

Decision 98-05-018 May 7, 1998

MAY. 8 1998

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.

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

INTERIM OPINION: EXTENSION OF INTERIM ADMINISTRATORS' TERM FOR ENERGY EFFICIENCY AND LOW-INCOME PROGRAMS

Summary

By today's decision, we extend the term for interim utility administration of energy efficiency and low-income assistance programs until December 31, 1998 and December 31, 1999, respectively. In consultation with the California Board for Energy Efficiency (CBEE), the interim utility administrators for energy efficiency shall develop final quarter 1998 program plans and budgets to be submitted to the Commission as Advice Letters by June 5, 1998. The Low-Income Governing Board (LIGB) should similarly work with the interim utility administrators to develop 1999 program plans and budgets for submission as Advice Letters by October 1, 1998.

The Assigned Commissioners' Ruling dated February 24, 1998 directed CBEE and LIGB to contact one of the Assigned Commissioners' offices before scheduling any further Board meetings. Until further notice, we extend this requirement to the Boards' Technical Advisory Committees. The Assigned

Commissioners may, at their discretion, limit the number or scope of meetings to best utilize the limited resources available to support board and committee activities.

Today's actions are taken out of necessity, and with considerable reluctance. Our objective of closely timing a shift to independent administration of public purpose programs with the implementation of direct access is thwarted by recent events beyond our control. A recent letter ruling issued by the Executive Officer of the State Personnel Board (SPB) has effectively caused the administrative, technical, and legal support for the independent Boards to cease work. Therefore, until uncertainties over the status of support services to the Boards are resolved, we have no recourse but to extend the interim utility administration for a longer period than we anticipated, or desired, in establishing our policy goals for electric restructuring.

Background

By Decision (D.) 97-02-014, the Commission established CBEE and LIGB, collectively referred to as "the Boards," to make recommendations about energy efficiency and low-income assistance programs in the restructured electric industry. Among other things, the Boards were assigned the task of developing requests for proposals (RFPs) articulating policy and programmatic guidelines for new administrators of these programs, subject to Commission approval. The new administrators would be selected on a competitive basis. Until this selection occurred and new administrators were fully operational, the utilities would serve as interim administrators of energy efficiency and low-income programs.¹ In

¹ Utilities are allowed to bid in response to the RFP to serve as the new independent administrators. However, D.97-09-117 makes it clear that 1) there will be no utility

Footnote continued on next page

D.97-09-117, the Commission set deadlines of October 1, 1998 and January 1, 1999 for completion of the transition to the new energy efficiency and low-income independent program administrators, respectively.

On February 4, 1998, the Acting Executive Officer of the SPB stated by letter ruling that the agreements between the Boards and their administrative and technical consultants were disapproved. This action was pursuant to a complaint to the SPB by the California State Employees Association. The agreement for technical consultant services is currently under reconsideration by the SPB. A related complaint by the Association of California State Attorneys and Administrative Law Judges regarding agreements between the Boards and legal consultant services is pending at the SPB. Each of these agreements had been entered into pursuant to Commission authorization in D.97-05-041.

The consequence of the letter ruling has been that the administrative and technical consultants have ceased work for the Boards as of February 4, 1998, with the exception of necessary wrap-up activities. This has left the Boards in the difficult situation of having numerous Commission deadlines to meet and significant Commission advisory tasks to achieve, but no resources beyond Board members to perform the work. The Commission has attempted to provide administrative support staff on a limited basis to the Boards, but is constrained by both the lack of staff availability and the lack of expertise in the more specialized and technical areas needed to support the Boards and meet the Commission's objectives.

By ruling dated February 24, 1998, the Assigned Commissioners acknowledged these developments and suspended the milestones and deadlines

shareholder incentives in the future and 2) the focus of program effort should shift to market transformation.

established for the Boards. The Assigned Commissioners called for Board and public comment on next steps for public purpose activities in the event that the current structure cannot continue in substantial part. Commenters were invited to suggest appropriate structures and timetables to achieve the Commission and legislative goals in different ways, if necessary, including variations on independent administration, utility administration, advisory board presence, Commission oversight role, and other aspects of administrative and contracting options. Initial comments were filed on March 11, 1998; reply comments were filed on March 23, 1998. A list of parties submitting comments is attached as Appendix A.

Summary of Comments

The majority of the comments encourage the Commission to "stay the course" in pursuing independent administration of public purpose programs in the near term, and argue that it is premature to abandon the policy direction adopted in D.97-02-014. Nonetheless, in view of recent developments, CBEE and various parties recommend that interim utility administration of energy efficiency programs be extended for three months, through the end of 1998. LIGB recommends extending utility administration of low-income assistance programs for another year in order to jointly plan the 1999 program activities.

The current utility interim administration is not without criticism, however. The City of San Jose expresses the concern that utilities are not being responsive to local governments and community stakeholders in their interim role as administrators. Residential Service Companies' United Effort and SESCO, Inc. argue that utility administration of low-income assistance programs should not be extended under any circumstances. The Department of Community Services and Development recommends that the Commission immediately move

forward to sign interagency agreements that would shift administration of low-income programs from the utilities to a single state agency.

The comments almost universally emphasized the urgent need for staff support for the Boards. Suggestions were made for options to obtain the necessary staff support, and some parties urged that workshops be convened to encourage planning of public purpose programs in the next few months.

Discussion

Today's actions are taken in recognition of the resource limitations and administrative uncertainties facing CBEE and LIGB. We are working to alleviate these constraints, but relief will not come in time to enable the Boards to meet the transition dates ordered by D.97-09-117. Given these circumstances, we believe that the most prudent approach is to extend the period of interim utility administration per the Boards' recommendations. We take this step reluctantly, however, since by doing so we are compromising an important policy objective of D.97-02-014, namely, to link as closely as possible the transition to independent administration of public purpose programs with the implementation of direct access.

Nonetheless, the Boards' recommendations will enable energy efficiency and low-income assistance programs to continue with continuity as we review the policies established by D.97-02-014 in light of recent developments. As we stated in D.98-04-063, it is our preference and intent to take steps necessary to "stay the course" by moving towards the independent administration of energy efficiency and low-income assistance programs. However, we must be open to alternatives if this course is not found feasible. We established a date of June 30, 1998, at which time we will assess alternatives should our "stay the course" approach become unfeasible. (D.98-04-063, *mimeo.*, p.3.) Extending the term for interim utility administrators today will buy us some time to transition to

independent administration or, if circumstances warrant, to consider alternative administrative approaches.

Some comments concerning the LIGB explored whether interim administration should be changed from the present interim utility administration. Given the uncertainty in providing ample support to the LIGB in the short term, a change in interim administrator seems to impose considerable transaction costs with limited benefits to be achieved. Program transfer will inevitably result in some discontinuities, and we do not believe such discontinuities are worth imposing.

One party suggests that no program funding be made available with any extensions of interim utility administration. We reject this suggestion. To extend the term of interim utility administrators without additional funding would unduly hamper the ability of those administrators to provide program services. In the case of energy efficiency, we would be asking utility administrators to extend their efforts by 25% (one calendar quarter) with budgets that were established on a nine-month basis. (See D.97-12-103.)

However, in developing an energy efficiency budget for the final quarter of 1998, the interim administrators should rely on the interim policy rules and other directions established by D.97-12-103. The interim administrators should work closely with CBEE to ensure that the final quarter program plans and budgets are consistent with policies governing funding of such activities for the first three quarters of 1998. Third quarter program plans and budgets should be filed at the Commission as Advice Letters by June 5, 1998. In addition to working with the interim administrators during the development of these plans and budgets, CBEE should file comments on the Advice Letters, which along with protests or comments by interested parties, are due June 19, 1998. Utility replies are due June 24, 1998.

Similarly, in consultation with LIGB, the interim administrators for low-income programs should develop 1999 program plans and budgets to be submitted to the Commission as Advice Letter filings by October 1, 1998. LIGB's and interested parties' comments are due within 30 days thereafter.

These Advice Letters should be served on 1) the Special Public Purpose Service list in this proceeding or any successor proceeding and 2) any other individual or organization that sends a written request to CBEE or LIGB to be served. The filings should also be available in electronic format for posting on the CBEE or LIGB web page, as appropriate.

In view of the limitations on staff support, it continues to be necessary to tailor the frequency and scope of Board-related meetings to those required to meet the highest priorities. The Assigned Commissioners' Ruling dated February 24, 1998 directed CBEE and LIGB to contact one of the Assigned Commissioners' offices before scheduling any further Board meetings. Until further notice, we extend this requirement to the Boards' Technical Advisory Committees. The Assigned Commissioners may, at their discretion, limit the number or scope of meetings to best utilize the limited resources available to support board and committee activities.

Consistent with our discussion in D.97-12-103, the Assigned Commissioners may issue a ruling to make any necessary procedural changes to today's determinations, such as "allowing utilities to continue as interim administrators until the new administrators are in place and to authorize budgets for this purpose." (D.97-12-103, *mimeo.*, p. 15, footnote 9.)

Findings of Fact

1. Given the February 4, 1998 ruling by the SPB Acting Executive Officer, LIGB and CBEE are unable to fulfill the schedule to transition public purpose programs to independent administration.

2. The majority of comments received in response to the February 24, 1998 Assigned Commissioners' Ruling 1) support a "stay the course" approach towards independent administration of public purpose programs in the near term, 2) emphasize the need for staff support for the Boards, and 3) support extension of interim utility administration to facilitate program continuity.

3. The Commission does not, at this time, have adequate staff to support the Boards in fulfilling the milestones for transition to independent administration within the timeframe originally determined.

4. Extending the term of interim utility administrators, as proposed by the Boards, will enable energy efficiency and low-income assistance programs to continue with continuity as the Commission reviews the policies established by D.97-02-014 in light of recent developments.

5. Changing to a different interim administrator at this time would impose unacceptable discontinuities in program delivery.

6. Extending the term of interim utility administrators without additional funding would unduly hamper the ability of those administrators to provide program services.

Conclusions of Law

1. The term of interim utility administrators should be extended to December 31, 1998 and December 31, 1999 for energy efficiency and low-income assistance programs, respectively.

2. The interim administrators, in close consultation with the Boards, should file Advice Letters to establish program plans and budgets for the extended term, as discussed in this decision.

3. Because support for Board and Technical Advisory Committee meetings is limited at this time, the Boards should advise one of the Assigned Commissioners' offices before scheduling additional meetings. The Assigned

Commissioners may, at their discretion, limit the number or scope of meetings to best utilize the limited resources available to support Board and Technical Advisory Committee activities.

4. This order should be effective today to facilitate uninterrupted delivery of energy efficiency and low-income programs.

5. Given the urgent nature of finalizing energy efficiency programs for the last quarter of 1998, a shortened comment/protest and reply period is necessary.

INTERIM ORDER

IT IS ORDERED that:

1. The term of interim utility administration of energy efficiency and low-income assistance programs funded pursuant to Public Utilities Code Sections 381(c)(1) and 382 shall be extended to December 31, 1998 and December 31, 1999, respectively.

2. For the purpose of this decision, "interim utility administrators" refers to Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company.

3. In developing energy efficiency program plans and budgets for the final quarter of 1998, the interim utility administrators shall rely on the interim policy rules and other program design and funding directions established by Decision (D.) 97-12-103. The interim utility administrators shall work closely with the California Board for Energy Efficiency (CBEE) to ensure that the final quarter program plans and budgets are consistent with policies governing funding of such activities for the first three quarters of 1998. By June 5, 1998, the interim utility administrators shall file Advice Letters presenting their fourth quarter program plans and budgets. In addition to working with the interim utility administrators during the development of these plans and budgets, CBEE shall,

and interested parties may, file comments or protests on the Advice Letters by June 19, 1998. Utility responses are due June 24, 1998.

4. In consultation with the Low-Income Governing Board (LIGB), the interim utility administrators for low-income assistance programs shall develop 1999 program plans and budgets to be filed at the Commission as Advice Letters by October 1, 1998. The comments of LIGB and interested parties are due within 30 days thereafter.

5. The Advice Letters required under Ordering Paragraphs 3 and 4 shall be served on 1) the Special Public Purpose Service list in this proceeding or any successor proceeding and 2) any other individual or organization that sends a written request to CBEE or LIGB to be served. The filing and any comment, protest, or reply, shall also be available in electronic format for posting on the CBEE or LIGB web page, as appropriate.

6. Until further notice by the Assigned Commissioners or by the full Commission, CBEE and LIGB shall contact one of the Assigned Commissioners' offices before scheduling any further meeting of the Board or Technical Advisory Committees. The Assigned Commissioners may, at their discretion, limit the number or scope of meetings to best utilize the limited resources available to support board and committee activities. The Assigned Commissioners may make procedural changes to today's determinations in order to address

R.94-04-031, I.94-04-032 ALJ/MEG/wav

contingencies that may arise and require modifications to the term of the interim administrator, and to authorize budgets for this purpose.

This order is effective today.

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

RICHARD A. BILAS

President

P. GREGORY CONLON

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

Commissioner Jessie J. Knight, Jr.,
being necessarily absent, did not
participate.

APPENDIX A

Responses to the February 24, 1998 Assigned Commissioners' Ruling

By March 11, 1998, the following parties submitted comments on the February 24, 1998 Assigned Commissioners' Ruling:

Appliance Recycling Centers of America, Inc.
California Board For Energy Efficiency (CBEE)
California Energy Commission
City of San Jose
Department of Community Services and Development of California
Enron and New Energy Ventures
Energy Pacific
Joint Comments by Latino Issues Forum, the Greenlining Institute, County
of Los Angeles Department of Community and Senior Citizens
Services and Natural Resources Defense Council.
Joint Comments - 21 Parties including Natural Resources Defense Council.
Low-Income Governing Board (LIGB)
National Association of Energy Service Companies
Residential Energy Efficiency Clearing House, Inc.
Residential Service Companies' United Effort, Insulation Contractors'
Association and SESCO, Inc.
Richard Heath and Associates
San Diego Gas & Electric Company
Sierra Club
Sacramento Municipal Utility District
Southern California Edison Company
Southern California Gas Company
Utility Conservation Services

Reply comments were filed by March 23, 1998 by the following Parties:

Association of Southern California Environmental and Energy Programs
CBEE
Department of Community Services and Development of California
LIGB
Office of Ratepayer Advocates
Pacific Gas and Electric Company
Residential Energy Efficiency Clearing House, Inc
Southern California Gas Company

(END OF APPENDIX A)