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MAIL DATE
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Decision 98-01-025

January 7, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sesco, Inc., Application For Rehearing
Of Resolution G-3134.

A.94-08-050
(Filed August 19, 1994)

ORIGINAL

**ORDER DENYING APPLICATION FOR REHEARING
OF RESOLUTION G-3134**

I. SUMMARY

Sesco, Inc. ("Sesco") has filed an application requesting rehearing of our Resolution No. G-3134 which approved Advice Letter 2271-B filed by Southern California gas Company ("SoCalGas"). SoCalGas filed the advice letter pursuant to our order issued in Decision (D.) 93-12-043 which required that SoCalGas establish an auction to award 25% of the funding allocated to the company's low-income weatherization program to competitive bidders. (D.93-12-043 (Re Southern California Gas Company, 52 Cal. P.U.C. 2d 471, 526 and Ordering Paragraph 11 (1993))). The weatherization program is part of SoCalGas's direct assistance program.

Sesco now claims that the Commission gave inadequate consideration to Sesco's protest of the advice letter filing with respect to the use of ex ante estimated savings to determine payments to contractors. Sesco proposed an alternative "pay for performance" payment based on ex post measured savings. Sesco's application for rehearing, however, merely expresses its disagreement with the Commission's approval of the advice letter filing, relying on a different policy view, not on the demonstration of legal error. Therefore, pursuant to Section 1732 of the California Public Utilities Code, which requires that the applicant specifically demonstrate legal error, we hereby deny rehearing of Resolution G-3134.

II. DISCUSSION

Sesco first argues that we misconstrued Sesco's protest as advocating that contractors be paid exclusively on ex post measured savings instead of ex ante estimated savings. (Sesco's Application for Rehearing, p.4.) In fact we understood correctly that Sesco was not recommending one or the other savings measurements, but instead proposed that both measurements be used. We stated in our resolution approving the advice letter that Sesco proposed that "pay-per-measure [i.e. ex ante] and pay-per-savings [i.e. ex post] contractors can be accommodated in one bidding effort." Resolution G-3134, mimeo, p. 3.) Sesco, therefore, has not shown we misconstrued the substance of its protest.

Second, Sesco claims we also erred in referencing D.93-12-043 as having resolved the issue of whether bidders should be paid on the bases of ex post measured savings or ex ante estimate savings. (Sesco's Application for Rehearing, p.8.) We acknowledge that the reference to D.93-12-043 in this regard was inaccurate, and we will order a deletion of this reference. Nonetheless, our decision not to accept Sesco's recommended measurement for determining payment to contractors who participated in the SoCalGas auction was correctly based on a procedural decision that is within this Commission's discretion to make. (California Constitution, Article XII, Section 2, Section 1701 of the California Public Utilities Code.)

We explained in Resolution G-3134 that a decision on the program design element recommended by Sesco could not be changed by way of a resolution approving SoCalGas's advice letter filing. (Resolution G-3134, p. 5.) In the application for rehearing, Sesco acknowledges, in fact, that a direct assistance program design was in place. (Sesco's Application for rehearing, p. 8.) In ordering SoCalGas to file an advice letter setting forth a competitive bidding protocol, we did not order SoCalGas to propose or establish a new design element involving ex ante or ex post savings measurements. SoCalGas was only ordered to establish a competitive bidding protocol that would open

the bidding to private contractors for 25% of SoCalGas's weatherization services under its direct assistance program. (52 Cal. P.U.C., supra, p. 526.)

In the immediate past, SoCalGas had exclusively contracted with community based organizations to administer its direct assistance programs, which include weatherization services. (52 Cal. P.U.C. 2d, supra, p. 525.) We found in D.93-12-043 that the low-income weatherization program could be more effective in terms of quality as well as cost if at least 25% of the authorized funding could be competed for by both private contractors as well as community based organizations.¹ (Id., p. 526.) We therefore ordered that SoCalGas file by advice letter a proposal to begin competitive bidding for 25% of its weatherization service. However, a key element of the program design, the measurement of savings, was not in question in this order.

Establishing a competitive bidding protocol, therefore, did not open a new forum for determining essential program design elements. As we stated in Resolution G-3134, such matters are properly dealt with in a utility's general rate case.² We recognized that the issues involved in SESCO's proposal require the application of the due process safeguards of a general rate case where all parties must be duly noticed.³

SESCO, moreover, had the opportunity to present its proposals in the general rate case proceeding in which the advice letter filing was ordered. (A.92-11-017, D.93-12-043). And, as we indicated in Resolution G-3134, SESCO's proper course would have been to present its concerns on the measurement of savings in a petition for modification

¹ We have stated that we intend direct assistance programs to address equity concerns and, therefore, cost-effectiveness measurements shall not be the sole factor used in determining the funding levels for these programs. (52 Cal. P.U.C. 2d, supra, p. 525. See also Re Rules & Procedures Governing Utility Demand-Side Management, 51 Cal. P.U.C. 2d 648, 656 (1993).

² Such issues as measuring and evaluating savings were also appropriately dealt with in the extended rulemaking and investigatory proceeding, R. 91-08-003 and I.91-08-002, which we established to consider the many complex issues of demand side management programs.

³ Due process concerns were the basis for our reference in the Resolution to Section 1708 of the California Public Utilities Code which requires that there be due notice to the parties of a proceeding, with an opportunity to be heard before the Commission may rescind, alter, or amend a prior decision.

of D.93-12-043. SESCO had available, therefore, an alternative means of properly raising before the Commission the issue of the appropriate savings measurement for SoCalGas' low-income weatherization program. Our rejection of SESCO's protest of the issue as part of the advice letter filing, was thus reasonable and just.

In conclusion, we find that SESCO has not shown legal error in Resolution G-3134.

IT IS THEREFORE ORDERED that:

1. The application for rehearing filed by SESCO is denied.
2. Resolution G-3134 shall be modified to delete the following sentence which appears in paragraph 9 on page 5:

"The existing program design has been authorized by the Commission in SoCalGas' General Rate Case, D.93-12-043."

3. The above-captioned docket shall be closed.

This order is effective today.

Dated January 7, 1998, at San Francisco, California.

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