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Decision 97-12-024 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) and SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E) for Approval of Demand-Side Management Pilot Bidding Contract.	ORIGINAL Application 97-03-045 (Filed March 25, 1997)

OPINION

1. Summary

The Commission approves a contract negotiated jointly by Southern California Gas Company (SoCalGas) and Southern California Edison Company (SCE) with SESCO, Inc. (SESCO), subject to one condition. This contract has been negotiated as part of the demand-side management (DSM) pilot bidding programs required by Public Utilities (PU) Code § 747 and our adopted rules governing DSM.[1] Because this contract will be cost effective only under a limited set of performance scenarios, we require that SESCO provide cost-effectiveness security in the amount of $200,000 consistent with other contracts we have approved under residential DSM pilot bidding programs.[2]

The DSM pilot bidding programs were initiated to test the impact of competitive bidding on utility procurement of DSM services. In general, the objective was to test the ability of third-party providers to replace certain utility DSM programs at a lower cost to ratepayers

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[1] Our rules governing the evaluation, funding, and implementation of DSM were developed in Rulemaking (R.) 91-08-003 and companion Investigation (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.

[2] See D.97-03-068 and D.97-07-025.

The measures to be installed by SESCO under the contract include attic insulation, duct insulation and sealing, infiltration reduction, energy efficient showerheads and aerators, water heater and pipe insulation wraps, and compact fluorescent lamps. The target market is any existing, non-low-income residence, including single family, multi-family and mobile homes that are separately metered and served by both SoCalGas and SCE.

Eligible measures will be installed over a two-year implementation period. The contract will continue in effect for 11 years for SoCalGas and six years for SCE.

The contract is a pay-for-performance agreement with some front-loading of payments in early years of the contract. Payments under the contract are made based on savings projections and periodically adjusted if projected savings are not achieved.

The contract negotiated with SESCO utilizes $5.2 million in funding at the 100% performance level and $6.5 million in funding at the 125% performance level. Funding for the pilot bidding program contracts has been authorized in D.92-09-080 and D.96-01-011 for SoCalGas and SCE, respectively.

Procedural Summary

On March 25, 1997, SoCalGas and SCE jointly filed the instant application requesting approval of the negotiated contract with SESCO. On April 24, 1997, SESCO filed the Response or Protest of SESCO, Inc. On April 28, 1997, the Residential Service Companies' United Effort (RESCUE), an association of residential energy efficiency service providers, filed the Response or Protest of RESCUE. SoCalGas and SCE each filed replies. On September 11, 1997, SESCO and RESCUE jointly filed a Withdrawal of Protest by RESCUE and Request for Immediate Contract Approval.

Thereafter, the assigned administrative law judge directed the parties to file briefs addressing the consistency between D.97-03-068 and the instant matter. Opening briefs were filed on October 20, 1997 by SoCalGas and SCE jointly, and by SESCO and RESCUE jointly. Reply briefs were filed on October 31, 1997.

SESCO Response/Protest

SESCO filed its Response/Protest to become a party in the docket and to request approval of the contract. However, SESCO seeks Commission clarification of the procedures for determining the cost-effectiveness of the contract. SESCO believes that the cost-effectiveness calculations provided in the application are erroneous. SoCalGas and SCE respond that the Total Resource Cost (TRC) and Utility Cost (UC) tests have been correctly applied consistent with the pilot bidding program decisions and DSM rules.

RESCUE Response/Protest

RESCUE filed a response/protest to become a party in the docket and request approval of the contract. However, RESCUE further requests the Commission to order SCE to commit additional funds to DSM pilot bidding programs. RESCUE contends that the instant contract and two other residential DSM contracts commit only 58.1% of the funds set aside for the SoCalGas' residential DSM pilot bidding program. SCE responds that RESCUE is incorrect. According to SCE, its funding commitment for SoCalGas' program fully subscribes all of SCE's available funds.

Background

In the DSM proceeding (R.91-08-003/I.91-08-002), the Commission directed the utilities to develop and present pilot bidding programs to fulfill the mandate of PU Code § 747. The Commission requirements for the DSM program are set forth in various decisions and rulings. The Commission ordered SoCalGas to solicit bids to replace both the single and multi-family portions of its residential, non-low-income weatherization retrofit and appliance efficiency incentive programs (D.92-09-080, mimeo. p. 122, Conclusion of Law 22). The Commission also directed SCE to coordinate with SoCalGas in implementing the pilot bidding program, so that winning bidders could receive payments for both gas and electric savings in gas-heated homes (*Id.*, at pp. 2-3). The contract submitted for approval in this proceeding is a result of this coordinated SoCalGas/SCE effort. This application is the third and final contract that SoCalGas will submit, and the second and final joint contract that SCE will submit. The

Commission approved a DSM pilot bidding contract between SoCalGas and Delta Pro-Tech on November 6, 1995. An additional DSM pilot bidding program contract among SoCalGas, SCE, and Winegard Energy, Inc. (Winegard), was approved in D.97-03-068 and D.97-07-025.

D.97-03-068 and D.97-07-025 are the Commission's most recent decisions approving a DSM pilot bidding contract. In D.97-03-068, the Commission approved the pilot bidding contract entered into by SoCalGas, SCE, and Winegard, subject to Winegard's acceptance of an additional cost-effectiveness security in the amount of $200,000. This condition was agreed to and accepted by Winegard. Thereafter, the Commission issued D.97-07-025 acknowledging the acceptance of the contract by Winegard.

Discussion

Since both SESCO and RESCUE request immediate approval of the contract, we will do so without hearings. Such approval will follow the guidelines set forth in D.97-03-068.

SCE and SoCalGas argue that because the Winegard contract and the SESCO contract are substantially similar, any conditions imposed on Winegard should also be required of SESCO. Accordingly, SCE and SoCalGas recommend that a security provision similar to that which was adopted for Winegard should also be adopted for the SESCO contract because the two contracts are similar in cost-effectiveness and service offerings.

SESCO and RESCUE respond that all parties have already addressed the cost-effectiveness of the proposed contract and the need for a cost-effectiveness and security deposit. All parties have concluded that the contract is cost-effective and should be approved as filed, without the imposition of yet another security deposit on top of the security provisions that the parties negotiated. Thus, SESCO and RESCUE contend that there is no reason that this contract should be required to conform to a decision in a different docket (D.97-03-068). According to SESCO and RESCUE, this contract should be evaluated on its own merit -- and be approved as filed. Further, in their brief, SESCO and RESCUE point out perceived errors in the cost-effectiveness analyses of SoCalGas and SCE.

In response to SESCO's argument, SoCalGas states that the cost-effectiveness procedures that underlie the SESCO contract are described and presented as a formula in the contract, which was painstakingly negotiated among the parties for approximately three years. These cost-effectiveness procedures were also taken directly from D.92-09-080, wherein the Commission describes the manner in which the utilities should calculate a bidder's TRC for purposes of evaluating the DSM pilot bidding programs. SoCalGas and SCE contend that the utilities used the same procedures for determining the TRC for the SESCO contract that the Commission approved in D.97-03-068 for the Winegard contract.

We have carefully considered the arguments of the parties. We conclude that SESCO and RESCUE cannot have immediate approval of the contract, other than on the same terms as we found necessary for Winegard. If SESCO does not find acceptable the $200,000 security deposit that we found necessary in Winegard, SESCO may forgo immediate contract approval and proceed to evidentiary hearing on the cost-effectiveness issue. We will allow 30 days for SESCO to decide. If SESCO decides that it wants an evidentiary hearing, then the Commission's approval of the contract will be stayed pending a decision on the cost-effectiveness issue and need for the $200,000 security deposit.

SESCO's acceptance of the contract will be deemed a waiver of its right to challenge any cost-effectiveness issues at a later date.

Findings of Fact

1. On March 25, 1997, SoCalGas and SCE submitted the SESCO contract for Commission review and approval. On April 24 and April 28, 1997, SESCO and RESCUE filed protests. On September 11, 1997, SESCO and RESCUE filed a request for immediate contract approval.

2. In D.97-03-068, the Commission found that the Winegard contract is marginally cost-effective under pre-installation savings estimates, but becomes non-cost-effective under various non-extreme performance scenarios.

3. The SESCO contract is similar in regard to cost-effectiveness.

4. Similar to the Winegard contract, the SESCO contract is a pay-for-performance agreement with some front-loading of payments in early years of the contract. Payments under the contract are made based on savings projections and periodically adjusted if projected savings are not achieved.

5. As in the Winegard contract, the SESCO contract includes payment hold-back provisions, performance securities, and detailed measurement and evaluation plans. These provisions mitigate the risk that ratepayers might pay for savings that do not materialize.

6. As in the Winegard contract, the SESCO contract includes an ex post measurement plan to verify the level of earnings achieved. The plan is rigorous, containing detailed requirements for sample design, survey development, and model specifications for the statistical analysis of pre- and post-installation billing data. Reporting requirements are also specified.

7. As in the Winegard contract, the SESCO contract does not include any security against the possibility that the program as a whole will not be cost-effective based on verified savings.

8. Cost-effectiveness security funds have been negotiated in other approved residential pilot bidding contracts, including the Winegard contract. In those instances, pre-installation program cost-effectiveness was similar to the SESCO contract.

9. The contract negotiated with SESCO utilizes $5.2 million in funding at the 100% performance level and $6.5 million in funding at the 125% performance level. Funding for the pilot program has been authorized in D.92-09-080 and D.96-01-011 for SoCalGas and SCE, respectively.

10. Eligible measures will be installed under the contract over a two-year implementation period. The contract will continue in effect for 11 years for SoCalGas and six years for SCE.

11. The contract contains specific project milestones and reporting requirements, detailed customer service and quality assurance plans, and specifications of product standards. The contract also contains a standard for resolving disputes using arbitration.

Conclusions of Law

1. The security and payment provisions contained in the contract approved by D.97-03-068 reasonably address the risk that payments made to Winegard during the early, front-loaded installments will not be recovered should performance fall below projections. The same security and payment provisions are contained in the SESCO contract addressed in the instant application.

2. Unless modified to include cost-effectiveness security, the Winegard contract did not adequately protect ratepayers from potential losses, i.e., a total program TRC based on verified savings that is less than 1.0. The SESCO contract has the same risk to ratepayers as the Winegard contract.

3. To address this risk, it is reasonable for the Commission to require SESCO to provide a cost-effectiveness security in the amount of $200,000, as required in the Winegard decision (D.97-03-068).

4. If SESCO agrees to provide ratepayers with a cost-effectiveness security of $200,000, and if the contract is administered properly, payments made under the terms of this contract are reasonable and SoCalGas and SCE should be authorized to recover such payments from their ratepayers.

5. The conditional finding of reasonableness of the Winegard contract in D.97-03-068 does not extend to the administration of the contract or to the amount and timing of potential shareholder earnings from achieved savings.

6. In the Final Opinion regarding the Winegard contract (D.97-07-025, p. 2), the Commission concluded that the Independent Boards created by D.97-02-014 will be making recommendations on how best to administer all ongoing energy efficiency and low-income programs, including pilot bidding contracts, during the transition to the new administrative structure.

7. A funding level of no greater than $6.5 million should be adopted for the SESCO contract.

8. The SESCO contract should be approved in a manner similar to the approval of the Winegard contract.

ORDER

IT IS ORDERED that:

1. The terms and associated payments of the negotiated contract entered into by Southern California Gas Company (SoCalGas) and Southern California Edison Company (SCE) with SESCO, Inc. (SESCO) in connection with SoCalGas' demand-side management pilot bidding program are reasonable subject to the inclusion of cost-effectiveness security in the amount of $200,000. This amount shall be in addition to other security requirements under the contract. The cost-effectiveness security shall be forfeited by SESCO if the program as a whole (combined gas and electric) does not pass the total resource cost test after the fourth-year persistence studies have been completed under the contract.

2. SESCO's acceptance of the contract will be deemed a waiver of its right to challenge any cost-effectiveness issues at a later date.

3. Within 30 days from the effective date of this order, SoCalGas and SCE shall file a statement in this docket informing the Commission of whether SESCO accepts these conditions, and if so, shall submit the contract modifications with their filing.

4. This proceeding remains open to receive the statement described in Paragraph 3 and possibly for evidentiary hearings if requested by SESCO.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

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