3):

> "Nothing in AB 1890 prevents us from providing for funding for renewables above the mandatory funding levels provided for in § 381(c)(3). At this time, we will establish funding at the minimums established by the statute." (D.97-02-014, mimeo. p. 74.)

PG&E and SCE interpret Section 381(c) and (d) to require that if the full $540 million has not been collected by December 31, 2001, all three utilities must fund the difference up to $75 million during the period January 1 to March 31, 2002. Specifically, SCE and PG&E contend that SDG&E is responsible for a pro rata share of any difference between the amounts collected and $540 million, based on the weighted average of SDG&E's contribution during the 1998-2001 period.

SDG&E argues that any shortfalls below the total statewide funding level of $540 million at the end of the four-year period would be the result of SCE and PG&E holding their expenditures to the statutory minimum. In SDG&E's view, the intent of the statute

is to require that any such shortfalls be made up exclusively by SCE and PG&E, and not shifted to SDG&E. SDG&E bases its interpretation on the language of § 381(c)(3) that states that SDG&E shall spend $12,000,000 per year for the years 1998-2001, while PG&E and SCE are directed to expend "not less than" their respective allocated amounts during the same period. SDG&E argues that this language establishes the fixed nature of SDG&E's obligation.

To determine the intent of the Legislature, 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:

> "In interpreting a statute, [one] should always turn to one cardinal rule before all others. We have stated time and time 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.)

The statutory language limits SDG&E's financial obligation to no more than $12 million per year over the 1998-2001 period. If the renewables payment period were limited to a four-year period, and the total $540 million were collected over that period, then we would agree with SDG&E's interpretation. However, the language of the statute anticipates that there could be a shortfall up to $75 million (based on the statutory funding minimums) that will not be collected over the 1998-2001 period, and directs that this $75 million shortfall be collected pursuant to subdivision (d). PU Code § 381(d), in turn, extends the competition transition charge (CTC) collection period into

the first quarter of the fifth year to insure that the full $540 million of renewables funds and other costs are collected. That section applies to "entities subject to the jurisdiction of the Public Utilities Commission," which includes SDG&E. SDG&E's assertions that it is excused from funding renewables beyond 2001 is inconsistent with this language.

We find that SDG&E's interpretation of the statute ignores the language of PU Code § 381(d), whereas PG&E's and SCE's interpretation is consistent with that language. Accordingly, if the CTC collection period extends into the first quarter of the fifth year, SDG&E is responsible for its share of the renewables residual payment. The statute is silent on the issue of how to determine the utilities' respective shares of that residual. We find that a pro rata share based on the utility's contribution during the 1998-2001 period is reasonable.

The language of PU Code § 381(c) refers to additional funding of "no more than $75 million," recognizing that the additional funding needed to meet the $540 funding total could be less than $75 million if we authorize PG&E and SCE to fund the renewables program above the statutory minimums. As we stated in D.97-02-014, nothing in the statute prevents us from increasing authorized funding at a later date. We may revisit this issue after the Legislature's consideration of program options and implementation mechanisms, and once the program is underway. (*See* D.97-02-014, mimeo, p. 74.)

LIGB's Proposal to Add Two Public Members

In D.97-02-014, the Commission created the LIGB consisting of up to seven members, including two representatives from the Commission and up to five members of the public. D.97-04-044 reduced the number of Commission representatives from two to one, and increased the number of public members on the LIGB to six.

On September 19, 1997, LIGB filed a report in compliance with D.97-02-014. In its report, LIGB recommended that the Commission increase the size of the LIGB to nine members by adding two more public members. LIGB explains that a larger board will better enable LIGB to assemble a quorum, assign tasks to subcommittees between meetings and ensure broader input and perspective at board meetings.

The assigned Administrative Law Judge solicited comments on LIGB's proposal by ruling dated October 7, 1997. The Latino Issues Forum filed comments opposing LIGB's request to increase the size of the Board, arguing that adding new members at this stage could further delay the accomplishment of needed tasks.[5] If the Commission chooses to increase the number of Board members, the Latino Issues Forum urges the Commission to select individuals directly involved with low-income, minority and limited-English-speaking communities and thoroughly familiar with the provision of low-income rate assistance and weatherization programs.

We will adopt LIGB's proposal to add two public members. We find that the time frames required by electricity restructuring have created a situation where additional Board members are needed. LIGB's explanation of the benefits of adding new members at this time convinces us that such appointments will facilitate, rather than delay, the accomplishment of Board responsibilities. As described below, we will consider the views of Latino Issues Forum and other interested parties regarding the qualifications of candidates once those candidates have been identified. Individuals interested in serving on the LIGB should submit a letter with a summary of their qualifications, not to exceed a total of six pages, to the LIGB and the assigned Commissioner's offices, at the following addresses

Low Income Governing Board
Attn: Sharon Weinberg
CH2M Hill
1111 Broadway, Suite 1200
Oakland, CA 94607-4046

Commissioner Neeper/Commissioner Knight
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

As recommended in its report, LIGB will create a summary list of all candidates and serve that summary on the Special Public Purpose service list in this proceeding, indicating where full information on candidates may be viewed. Concurrent with

[5] On October 17, 1997, Latino Issues Forum filed a motion requesting that its comments be accepted late-filed. Because acceptance of the comments two days after the deadline would not prejudice any parties, we will grant the motion.

serving the summary, LIGB will also post the full six pages on each candidate on its website (*http://www.ligb.org*). Interested parties may file comments on the candidates within ten days after LIGB has served the summary and posted the full information on candidates. These comments should be filed at the Commission's Docket Office and served on the Special Public Purpose service list in this proceeding. The LIGB may similarly file and serve its own recommendations within a timeframe that allows the LIGB or a subcommittee thereof to meet and consider the candidates. As soon as practicable thereafter, appointment of the two additional public members will be made by Commission decision, assigned Commissioner's ruling, or Executive Director's letter, as appropriate.

Findings of Fact

1. The CEC's interpretation of funding sources for public interest RD&D is inconsistent with the language of D.97-02-014 that: 1) indicates that the statutory minimum funding requirements for public interest RD&D would reduce the funding currently in authorized rates for RD&D and 2) identifies alternatives for the utilities to obtain additional funds for regulated RD&D.

2. The source of funding for public interest RD&D does not alter the requirement that these and other public purpose funds be collected via a separate rate component consistent with PU Code § 381(a).

3. PU Code § 381(c) limits SDG&E's financial obligation for the renewables program to no more than $12 million per year only over the 1998-2001 period.

4. PU Code § 381(c) directs that funding for the renewables program will total $540 million, which is $75 million more than the minimum funding levels established in that subsection. That subsection directs that funding for this shortfall be collected pursuant to PU Code § 381(d).

5. PU Code § 381(d) extends the competition transition charge collection period into the first quarter of 2002 to insure that the full $540 million of renewables funds and other costs are collected. That section applies to "entities subject to the jurisdiction of the Public Utilities Commission," which includes SDG&E.

6. The amount that needs to be collected during the first quarter of 2002 to meet the $540 million funding level for renewables will be less than $75 million if the Commission increases 1998-2001 authorized funding levels for PG&E and SCE above the statutory minimums.

7. Increasing the LIGB by adding two public members will better enable LIGB to assemble a quorum, assign tasks to subcommittees between meetings, and ensure broader input and perspective at board meetings.

Conclusions of Law

1. SCE's Petition for Modification of D.97-04-044 requests a minor clarification that is consistent with PU Code § 381.

2. SDG&E's interpretation of PU Code § 381 ignores the language of subdivision (d) and should be rejected.

3. If the CTC collection period extends into the first quarter of the 2002, SDG&E, SCE and PG&E should be responsible for funding the renewables program to meet the $540 million funding requirement. It is reasonable to determine each utility's pro rata share of this payment based on the utility's contribution during the 1998-2001 period.

4. This order should be effective today to facilitate timely completion of the fund transfer arrangements with the CEC.

5. LIGB's request to add two public members is reasonable and should be adopted.

6. The Latino Issues Forum's motion to accept its late-filed comments does not prejudice any parties and should be granted.

INTERIM ORDER

IT IS ORDERED that:

1. The October 17, 1997 Motion of Latino Issues Forum to Accept Late Filing of Comments on Adding Members to the Low Income Governing Board is granted.

2. Decision 97-02-014 is modified by adding the following language to Ordering Paragraph 2, subsection (c): "SDG&E, SCE, and PG&E shall transfer these amounts to the CEC from their existing RD&D balancing accounts."

3. San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company shall be responsible for a pro rata share of funding for the renewables program during the first quarter of 2002, pursuant to Public Utilities Code § 381(d). Each utility's pro rata share shall be based on the utility's contribution during the 1998-2001 period.

4. The number of public members on the Low Income Governing Board (LIGB) shall be increased from six to eight. Individuals interested in serving on the LIGB shall submit a letter with a summary of their qualifications, not to exceed a total of six pages, to the LIGB and to each of the assigned Commissioners' offices, at the following addresses:

Low Income Governing Board
Attn: Sharon Weinberg
CH2M Hill
1111 Broadway, Suite 1200
Oakland, CA 94607-4046

Commissioner Neeper/Commissioner Knight
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

LIGB shall create a summary list of all candidates and serve that summary on the Special Public Purpose service list in this proceeding, indicating where full information on candidates may be viewed. Concurrent with serving the summary, LIGB shall also post the full six pages on each candidate on its website (*http://www.ligb.org*). Interested parties shall file comments on the candidates within ten days after LIGB has served the summary and posted the full information on candidates. The LIGB shall file and serve its own recommendations regarding the selection of public members within five days after the LIGB has met to consider the candidates. Parties' comments and LIGB

recommendations shall be filed at the Commission's Docket Office and served on the Special Public Purpose service list in this proceeding.

This order is effective today.

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

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