

Decision 99-03-056 March 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies and Programs
Governing Energy Efficiency, Low-Income
Assistance, Renewable Energy and Research
Development and Demonstration.

Rulemaking 98-07-037
(Filed July 23, 1998)

**PROPOSED DECISION: ADMINISTRATION OF ENERGY
EFFICIENCY AND LOW-INCOME ASSISTANCE PROGRAMS**

Overview and Summary

This decision addresses the issue of how energy efficiency programs and low-income assistance programs should be administered (1) between now and the end of 2001 and (2) after 2001. We determine that energy efficiency and low-income assistance programs should continue to be administered by investor-owned utilities, subject to our oversight, through 2001. We arrive at this decision after considerable input from interested parties regarding the impact of recent developments on implementation of our policies, in particular, the Governor's veto of Assembly Bill (AB) 2461. We find that continuing interim utility administration over the next three years is the most viable option for maintaining progress towards our market transformation and low-income assistance goals, while affording us the time needed to carefully explore and implement organizational alternatives for the future.

Beyond 2001, however, we are opposed to continuing with utility administration of energy efficiency programs and will actively pursue creating an organizational alternative for the administration of these programs. Our current preference is to establish a legislatively mandated nonprofit organization,

assuming that funding for energy efficiency is authorized beyond 2001. As discussed in this decision, in Phase 2 of this proceeding, we solicit public input on how to implement this preference as well as on other organizational options that do not involve utility administration. We intend to work with the Legislature to develop a bill that will implement the new organizational structure for energy efficiency administration, to be passed no later than the end of the 2000 session.

For the administration of low-income assistance programs after 2001, we will explore a variety of organizational options, including continuing with utility administration, using utilities as fiscal agents for independent administrators, creating a nonprofit organization or transferring administration to an existing state agency. We do not reject the option of continuing utility administration of low-income assistance programs at this time, as we do for energy efficiency, because the potential conflicts are not as evident or pronounced. We will explore organizational options during Phase 2, and work with the Legislature to introduce legislation, as appropriate.

By today's decision, we officially cancel the Request for Proposal (RFP) process for energy efficiency program administrators that has been suspended pending the outcome of this decision. We will also cancel the RFP process to develop low-income independent program administration.

The Low Income Governing Board (LIGB) and the California Board for Energy Efficiency (CBEE), collectively referred to as "the Boards," should continue their involvement in assisting us with the development and review of program designs, budgets, implementation plans and policies. The Boards may participate in our Phase 2 exploration of future administrative options. We request comment on current per diem rules in response to concerns expressed by CBEE.

We continue our efforts to obtain necessary resources for the Boards. We are in the process of seeking approval of a budget change authorization for support and technical staff, pursuant to the terms of the settlement agreements we reached with the California State Employees Association and the Professional Engineers in California Government. In the meantime, we reaffirm the authorization set forth in Decision (D.) 98-07-036 that will enable the Boards, on an interim basis, to "resume the service of the administrative and technical consultants under the previously suspended agreements or retain the services of other consultants pursuant to the terms of the settlement agreements and consistent with the state contracting rules and procedures." (D.98-07-036, mimeo., p. 4.)

Background

In D.97-02-014, the Commission established LIGB and CBEE 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 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. In 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.

Since the issuance of D.97-09-117, several steps have been taken to implement our policies. Members have been appointed to each Board, Technical Advisory Committees have been established, and the Boards' bylaws and start-up procedures have been approved by the Commission. The Boards have made

recommendations to the Commission on policies, program designs and budgets for both the 1998 and 1999 program years. CBEE has developed an RFP for independent administrators that was reviewed and approved by the Commission. LIGB also developed an RFP for our consideration. Consistent with our expectations, the Boards have conducted numerous public meetings to assist them in formulating recommendations to the Commission.

However, as described in prior Commission decisions and Assigned Commissioner rulings, there have been major obstacles to implementing the policies we articulated in D.97-09-117. In order to proceed with start-up activities, in D.97-05-041 we authorized the Boards to obtain technical and administrative assistance through the hiring of consultants on a nondiscriminatory basis, using a broad-based recruitment process. The Boards proceeded to hire consultants, consistent with our direction. In February, 1998, the Acting Executive Officer of the State Personnel Board (SPB) issued a letter determination that disapproved the agreements between the Boards and their administrative and technical consultants. SPB's action was in response to a complaint filed by the California State Employees Association (CSEA).

Following the letter determination, the Commission instructed the administrative and technical consultants to cease work for the Boards. As a result, the Boards were left without sufficient resources to meet numerous Commission deadlines and significant advisory tasks. The Commission attempted to provide administrative support staff on a limited basis to the Boards, but was 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 Commissioner acknowledged these developments and suspended the milestones and deadlines established for the

Boards. In light of these developments, the Commission extended the term for interim utility administration of energy efficiency and low-income assistance programs until December 31, 1998, and December 31, 1999, respectively.

In mid-1998, the Commission entered into settlement agreements with the California State Employees Association and the Professional Engineers in California Government (PECG) which resolved issues regarding the provision of administrative, technical, and engineering support for the LIGB and CBEE. Under these agreements, the Commission agreed to take all reasonable steps to create and fill a combined total of nine civil service positions and to transfer any civil service duties and responsibilities previously performed by the administrative and technical consultants for the Boards to these positions. Pursuant to the agreement with CSEA, and subject to certain conditions, once the civil service positions were filled, the Commission or Boards could contract for the services of up to eight full-time equivalent consultants to perform work for the Boards.

The agreements recognized that there would be a transition period until the new civil services positions could be established. Therefore, the Boards were authorized to resume the services of the administrative and technical consultants under the prior agreements (or obtain similar agreements for services with other contractors) through the transition period. The original transition period under the settlement agreements is through December 31, 1998. However, pursuant to the procedures under the settlement agreement with CSEA, the Commission has requested an extension of the transition period for the use of administrative and technical consultants.

By D.98-07-036, the Commission determined that barriers to pursuing the policies established in D.97-09-117 were substantially removed, and directed the

Energy Division to issue the RFP for independent administrators of energy efficiency programs.

After the issuance of D.98-07-036, two additional obstacles surfaced during the final days of the California legislative session. First, the Commission's budget request for additional positions necessary to fulfill the terms of the settlement agreements described above, was vetoed by the Governor. Second, AB 2461 was vetoed by the Governor. This bill, among other things, would have provided that fund administration for energy efficiency and low-income programs be handled by the State, with the program funds to be transferred to the State Treasury. The bill also provided for independent program administrators, with an operative date starting July 1, 1999. Currently, program funding is authorized as a component of utility rates and administered by the utilities under the Commission's jurisdiction and direction.

Recognizing that these actions created insurmountable obstacles to handing off energy efficiency programs to new administrators on January 1, 1999, the Assigned Commissioner extended the term of interim utility administrators for energy efficiency programs through December 31, 1999, subject to earlier transfer with three months notice from the Commission. (See Assigned Commissioners Ruling dated September 23, 1998.) The Assigned Commissioner also convened a public hearing on October 27, 1998, to solicit comment on potential administrative structures for energy efficiency and low-income programs, in light of recent developments. Comments were requested on the following structural alternatives, among others, that parties identified:

1. Continue utility administration
2. Re-introduce AB 2461
3. Require utilities to issue an RFP for administrators

4. Sponsor Legislation to create a new administrator (nonprofit or profit; overseen by Commission or not)
5. Transfer administration to an existing organization.

The Assigned Commissioner also solicited comments on whether any changes to the Boards would be appropriate. The Energy Division suspended the due date for RFP bidder proposals to allow time to address the issues raised in the Assigned Commissioner's ruling. Forty individuals and organizations responded in writing and/or with oral comments at the Public Hearing. (See Attachment 1.)

The draft decision of Administrative Law Judge Meg Gottstein in this matter was mailed to the parties in accordance with PU Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on January 11, 1999, and reply comments were filed on January 19, 1999.

Discussion

The majority of commentators encourage us to maintain interim utility administration until such time as an alternative structure (such as a nonprofit organization) can be thoroughly explored and proposed to the Legislature. Parties supporting this approach for energy efficiency programs include the Office of Ratepayer Advocates (ORA), the California Energy Commission (CEC) and the Joint Parties, which are comprised of 24 environmental organizations, private energy service companies, manufacturers and distributors of energy efficiency products, energy consultants and the current utility interim administrators. (See Attachment 1.) On the low-income assistance side, ORA and others argue that retaining utility administration of low-income programs will best achieve the goal of maintaining continuity of these programs to the customers, given current obstacles to independent administration.

Parties proposing continued utility administration do not, however, agree on what steps the Commission should take beyond the near term, particularly for energy efficiency programs. The Joint Parties, for example, take no position on the administrative structure for energy efficiency beyond 2001. However, their comments imply that continued utility administration of energy efficiency programs beyond 2001 is a viable option for Commission consideration. ORA, on the other hand, recommends that the Commission adopt a policy to end the role of utility administration in energy efficiency by 2001. In particular, ORA recommends that the Commission adopt a model that utilizes a network of Regional Energy Offices and existing governmental agencies. CEC also recommends that continuing utility administration beyond 1999 should only be considered as a short-term strategy. For the longer-term, CEC recommends that the Commission explore the pros and cons of two options: the development of a nonprofit board and the transfer of energy efficiency programs to an existing organization.

Several parties express considerable concern over the prospect of continuing with utility program administration, recommend that the Commission proceed immediately with implementing specific organizational alternatives. The Sierra Club, for example, recommends that the Commission solicit a proposal from the California Power Exchange to provide oversight administrative services for energy efficiency programs. The Residential Energy Efficiency Clearing House Inc. recommends that the Commission establish special trust accounts for energy efficiency programs, similar to the Nuclear Decommissioning Trust Model. ICF Kaiser recommends that the Commission proceed with a competitive RFP process, even though a funding mechanism for selected administrators has not been established. Global Energy Partners proposed that one or more utilities issue RFPs to select independent program

administrators. The Marketplace Coalition urges the Commission to direct utilities to pay contractors for services that meet Commission specifications.

Other parties, such as LIGB, Greenlining Institute and Latino Issues Forum, only reluctantly support continued utility administration as a last resort.¹ Still others, such as the California Department of General Services and the Sacramento Municipal Utility District, encourage us to consider transferring program administration to existing state agencies or to new joint power authorities.

No one, however, recommends reintroducing AB 2461 to transfer funding for these programs to the State Treasury, particularly if funding is subject to annual appropriations. CBEE argues that neither electric public goods charge funds nor gas demand-side management funds should be considered state funds. CBEE maintains that funding for these programs have been authorized as rate components, to be collected by regulated utilities under the authority of the Commission.

Clearly, were there no obstacles to the implementation of our policies, we would proceed immediately with the course we established in D.97-09-117, namely, to transfer administration of energy efficiency and low-income assistance programs to independent administrators selected via a competitive bid process. However, due to circumstances beyond our control, we must now adopt a "second best" solution. In evaluating alternatives for this solution, we have considered whether the alternative can be implemented without undue

¹ Greenlining Institute and Latino Issues Forum do, however, clarify in their comments on the proposed decision that they would support utility administration if it resulted from a competitive bid, as originally envisioned by the Commission.

delay or disruption to programs, while still addressing policy objectives to our satisfaction.

Proponents of an approach that would curtail utility administration well before 2001 do not meet this threshold consideration. Experience has taught us that a minimum of one to two more years is required to put a substitute administrative structure in place and have it fully functioning, particularly since alternatives to utility administration are likely to require legislative authorization. Moreover, if anything is clear from the last two years, it is that there are surprises and unexpected events that may raise more issues to be resolved. Setting a deadline for utility interim administration that does not reflect a reasonable time frame in which to develop organizational alternatives will create uncertainty and disruption in the market. Our second best solution should be designed to avoid this result.

We also reject at this time proposals to shift administrative responsibilities around inside state government. This approach may not fully resolve staffing and procurement issues raised by the state employee unions, may complicate the process and procedures for fund administration, and may give rise to program oversight issues. While these issues might be resolved over time, we are not willing to consider adopting the state agency administrative model until these issues can be explored further.

That leaves us with the option preferred by the majority of commentators, namely, to continue utility administration beyond 1999 and until organizational alternatives for the administrative structure can be further explored. We agree with ORA, among others, that there are advantages to this approach. As several parties note in their comments, energy efficiency cannot be sustained in California with continued uncertainty over how programs will be administered. Continued uncertainty is disruptive and unfair to all market participants:

potential bidders, appliance retailers, distributors and manufacturers, utility customers and utility administrators. Therefore, as UC/CSU comments, it is critical to implement an administrative structure now that ensures that there will be no hiatus for key programs, such as the Standard Performance Contract Program, in 2000. Moreover, the utility administrators, under our direction with input from LIGB and CBEE, have made changes to their programs to reflect our policy goals, thus demonstrating that progress can be made under the status quo.

In view of existing obstacles to independent administration, coupled with our desire to reduce uncertainty and service disruption in the market, we believe that it is reasonable to continue with utility administration through December 31, 2001. This approach will afford us sufficient time to fully explore organizational alternatives before implementing a preferred structure. In contrast, approaches that would require us to transfer utility administration to another organizational structure before that date are simply premature. Instead of selecting an organizational alternative at this time, as some parties recommend, we will make use of the time between now and December 31, 2001, to fully evaluate alternatives and take all the necessary steps to implement our preferred alternative.

However, none of the comments have lessened our fundamental concerns over a continued role of utilities in the administration of energy efficiency programs over the longer term. In particular, we still believe that utilities as program administrators are not motivated to create the independent energy efficiency industry that we envision for the future. The concerns we articulated in D.97-02-014 bear repeating:

“...electric utilities are entering a period where their interest in increasing sales volumes (as opposed to decreasing them via energy efficiency) had never been greater. As a result of the rate cap and competition transition charge (CTC) provisions of AB 1890, customer

actions that reduce electrical usage will threaten utility profits by reducing the revenues collected to pay for transition costs (e.g., uneconomic generating assets). Conversely, customer actions that increase electric usage will accelerate or facilitate the full recovery of transition costs during the transition cost recovery period.

"This environment does not give utilities any motivation, and in fact provides greater disincentives than in the past, to develop an independent industry which will directly compete with the electricity services they provide. With the enactment of AB 1890, utilities are motivated to promote their own relationship with customers, rather than that of their competitors in the private market. In view of these structural conflicts, we disagree with SoCal and Coalition members that utilities are the clear choice for energy efficiency administrators of the future.

"Coalition members and SoCal argue that these disincentives can be addressed by continuing shareholder incentives and some form of sales adjustment mechanism. This argument presumes that we are willing to assume our past regulatory role. Since 1990, we have been willing to experiment with various incentive mechanisms in order to achieve the benefits of avoiding more costly utility supply-side investments. This experimentation has required considerable regulatory oversight, the expenditure of significant public and private resources, and ongoing administrative fine-tuning. As NRDC and others point out, the benefits to this approach have warranted such efforts. Instead of investing solely in supply-side options, utilities have diversified their resource base by encouraging cost-effective energy efficiency, thereby saving ratepayers millions of dollars in avoided costs.

"However, our goals for future energy efficiency activities in California are now quite different. No longer is our primary focus to influence utility decision-makers, as monopoly providers of generation services. Rather, we now seek to transform the market so that individual customers and suppliers in the competitive generation market will be making rational energy service options. In our view, continuation of an administrative structure dependent upon utility shareholder incentives is incompatible with these objectives, particularly when we have the option of vesting

responsibility for these programs in entities that can embrace our articulated mission without conflict." (D.97-02-014, mimeo., pp. 23-25.)

These concerns have not been assuaged by time and experience with interim utility administrators. While we recognize that utilities have made progress towards redesigning programs consistent with our energy efficiency market transformation goals over the past 18 months, this progress has been made under the guidance of CBEE recommendations and with considerable oversight by the Commission. Further regulatory oversight, in the form of performance-based ratemaking for distribution utilities, will be necessary to ensure that incentives to the utility are aligned properly with our market transformation goals. In addition, we note that the interim performance incentives for administrators were not proposed and reviewed as part of a total cost bid by the utility. The absence of competition for administrative services requires that the Commission continue to evaluate the appropriateness of performance incentives for interim utility administrators and, if continued to be found appropriate, the incentive level and performance basis. Our experience has been that such an evaluation requires an enormous commitment of time and resources.

Given our ongoing concerns about the motivation of utilities in a restructured environment, coupled with the continued need for substantial regulatory oversight of utility administrators, we are unwilling to continue utility administration of energy efficiency programs beyond 2001.² Assuming that funding for energy efficiency continues beyond 2001, we will start now to pursue

² As stated herein, we are not recommending a competitive bid process for administration should the Legislature wish to extend funding beyond 2001. However, if a competitive bid process is adopted, we would not exclude utilities from bidding.

options that will result in an organizational structure that meets our goal of creating independent administrative oversight of these programs.³

Our preference is to establish a legislatively mandated nonprofit organization, assuming that funding for energy efficiency is authorized beyond 2001. As suggested by CBEE's comments, the start-up functions of the new administrator should begin no later than January 1, 2001 to ensure the new administrator is ready to take over all functions on January 1, 2002. However, as SDG&E/SoCal Gas comments, the nonprofit (or other new administrator) would not administer or implement energy efficiency programs in 2001. In our view, a nonprofit organization should have at least the following characteristics:

1. A Mission Statement that encompasses the concepts of market transformation goals and cost effective provision of energy efficiency services.
2. Accountability to governmental organizations (e.g., the Commission), such as through budgetary approval requirements and appointment of the Board of Directors.
3. A requirement that a significant number of the Board of Directors have energy efficiency expertise.
4. No ambiguity about IRS nonprofit status.
5. Ability to hire necessary staff and consultants
6. Authorization to direct the use of energy efficiency funds collected in rates (or otherwise appropriated or obtained).

³ AB 1890 establishes funding for energy efficiency programs via the public goods surcharge only through 2001. There is no similar provision for low-income assistance programs.

7. Authority to either directly administer programs or to hire an administrator.

We believe that this nonprofit structure will ensure that energy efficiency is effectively and efficiently administered by an independent entity in the market, consistent with the goals we established in D.97-02-014. A nonprofit structure appears to be the best way to allow the realization of independent administration without the legal and technical barriers we have had to face to date. We note that this concept is not new: Several states have joined together to form the Northwest Energy Efficiency Alliance, a nonprofit organization, to serve a similar function.

We believe there should be a periodic review (e.g., every five years) of the need for a nonprofit, or other, organization to handle the funds and programs, based on whether its goals have been substantially accomplished and the potential future benefits of public expenditures. Our expectation is that, assuming the Legislature does find a need for future public funding, the accomplishment of market transformation objectives will decrease the need for public expenditures over time.

With regard to low-income assistance programs, our concerns over the continuation of utility administration of these programs do not appear as evident, nor as pronounced. The CARE program is designed to provide financial relief to low-income ratepayers, in the form of discounts to the energy bills. Energy efficiency programs implemented within the low-income assistance program are generally designed for equity purposes. Because utility involvement in these programs does not represent as apparent a conflict with their role in the restructured energy market, we do not reject the possibility of continued utility administration beyond 2001. However, we also do not endorse

it. Rather, we leave the question open for further debate as we also explore organizational alternatives.

In the meantime, to reduce the potential conflicts between the utilities' role in the newly competitive energy services industry and their continued role as interim program administrators, we direct utilities to transfer program implementation activities away from themselves and towards other market participants. In particular, implementation activities for energy efficiency and low-income energy efficiency should be outsourced and competitively bid to the broadest possible extent and appropriate for maximizing the achievement of the Commission's objectives. The specific role of utilities in any implementation activity should be addressed in the program planning process for each program year and approved by the Commission in its review of the proposed program and budgets. For those activities where outsourcing is appropriate, there should be an orderly, yet rapid transition from utility implementation to implementation by other market participants between now and the end of 2001. Utility administrators and the Boards should seek broad input from customers on the design of programs and ensure that program offerings are available to underserved communities and customer groups. In addition, utility administrators should continue movement toward uniform, statewide program designs and implementation.

Today, we also officially cancel the RFP processes for energy efficiency and low-income program administrators that have been suspended pending the outcome of this decision. Unless and until we have an established mechanism and organizational structure for transferring funds collected in utility rates to independent administrators, we should not proceed with this bid solicitation or devote additional staff and Board resources to this effort.

We now turn to the question of the future of the Boards. ORA, REECH and other parties criticize the Boards and/or the Board structure. ORA in particular has presented a detailed and thoughtful analysis concluding that the Boards should be disbanded in favor of working groups facilitated by the Commission's Energy Division. This recommendation is predicated upon the premise that if the utilities continue as administrators through 2001, the main function of the Boards disappears. ORA also points out that there can be cost savings by moving to working groups to consider program issues, and lists a number of unresolved issues which it believes lead to conflict, inefficiency, legal problems and administrative conundrums. These include issues of responsibility, accountability, resources, contracting issues, expenditures, dispute resolutions, conflict of interests, role of Board members, and Board standing in Commission proceedings.

ORA makes several good points, although several of its concerns probably would not be alleviated by working groups. However, there are also good reasons to consider retaining the Boards. First, the Boards provide a formal process for experts to provide analysis and advice to the Commission. Some of these experts would not be likely to participate in the looser working group structure; indeed, many of the present Board members did not participate in the previous working groups in these areas. As a related matter, the stable membership of Commission-appointed Board members (who were appointed to represent various interests) can serve to provide more continuity in policy development. Second, the Boards have access to greater resources. While there has been uncertainty on staffing, each Board has retained the services of qualified consultants as well as having access to Commission resources. Third, the Boards do not need to reach consensus to provide a recommendation. While we prefer consensus development, the Commission is often served better by a thoughtful

majority recommendation (after public input) than by no recommendation.

Fourth, the Boards were given the function not only of facilitating independent administration, but also of providing the Commission with programmatic advice.

We must next consider the specific circumstances of each area of responsibility, beyond the development of the RFPs, to determine the appropriate model for the future. The CBEE has considered issues including allocation of funds between individual programs and program categories (e.g., residential, non-residential, new construction), levels and structure of utility incentives, new program development, innovations such as standard performance contracts, cost-effectiveness criteria for measurement and evaluation, and provided detailed recommendations in these and other areas to the Commission. The CBEE has continued to provide these recommendations in the context of our broad policy goal of achieving market transformation. All of these tasks are still required under continued utility administration.

The LIGB has advisory responsibility for CARE and low-income energy efficiency (LIEE). We recognize that many of LIGB's ten CARE and 11 LIEE recommendations were recently adopted for each utility in a Resolution at our January 20, 1999 meeting. Program changes adopted include movement towards the standardization of LIEE measures and programs between utilities and the use of a self-certification eligibility program for CARE. Continuing advice on the CARE and LIEE programs is still needed. An outstanding task is to develop a needs assessment. Draft White Papers on Needs Assessment and Pilot Programs were distributed for consideration at the LIGB January 19-20, 1999 meeting. Pursuant to Resolution E-3583, dated December 17, 1998, the LIGB is required to submit a proposal for a needs assessment and an outreach pilot program to be considered for 1999 by February 26, 1999. Utilities should submit advice letters by March 12, 1999, requesting approval to implement a needs assessment and

any pilot program. These advice letters should address any LIGB recommendations submitted to the Commission on February 26, 1999.

Both Boards have done a commendable job. We believe that it is not appropriate at this time to change direction for receiving input on low-income or energy efficiency programs. For example, there is an urgency in movement toward market transformation of energy efficiency programs due to the uncertainty of funding beyond 2001. There is also a continuing need for advice on improving and standardizing the CARE and LIEE programs. We believe it is necessary to retain the CBEE and LIGB in order to ensure we will receive expert advice on all of the programmatic matters within their scope.

The CBEE cautions that it must have adequate support and technical resources, adequate compensation for board members, and augmentation and/or replacement of board members to continue to assist the commission with program planning and policy oversight. We will work in this docket and through the assigned commissioner and staff to resolve issues brought up by CBEE, ORA and others. Specifically regarding resources, we agree that the Boards cannot function effectively without appropriate resources and we continue to seek to provide such resources. ORA comments that, if the Commission decides to keep the CBEE and/or LIGB, the Commission should direct the Boards to file revised budgets, require Assigned Commissioner approval to hold more than one meeting per month, review Board membership, require Commission staff presence at Board meetings, and resolve outstanding legal and administrative issues. To the extent not otherwise addressed in this decision, we will delegate these tasks to the Assigned Commissioner.

We are interested in exploring ways to resolve the issues raised by ORA and other parties within the Board structure. We will direct the Energy Division to convene a workshop within 60 days of this decision to address these concerns

and issues, and file a workshop report in R.98-07-037 within 120 days from the effective date of this decision. Topics for the workshop may include, but are not limited to: clarifying the role of the Boards; restructuring the Boards; amending the purpose of the Boards; clarifying operating procedures (such as compliance with Bagley-Keene, public participation, protocol for action between meetings). Results and recommendations of audits should also be workshop topics. The workshop report should include specific proposals for amending the Boards' Charter and Bylaws. We will delegate to the Assigned Commissioner the task of implementing interim changes and/or controls for the Boards. The Assigned Commissioner should assess whether any such changes require approval by the full Commission and, if necessary, the Assigned Commissioner will bring such changes before the full Commission.

Between now and the end of 2001, the CBEE and LIGB should focus their efforts on assisting us with the development and review of program designs, budgets, implementation plans and policies. In response to comments on the need for multi-year funding, we agree that it is necessary to avoid program interruptions from year to year. Therefore, we will authorize the continuation of programs and funding adopted for 1999 energy efficiency and low-income assistance activities through December 31, 2001, unless and until subsequent program and budget changes are approved by the Commission. We delegate to the assigned Commissioner the task of considering options for future budget and program change proposals, and issuing a ruling setting forth procedures and schedules that accommodate the availability of resources to address these, as well as other public purpose program priorities. We also invite the CBEE and LIGB to participate in the second phase of this proceeding, described below.

In the future, the CBEE and LIGB will present their proposed annual operating budgets in the form of compliance filings in this proceeding or its

successor. The assigned Commissioner will establish a schedule for these filings, and comments are due 15 days thereafter. The compliance filings should also include the applicable information required in Ordering Paragraph 7 of D.98-02-040. The compliance filings should be filed at the Commission's docket office and should be served on the service list in this, or successor proceeding, and on any other individual or organization that sends a written request to the CBEE and LIGB to be served.

In addition, the CBEE and LIGB may continue to bring policy issues to the Commission's attention for consideration prior to the development of specific program plans. This may include guidelines for program design or funding criteria, recommendations for specific programs or pilots that the CBEE or LIGB would like to see implemented in the coming year, or broad policy recommendations. However, the CBEE or LIGB should present these proposals in a manner that affords the Commission and interested parties sufficient time to evaluate them prior to the submission of utility budget and program change proposals. The assigned Commissioner will establish procedures for considering these proposals, as appropriate, during the period between now and the end of 2001. Such procedures should balance the need for program or policy modifications with the implementation constraints and limitations in resources.

We are aware that the CBEE have raised the issue of modifying the adopted per diem rules so that they can meet their responsibilities. CBEE has discussed some of the options, such as increased per diem for board members and compensation for preparation time, but has not developed a full set of recommendations for the Commission at this time. CBEE and LIGB should include a detailed description of the activities and responsibilities that must be accomplished and estimated time frames for completion, which support a modification of the existing per diem standards. CBEE and LIGB should develop

a full range of per diem options, including the status quo, with specific recommendations for our consideration. CBEE and LIGB should file and serve those recommendations on the service list in this proceeding. Within 20 days from the date of service, interested parties may file comments on the Boards' options and recommendations. We do not set a specific date for the Boards' filings, but encourage the Boards to develop filings as expeditiously as possible.

We will also continue our efforts to obtain necessary resources for the CBEE and LIGB. We are in the process of seeking approval of a budget authorization for Board support and technical staff, pursuant to the terms of the settlement agreement we reached with the California State Employees Association and the Professional Engineers in California Government. In the meantime, pursuant to the Commission's request, CSEA has verbally agreed to extend the transition period for the use of administrative and technical consultants through June 30, 1999. We expect written confirmation will be forthcoming. Accordingly, we will extend the authorization set forth in D.98-07-036 that will enable the CBEE and LIGB, on an interim basis, to "resume the service of the administrative and technical consultants under the previously suspended agreements or retain the services of other consultants pursuant to the terms of the settlement agreements and consistent with the state contracting rules and procedures." (D.98-07-036, mimeo., p. 4.)

To prepare for the post-2001 period, we initiate a second phase of this proceeding that will flesh out proposed alternatives for the administration of energy efficiency and low-income assistance programs, and consider those alternatives in light of policy preferences and implementation feasibility. We may transfer Phase 2 issues to a separate rulemaking proceeding, as needed, in order to comply with the time limit requirements of Senate Bill 960. We intend to develop specific recommendations to the Legislature, including language for

proposed legislation, based on the information developed in this phase. As the CBEE and TURN recommend in comments, we will allow the Boards a role in analyzing future administration options. We invite the CBEE and LIGB to be active participants in this inquiry, with the caveat that their primary responsibility is to advise us on program plans and implementation.

As a threshold issue, interested parties should comment on whether funding for energy efficiency programs should continue beyond 2001, and if so, at what funding levels. Interested parties should also comment on post-2001 administrative structures from two standpoints. First, parties may comment on their policy preferences for administrative structures after 2001. To the extent that parties disagree with our preferred organizational structure for energy efficiency, they should offer arguments in support of other administrative structures that do not grant administrative control to utilities or state agencies on a sole source basis. On the low-income assistance side, parties should comment on any alternatives they choose, including continued utility administration of those programs.

Second, comments should focus specifically on organizational alternatives from an implementation standpoint. In particular, we are looking for consideration of and detailed descriptions of all the steps it would take to implement our proposal for energy efficiency, including the need (and language) for legislation, activities and responsibilities and who would be responsible for accomplishing each related contract procurement requirements, staffing options, the process for establishing nonprofit tax status, what interagency agreements would be needed, etc. Interested parties are encouraged to meet informally to flesh out these details. The CBEE and LIGB may be an appropriate locus of this effort, but parties may choose any forum they wish. For example, it may be appropriate for Energy Division to hold a workshop. If parties prefer a different

energy efficiency structure, they should also provide as much detail as possible. For a low-income structure, we also look to parties to develop a detailed proposal (and attempt to develop a consensus if possible).

Parties are cautioned that we wish to examine only those alternatives for energy efficiency beyond 2001 that do not involve sole source grant of administration to utilities or state agencies. In particular, we encourage parties to comment on the implementation steps associated with our preferred approach to the administration of energy efficiency programs, i.e., the legislatively mandated nonprofit organization subject to Commission oversight. Comments on post-2001 administrative alternatives should be filed and served on all appearances and the state service list in this proceeding within ninety (90) days from the effective date of this order.

The CEC, ORA and TURN comment that the CPUC must provide a legal analysis of the alternatives, including a non-profit, in order to allow parties to fully understand the implications of each alternative. For example, what are the implications for contracting requirements, personnel acquisition, establishment and administration of the funds, etc.? We agree that these are fundamental issues that need to be understood, and that have been much of the source of confusion and uncertainty to date. We will delegate to the Assigned Commissioner the responsibility to use Legal Division or other resources (e.g., the Attorney General's office) to research these issues and provide the necessary information to parties.

By ruling dated December 11, 1998, the Assigned Commissioner requested comments on his proposal to review performance incentives for the interim utility administrators in the Annual Earnings Assessment Proceeding (AEAP). Comments were filed by the CBEE, PG&E, SCE and jointly by SDG&E and SoCal (Joint Respondents).

All parties support the AEAP as a procedural vehicle for considering the earnings claims associated with 1998 and 1999 program years, but recommend bifurcating or phasing the AEAP to allow for an earlier resolution of verification issues associated with these program years. Comments also support using the California DSM Measurement Advisory Committee (CADMAC) and ORA review process currently in place in the AEAP. This process involves earnings verification by ORA and its technical consultants, as well as the review of disputed issues by independent technical reviewers.⁴ However, CBEE recommends considering changes to CADMAC and possibly the formation of a new Market Assessment and Evaluation Advisory Committee. CBEE also recommends that it be given the opportunity to review the utilities' verifications and earnings claims as well as ORA's verification report for 1998 and 1999 programs, and be given the opportunity to submit recommendations on disputed issues.

We have reviewed the comments, and concur with the assigned Commissioner's preference to review all future earnings claims in the AEAP, including those resulting from performance award mechanisms adopted for 1998 and 1999 programs. We intend to utilize the current earnings verification process in reviewing earnings claims in the AEAP. We agree with CBEE that the Boards should have an opportunity to receive and provide comment on the filings in each AEAP. In those comments, CBEE may propose changes to CADMAC, as may any interested party participating in the AEAP. However, we agree with

⁴ In each AEAP, independent technical reviewers are selected by our Energy Division to assist the CADMAC in providing independent technical review on measurement and verification issues to the Commission. The CADMAC is responsible for reviewing utility measurement plans and results and developing potential modifications to the adopted protocols for consideration in each AEAP. See D.93-05-063.

CBEE that changes to CADMAC should only be considered for the program-year 1999 AEAP review cycle, or later. The existing CADMAC should participate in the 1998 program-year review of earnings claims.

In its comments, PG&E argues that any technical consultants that assisted CBEE in the development of performance awards and milestones should not be allowed to evaluate utility earnings claims under those mechanisms. We disagree. We see no conflict in this dual role. In fact, any technical consultant that is already familiar with the performance award mechanisms in place has an advantage in terms of understanding the standards for review prior to evaluating the utility earnings claims.

With regard to phasing or bifurcating the AEAP, we are not opposed to the idea. However, we also recognize that interested parties and the Commission have limited resources to create an expedited schedule, as some comments suggest. Currently, utilities submit filings in March and April that provide ORA and CADMAC with measurement and evaluation information prior to the utility applications, due in early May of each year. (See D. 98-03-063, Table 2.) Nothing prohibits the utilities from augmenting that material to include detailed information concerning earnings claims associated with post-1997 programs, so that ORA, CADMAC and the Boards have a head start in preparing for their reviews.

We will also use the AEAP as the procedural forum for evaluating existing administrator performance award mechanisms, and proposals for modifying these mechanisms, for the 2000 and 2001 program years. Again, nothing prohibits the utilities from developing proposals for these award mechanisms, and eliciting responses from interested parties and the Boards prior to the May due date of their AEAP applications. However, we will leave scheduling decisions regarding any phasing or bifurcation of the proceeding to the Assigned

Commissioner and Administrative Law Judge. At this time, we do not modify the AEAP schedule set forth in D.98-03-063.

In their comments, Joint Respondents state that they are uncertain about the Commission's intent in D.98-06-063, issued June 18, 1998. In this decision, we addressed petitions for modification of Resolution E-3515 filed by PG&E and Residential Energy Service Companies' United Effort. Among other things, these parties requested that the Commission reaffirm its existing policies and approaches to shareholder incentives for low-income programs. Our decision clearly approves this recommendation by stating repeatedly that "existing shareholder incentive mechanisms should continue to apply to 1998 low-income programs for both gas and electric utilities." (D.98-06-063, p. 5; Conclusion of Law 3; Ordering Paragraphs 3, 4, 5 and 6.) We find no basis for Joint Respondents confusion on this point.

In their 1999 AEAP applications, utilities should include proposals for administrator performance award mechanisms for the 2000 and 2001 program years, for both energy efficiency and low-income assistance programs. The utilities should also include in their recommendations on how the costs associated with ORA's and CADMAC's technical consultants should be recovered in the future. The 1999 AEAP applications should be served on all appearances and the state service list in this proceeding, on parties to the 1998 AEAP, as well as on the Boards.

In their comments on the draft decision, ORA states that it does not intend to procure consultants for the review of future earnings claims as it has in the past. ORA argues that this is no longer appropriate because (1) the 1998-2001 programs are not subject to the protocols adopted in D.93-05-063, (2) the earnings mechanism for the 1998-2001 programs is not comparable to the mechanism under review during past AEAPs, and (3) no provision has been made by the

Commission for funding future ORA technical consultants through the public goods surcharge. (ORA comments, pp. 5-6.)

We believe that the Commission's decision making process is best served by the current approach to earnings verification. Currently, the utilities present their proposals for earnings claims, based on the earnings verification efforts of their staff and consultants. ORA evaluates those claims using technical consultants where necessary, and those consultants are paid for by the utilities. In addition, the Commission obtains an independent review via the technical consultants procured by the Energy Division. ORA is not required to hire consultants for its part of the review process, and we have never required that they do. However, we remain committed to affording ORA that opportunity, with funding provided for by the utilities. Therefore, as discussed above, the utility applications should include recommendations on how the costs of such consultants will be recovered in the future.

In response to comments on the need for multi-year funding, we agree that it is necessary to avoid program interruptions from year to year. Therefore, we will authorize the continuation of programs and funding adopted for 1999 energy efficiency and low-income assistance activities through December 31, 2001, unless and until subsequent program and budget changes are approved by the Commission. We delegate to the assigned Commissioner the task of considering options for future budget and program change proposals, and issuing a ruling setting forth procedures and schedules that accommodate the availability of resources to address these, as well as other public purpose program priorities.

Findings of Fact

1. In D.97-09-117, the Commission envisioned that energy efficiency and low-income assistance programs would be administered by independent program administrators, selected via a competitive bid process. LIGB and CBEE were

established, among other things, to develop RFPs articulating policy and programmatic guidelines for independent program administrators, subject to Commission approval. Utilities were authorized to continue program administration in the interim, until the competitive bid process was completed.

2. Major obstacles remain regarding the implementation of the Commission's preferred policy approach articulated in D.97-09-117. In particular, in the fall of 1998 the Governor vetoed Assembly Bill 2461, which would have transferred public purpose surcharge funding for these programs to the state treasury. The Governor also vetoed the Commission's budget for additional staff to assist LIGB and CBEE, consistent with settlement agreements reached with state employee unions.

3. Setting a deadline for utility interim administration that does not allow enough time to explore organizational alternatives, and to select and implement a preferred approach, will create uncertainty and disruption in the market.

4. Shifting administrative responsibilities around inside state government may not fully resolve staffing and procurement issues raised by the state employee unions. Moreover, it may complicate the process and procedures for program and fund administration.

5. Energy efficiency cannot be sustained in California with continued uncertainty over how programs will be administered. A decision to continue with utility administration through 2001 reduces this uncertainty, while affording the Commission sufficient time to explore alternatives and ensures that there will be no hiatus for key programs in 2000.

6. With Commission oversight and input from the Boards, progress towards Commission policy goals can continue to be made under utility interim administration.

7. Continuing with utility administration of energy efficiency programs over the long-term, however, raises significant concerns over (1) the motivation of utilities in a restructured industry and (2) the continued need for substantial regulatory oversight of utility administrators. These concerns have not been assuaged by time and experience with interim utility administrators. However, these concerns do not appear as evident nor as pronounced with regard to low-income assistance programs.

8. Directing interim utility administrators to transfer program implementation activities away from themselves and towards other market participants will reduce the potential conflicts between the utilities' role in the newly competitive energy services industry and their continued role as interim program administrators for energy efficiency and low-income assistance programs.

9. A legislatively mandated nonprofit organization to carry out energy efficiency program administration beyond 2001 appears to be the best way to allow the realization of independent administration without the legal and technical barriers the Commission has faced to date. There are significant legal uncertainties that remain when considering alternative structures for independent administration.

10. The AEAP is a well-established and effective forum for verifying earnings claims associated with utility energy efficiency and low-income assistance programs. It is also the appropriate forum for evaluating proposals for performance incentive mechanisms for the administration of these programs in 2000 and 2001.

11. It is premature to proceed with an RFP for program administrators, or proceed with plans to transition programs to independent administrators, unless

and until there is an established mechanism and organizational structure for transferring funds collected in utility rates to independent administrators.

12. The Boards have contributed much valuable assistance to the Commission in its attempt to move energy efficiency and low income energy assistance programs to independent administration, including development of Requests for Proposals consistent with our direction.

13. There continues to be a need for the Boards due to the complexity of issues for which we have requested advice and on the energy efficiency side, the potentially short time frame to achieve market transformation with public funding.

14. The Boards will continue to be responsible for assisting the Commission with the development and review of program designs and budgets, implementation plans and policies.

15. There continues to be a need to develop a low-income needs assessment.

16. The Boards indicate that modifications to the Commission's adopted per diem rules may be needed to meet responsibilities.

17. There is a need to ensure continuity of energy efficiency and low-income programs through 2001.

Conclusions of Law

1. In view of existing obstacles to independent administration, coupled with our desire to reduce uncertainty and service disruption in the market, it is reasonable to continue with utility administration of energy efficiency and low-income assistance programs through December 31, 2001.

2. Interim utility administration of energy efficiency programs should not continue past December 31, 2001.

3. The Boards should continue to exist. Between now and the end of 2001, the Boards should focus its efforts on assisting the Commission with the

development and review of program designs, budgets, implementation plans and policies. The Boards may provide advice regarding future administrative structures.

4. In implementing their 1999 program plans and developing plans for 2000 and 2001, utility administrators (including Southern California Gas Company) should transfer implementation activities away from themselves and towards other market participants. In particular, implementation activities for energy efficiency and low-income energy efficiency should be outsourced and competitively bid to the broadest possible extent and appropriate for maximizing the achievement of the Commission's objectives. The specific role of utilities in any implementation activity should be addressed in the program planning process for each program year and approved by the Commission in its review of the proposed program and budgets. For those activities where outsourcing is appropriate, there should be an orderly, yet rapid transition from utility implementation to implementation by other market participants between now and the end of 2001. Utility administrators and the Boards should seek broad input from customers on the design of programs and ensure that program offerings are available to under-served communities and customer groups. In addition, utility administrators should continue movement toward uniform, statewide program designs and implementation.

5. As discussed in this decision, all future earnings verifications for administrator performance incentives should take place in the AEAP, including those resulting from incentive mechanisms adopted in 1998 and 1999. The 1999 AEAP should be the procedural forum for evaluating administrator performance incentives for the 2000 and 2001 program years, including the issue of whether these incentives should be continued for interim utility administrators.

6. The RFP for energy efficiency program administrators authorized in D. 98-07-036 should be cancelled.

7. The Commission should authorize the continuation of programs and funding adopted for 1999 activities through December 31, 2001 unless subsequent program and budget changes are adopted by the Commission.

8. As discussed in this decision, the Boards may bring policy issues to the Commission's attention for consideration prior to the development of specific program plans. This may include guidelines for program design or funding criteria, recommendations for specific programs or pilots that the Boards would like to see implemented in the coming year, or broad policy recommendations. As discussed in this decision, the assigned Commissioner should establish procedures for considering these proposals.

9. As discussed in this decision, the Boards should develop a full range of options for Board per diem, including the status quo, with specific recommendations for our consideration. The Boards should include a detailed description of the activities and tasks that they must accomplish and provide estimated time frames for completion of these activities which support a modification of the existing per diem standards.

10. As authorized in D. 98-07-036, the Commission may, on an interim basis, through June 30, 1999, continue the service of the administrative and technical consultants under the previously suspended agreements or retain the services of other consultants pursuant to the terms of the settlement agreements and consistent with the state contracting rules and procedures to assist the Boards.

11. In Phase 2 of this proceeding, the Commission should flesh out proposed alternatives for the administration of energy efficiency and low-income assistance programs, and consider those alternatives in light of our policy preferences and implementation feasibility. The Commission should develop specific

recommendations to the Legislature, including language for proposed Legislation, based on the information developed in this phase.

12. In order to proceed as expeditiously in addressing Phase 2 issues, this order should be effective today.

O R D E R

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, 2001.

2. For the purpose of this decision, "interim utility administrators" and "the utilities" refer to Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, and Southern California Gas Company. The California Board for Energy Efficiency (CBEE) and the Low-Income Governing Board (LIGB) are collectively referred to as "the Boards."

3. Unless otherwise indicated, all applications, comments or other filings referred to in this decision shall be filed at the Commission's Docket Office and served on all appearances and the state service list in this proceeding, or successor proceeding. The filings and any comment, protest or reply, shall also be available in electronic format for posting on the Board web sites, as appropriate.

4. The Request for Proposals (RFP) authorized by Decision (D.) 98-07-036 is cancelled.

5. By March 12, 1999, the utilities shall file advice letters, requesting approval to implement a needs assessment and any pilot programs for program year 1999. These advice letters shall address any recommendations on conducting a needs

assessment or outreach pilot programs submitted by the LIGB to the Commission by February 26, 1999.

6. The Energy Division shall convene a workshop within 60 days of this decision to address concerns and issues with respect to the Boards, with a workshop report to issue to the Assigned Commissioner in R.98-07-037 within 120 days from the effective date of this decision.

7. The Assigned Commissioner is delegated the tasks of implementing interim changes and/or controls for the Boards. The Assigned Commissioner shall assess whether any such changes require approval by the full Commission and, if necessary, the Assigned Commissioner shall bring those changes before the full Commission.

8. For the 2000 and 2001 program years, the Boards shall file separate compliance filings in this or a successor proceeding proposing their annual operating budgets. The compliance filings will be served on all appearances and the state service list in this proceeding (or successor proceeding) and on any other individual or organization that sends a written request to the Boards to be served. The assigned Commissioner shall establish a schedule for these filings and comments are due within 15 days thereafter.

9. We authorize the continuation of programs and funding adopted for 1999 energy efficiency and low-income assistance activities through December 31, 2001 unless subsequent program and budget changes are adopted by the Commission. We delegate to the assigned Commissioner the task of considering options for future budget and program change proposals.

10. In their 1999 Annual Earnings Assessment Proceeding (AEAP) applications, the utilities shall include proposals for administrator performance incentives for both energy efficiency and low-income assistance programs. As discussed in this decision, the AEAP applications shall also include utility

recommendations on how the costs of earnings verification by technical consultants should be recovered. The 1999 AEAP applications shall be served on all appearances and the state service list in this proceeding, on parties to the 1998 AEAP, as well as on the Boards. The AEAP shall be the forum for verifying all earnings claims arising from interim utility administrator performance incentives.

11. The Boards shall develop a full range of options for Board per diem, including the status quo, with specific recommendations for Commission consideration. We direct the Boards to file this information as soon as practicable. Interested parties may file comments on the Board filings within twenty (20) days thereafter.

12. Interested parties shall file and serve Phase 2 comments on post-2001 administrative alternatives within ninety (90) days from the effective date of this order. As discussed in this decision, parties shall not present arguments or analysis in defense of continued utility administration on the energy efficiency side, but only evaluate administrative alternatives that do not grant administration to utilities or state agencies on a sole source basis. In their comments, parties are directed to specifically address the following questions and issues:

- Should funding for energy efficiency programs be continued beyond 2001, why or why not? If so, what factors or criteria should be considered in setting the funding levels? What funding levels do you recommend, based on those factors or criteria (e.g., percentage of 1998 levels, absolute dollar numbers, etc.)?
- What administrative structure do you recommend for post-2001 energy efficiency and low-income assistance programs, and why? Comment specifically on whether you support the preferred organizational structure for energy efficiency

discussed in this decision, i.e., a legislatively-mandated nonprofit organization.

- If you disagree with the creation of a legislatively-mandated nonprofit organization for the energy efficiency program and/or the low-income assistance program administration, discuss in detail why your recommended administrative structure is superior from either a policy or implementation standpoint.
- Discuss in detail the specific implementation steps associated with your recommended administrative structure, including the need (and language) for legislation, contract procurement requirements (e.g., do the state procurement rules apply?), staffing options, the process for establishing nonprofit tax status, if applicable, what interagency agreements would be needed, etc. If your recommended administrative structure differs from the preferred structure proposed in this decision, compare and contrast the implementation steps between the two.

This order is effective today.

Dated March 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I will file a concurring opinion.

/s/ RICHARD A. BILAS
Commissioner

ATTACHMENT 1

Page 1

**List of Parties Providing Written and/or Oral
Comments in Response to Assigned Commissioner's Ruling**

ADM Associates
Amana Refrigeration, Inc.*
Bay Area Poverty Resource Council
California Board for Energy Efficiency
California Department of Community Services and Development,
and members of its network
Community-based organizations
California Energy Commission
City of San Jose
Comfort Master of Sacramento*
East Los Angeles Community Union, The Maravilla Foundation and the
Association of Southern California Environmental and Energy Providers
Electric & Gas Industries Association*
Environmental Defense Fund*
Frigidaire Company*
Global Energy Partners LLC
Greenlining Institute
ICF Kaiser Consulting Group
Insulation Contractors Association
Latino Issues Forum
Lights of America*
Low Income Governing Board
Marketplace Coalition: Residential Service Companies United Efforts,
Insulation Contractors' Association of California and SESCO, Inc.
Maytag Company*
Marina Mechanical*
National Association of Energy Service Companies*
Natural Resources Defense Council*
Office of Ratepayer Advocates
Onsite Energy Corporation*
Pacific Gas and Electric Company*
Proven Alternatives*
Residential Energy Efficiency Clearing House, Inc.
Richard Heath and Associates, Inc.
San Diego Gas & Electric Company*

ATTACHMENT 1

Page 2

Sacramento Municipal Utility District
Sempra Energy Solutions*
Schiller Associates*
Sierra Club
Southern California Edison Company*
Southern California Gas Company*
Southern California Tribal Chairmen's Association
The Utility Reform Network
Western Appliance*
Whirlpool Corporation*

* These organizations filed a response as "Joint Parties."

(END OF ATTACHMENT 1)

R.98-07-037

D.99-03-056

President Richard A. Bilas, Concurring:

I would like to express my further thoughts on one item in this decision. The decision, on page 16, calls for the utilities to "transfer program implementation activities away from themselves and toward other market participants. In particular, implementation activities for energy efficiency and low-income energy efficiency should be outsourced and competitively bid to the broadest extent possible and appropriate for maximizing the achievement of the Commission's objectives." Generally speaking, I support this language. However, I want to clarify my thinking on what this means for those low-income energy efficiency functions that are already implemented by entities other than the utilities.

There is already in place a decision by the Commission (Resolution G-3245) which restricts Southern California Gas Company from bidding out its low-income energy efficiency programs for 1999. Nothing in this decision changes that. However, Resolution E-3586 and this decision do require the utilities to present their plans for bidding out implementation activities in their program planning filings for 2000. At that time, the Commission will consider utility bidding proposals with two principles in mind, as implied by this decision. First, we will consider whether the program should be provided by the utility or another entity, with the thought in mind that utilities are sometimes not the best positioned to provide these services in particular communities. Second, we will look at "appropriateness." It may not be appropriate to bid out programs if the utility is

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providing the programs effectively and at lower cost. Further, if the programs are already provided by an entity other than the utility, (such as through a pilot program) it may not be necessary to seek further competitive bids if the program is being run effectively and at the lowest cost.

/s/ Richard A. Bilas

Richard A. Bilas, Ph.D.

President

San Francisco, California

March 18, 1999