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Decision 99-08-021 August 5, 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)

TABLE OF CONTENTS

Title	Page
INTERIM OPINION: PROGRAM YEAR 2000 SELECTED POLICY, PROGRAM AND FUNDING MODIFICATIONS	2
1. Summary	2
2. Background	2
3. Modifications to Policy Rules	6
3.1. Position of the Parties	7
3.2. Discussion	8
4. Use of Carryover Funds	10
4.1. Positions of the Parties	11
4.2. Discussion	11
5. Performance Incentive Design Recommendations	13
5.1. Position of the Parties	14
5.2. Discussion	15
6. Selected Program-Specific Refinements and Budget Revisions	16
6.1. Positions of the Parties	18
6.2. Discussion	21
7. Other PY 2000/2001 Planning Issues	25
8. Utility Compliance Filings	26
9. Comments on Draft Decision	26
Findings of Fact	28
Conclusions of Law	31
INTERIM ORDER	33
Attachment 1	
Attachment 2	

INTERIM OPINION: PROGRAM YEAR 2000 SELECTED POLICY, PROGRAM AND FUNDING MODIFICATIONS

1. Summary[1]

By today's decision, we adopt selected policy, program and funding modifications to energy efficiency programs funded through the public goods charge and gas demand-side management funds, consistent with the recommendations of the California Board For Energy Efficiency (CBEE). Our affiliate rules, most recently adopted in Decision (D.) 98-08-035, will continue to govern utility-affiliate relationships in the energy efficiency arena, as well as others.

Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE), collectively referred to as "the utilities," are directed to file compliance applications for Program Year (PY) 2000 and 2001 consistent with today's decision. These applications should be filed within 30 days of the effective date of this decision and should be served on the service list in this proceeding.

2. Background

In D.99-03-056, the Commission authorized the continuation of programs and funding adopted for 1999 energy efficiency activities through December 31, 2001:

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[1] Attachment 1 explains each acronym or other abbreviation that appears in this decision.

> "....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 priorities." (D.99-03-056, mimeo., p. 20.)

In addition, the Commission directed that utility administrators, in implementing their 1999 program plans and developing plans for 2000 and 2001:

> "...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....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." (D. 99-03-056, Conclusion of Law 4.)

On March 10, 1999, the Assigned Commissioner and Administrative Law Judge (ALJ) held a workshop on how to proceed with PY 2000 and PY 2001 planning for both energy efficiency and low-income assistance programs. In addition to offering oral comment at the workshop, interested parties were also invited to file comments by March 19, 1999 indicating their preferred approach.

In his ruling dated March 26, 1999, the Assigned Commissioner adopted the approach described below.[2]

For energy efficiency, CBEE was directed to initiate a public input process. This process would assist CBEE in developing recommendations to the Commission for selective changes to the current policy rules, guidelines on programs, budgets and program administrative issues. Interested parties were invited to comment on CBEE's recommendations. Any changes adopted by the Commission would apply to energy efficiency activities through December 31, 2001.

The Assigned Commissioner clarified his expectations as follows:

> "...in our view 'selected' implies 'limited in number' and therefore CBEE and interested parties should focus on only the highest priority modifications for the Commission's consideration. We believe that the following categories, among possible others, represent the type of modifications appropriate for Commission consideration: (1) changes needed to clarify aspects of our policy rules that were not addressed during the PY 1999 program planning process. (2) program initiatives that may have been neglected because of the compressed time schedule for PY 1999 program planning, or (3) program design modifications that are needed to 'fix' a problem already observed in their implementation. **We are not interested in relitigating issues that were debated and addressed by the Commission during the PY 1999 advice letter planning process.** We are, however, interested in changes that may be needed in 2000 and 2001 to further the Commission's objectives for outsourcing and competitive bidding of implementation activities..." (Assigned Commissioner's Ruling, March 26, 1999, pp. 3-4; emphasis added.)

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[2] Since today's order addresses energy efficiency programs and issues, we do not describe the procedural approach adopted for low-income assistance programs.

On April 1, 1999, the Commission issued Resolution (Res.) E-3592. Among other things, Res. E-3592 approved CBEE's recommendations regarding PY 1999 energy efficiency policy rules, utility performance incentives, market assessment and evaluation plans, budgets and program area descriptions, with certain modifications. Consistent with D.99-03-056, the Commission directed the utilities to incorporate the following eight-program design and implementation principles into their programs:

a. Continue movement toward uniform statewide program designs and implementation;
b. Continue transfer of program implementation away from administrators;
c. Rely on competitive processes when outsourcing activities;
d. Continue third party initiatives, defer a second general solicitation and use targeted solicitations;
e. Coordinate program activities with regional and national entities, where appropriate;
f. Support commercialization of emerging technologies;
g. Seek broad input from customers on the design of programs; and
h. Ensure program offerings are available to under-served communities and customer groups.

CBEE sponsored a public workshop on April 6, 1999 to address the PY 2000/2001 planning issues. In addition, CBEE heard comments on PY 2000/2001 planning at each meeting following the issuance of the Assigned Commissioner's Ruling (including meetings held on April 6, 7, 29, 30 and May 5). CBEE filed its recommendations on May 12, 1999.

On June 7, 1999 the following parties filed comments: California Energy Commission (CEC), National Association of Energy Service Companies (NAESCO), Natural Resources Defense Council (NRDC), Office of Ratepayer Advocates (ORA), PG&E, SCE, SDG&E and SoCal (jointly), and the University of California (UC).

CBEE deliberated on its reply comments at its June 10, 1999 meeting and public comment was heard. CBEE filed its reply comments on June 14, 1999.[3]

The purpose of this decision is to address the selective changes recommended by CBEE and consider the comments and recommendations of interested parties. Following the issuance of this order, the utilities will file compliance applications for budget and program changes consistent with today's decision. These changes will apply to energy efficiency programs implemented through December 31, 2001.

In the following sections, we describe CBEE's recommendations, followed by a summary of parties' positions and our final determinations. In their comments, parties support many of CBEE's recommendations. For the sake of brevity, we describe below only the areas of disagreement and additional recommendations not presented by CBEE.

3. Modifications to Policy Rules

CBEE recommends that the Commission adopt limited modifications to the policy rules that, in a consolidated fashion: (1) implement the specific changes, additions, and modifications ordered in Res. E-3592; (2) implement limited additional changes consistent with continuing utility administration of energy efficiency funds pursuant to D.99-03-056, also ordered in Res. E-3592; and (3) replace policy rule IV-7 with a new policy rule that implements the Commission's direction in Res. E-3592 on tying and conditioning. Tying and

[3] On June 14, 1999, PG&E filed a motion to accept a response to other parties' comments on CBEE's recommendations. PG&E's motion is denied. The assigned Commissioner set forth the procedure for comments and PG&E did not obtain permission from the assigned ALJ before filing. Moreover, allowing PG&E's filing would disadvantage other parties who would not have a similar opportunity to file additional comments.

conditioning refers to the use of public goods funds to restrict a customer's ability to choose providers of energy, e.g., by tying the receipt of energy efficiency services to the provision of electric energy service.

3.1. Position of the Parties

ORA objects to CBEE's proposed policy rule modifications in several areas. In particular, ORA argues that it would be a serious mistake to delete the policy rule (Policy Rule IV-7) that provides guidance for Standard Performance Contracting (SPC), as CBEE proposes. With SPC, the utility offers fixed prices to customers or energy service companies for measurable energy savings achieved by the installation of specific energy efficiency projects. A standard contract specifies the operating rules of this market intervention strategy, including eligible projects. Payment is subject to performance measurement, as detailed in measurement protocols attached to the standard contract. The existing Policy Rule IV-7 specifies SPC design features. (See Attachment 2.)

ORA also argues that CBEE's recommendations on policy rule modifications do not address the continued controversy over the Public Purpose Test of cost-effectiveness. ORA recommends that the policy rules simply replace that test with reference to the more familiar Societal Test. In addition, ORA recommends that the Commission delete all references in the policy rules to the CBEE and its technical consultants, retain the reference to utilities as interim program administrators, delete the section of the policy rules intended for independent program administrators, and describe the role of CBEE in the governance of energy efficiency activities.

PG&E recommends changes to CBEE's proposed policy rule modifications that would, in its view, more accurately reflect the role of CBEE and make other needed clarifications. SDG&E/SoCal argues that the existing affiliate rules authorized by the Commission are sufficient to address the tying issue. They believe that CBEE's new language is duplicative and potentially confusing.

3.2. Discussion

On the issue of policy rule changes affecting the role of the CBEE, we note that the Commission will be considering this issue in a separate forum. Ordering Paragraph 6 of D.99-03-056 directed the Energy Division to convene a workshop to address concerns and issues with respect to the role of the CBEE, with a workshop report to be issued to the Assigned Commissioner in this proceeding. In Res. E-3592, we stated that "CBEE should defer major policy rule modifications until completion of the workshop concerning the role of the board." (Finding of Fact 26.) Therefore, we find that ORA's and PG&E's proposed policy rule modifications regarding CBEE's role to be premature. We will address recommendations regarding policy rule changes to the role or functions of CBEE at a later date, upon completion of the workshop process.

With regard to ORA's objection to the policy rule language regarding the Public Purpose Test of cost-effectiveness, we believe that ORA is attempting to relitigate an issue that was addressed and resolved in prior Commission orders. In D.98-07-036, we adopted the policy rules, including the Public Purpose Test of cost-effectiveness. In Res. E-3592, we reiterated that the Public Purpose Test is to be used as the standard of cost-effectiveness for public goods charge efficiency funds. (See Res. E-3592, pp. 28-29; Finding of Fact 44; Ordering Paragraph 5.) As stated on page 4 of the Assigned Commissioner's ruling, dated March 26, 1999, "we are not interested in relitigating issues that were debated and addressed by the Commission during the PY 1999 advice letter planning process." Therefore, we do not find merit to ORA's objections in this proceeding.

Also in response to ORA's concerns, we have reviewed the existing Rule IV-7 addressing the SPC program, which CBEE recommends be deleted and replaced with language regarding tying and conditioning. We note that this level of detail regarding program design criteria is customarily addressed in program filings and decisions approving the programs themselves. We agree with CBEE that it is no longer appropriate to maintain a policy rule that is limited in its application to the design of a single intervention strategy (SPC). We believe that the program planning process is the appropriate forum for considering specific design issues for all programs and strategies.

ORA argues that continued designation of the utilities as "interim" administrators appropriately captures the Commission's position that non-utilities will be administrators at some point in the future. We see no hidden meaning in the removal of the "interim" designation. Rather, in our view it simply denotes the reality that utilities will be the program administrators of energy efficiency programs through 2001. We have clearly stated our position that we will only consider post-2001 administrative alternatives that "do not grant administration to utilities or state agencies on a sole source basis." (D.99-03-056, Ordering Paragraph 12.) Finally, with respect to ORA's recommendation to delete the section of the policy rules intended for independent program administrators, we believe that CBEE's modifications have accomplished this objective. (See Attachment 2.)

In response to SDG&E/SoCal and PG&E's comments, we have also considered Rule IX-6, which addresses the temporary assignments of utility employees to affiliates. As these parties point out, the Commission's affiliate rules (most recently adopted in D.98-08-035, Appendix B, Rule V.G.2) already require utilities to track and report employee movements between a utility and its affiliates. In the filings leading to Res. E-3592, the language now incorporated into CBEE's proposed Rule IX-6 was originally intended for independent administrators which had no applicable affiliate rules. We agree with SDG&E/SoCal and PG&E that the easiest, simplest and least confusing way to address affiliate rules is to continue to have the Commission's adopted affiliate rules as the basis for utility-affiliate relationships in the energy efficiency arena, as well as others.

In sum, we find that CBEE's proposed policy rule modifications appropriately respond to the directions given in Res. E-3592 and the Assigned Commissioner's ruling. We adopt them, along with PG&E's recommendations for corrections to certain typographic errors, with one exception. As discussed above, we do not adopted proposed Rule IX-6. Our adopted affiliate rules will continue to serve as the basis for utility-affiliate relationships, including those that arise in the energy efficiency arena. Attachment 2 presents our adopted policy rules. As CBEE and others note, however, these rules may need to be further modified pending the outcome of the workshop process addressing the roles and responsibilities of CBEE.

4. Use of Carryover Funds

Based on the best information available at this time, CBEE estimates that as much as $57 million in carryover funds may be available to augment either PY 1999 or PY 2000/2001 funding. This includes: (1) $7.5 million in new administrator start-up funds that the Commission directed be reallocated to energy efficiency programs. (Res. E-3592, Ordering Paragraph 6); (2) $8.044 million in unallocated funds resulting from the adopted PY 1999 budget being less than funding levels (*Id.*, Attachment C), and (3) unexpended and uncommitted funds from PY 1998. (See CBEE Reply Comments, p. 9.)

CBEE recommends that none of these funds be spent on programs in PY 1999 and that utility administrators carry over these funds to PY 2000/2001. In the case of gas demand-side management funds, CBEE believes that additional information is required to determine whether it is appropriate to return unexpended gas funds to gas ratepayers, versus carrying over the funds to PY 2000/2001.

4.1. Positions of the Parties

NRDC believes that CBEE's recommendation regarding the allocation of carryover funds is inappropriate for consideration at this time. Instead, NRDC recommends that the Commission wait until the utilities file their advice letters on unexpended funds in September, per Res. E-3592.[4] PG&E also urges the Commission not to preclude the opportunity to file for changes in PY 1999 program funding authorization. PG&E would like authorization to request additions to the 1999 budget through the advice letter process, should worthy activities arise later in the year.

4.2. Discussion

In response to NRDC's comments, CBEE points out that the advice letters which program administrators were directed to file in September, per Res. E-3592, are the same documents that will serve as the compliance applications on program planning for PY 2000/2001.[5] Therefore, it is appropriate that we give some guidance regarding carryovers at this juncture.

In considering CBEE's recommendation, we observe that utilities already have considerable funding flexibility to respond to experience gained in implementing the programs. During the 1999 program planning process, CBEE

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[4] Res. E-3592, Ordering Paragraph 14: "The utilities shall file by advice letter a September 1999 update of PY98 expenses and PY99 estimates."

[5] See the assigned ALJ's ruling dated April 23, 1999.

recommended program budget ranges, and Res. E-3578 and Res. E-3592 adopted them. These budget ranges, which vary by program, allow the utilities to adjust program spending during the year except, appropriately, between the three overall program areas (residential, non-residential and new construction). Therefore, the lack of additional funding in PY 1999 via carryovers does not unduly restrict the utilities from accommodating needs for additional spending on program efforts during the remaining months of PY 1999.

We are also persuaded by CBEE's filing that the PY 1999 programs are already funded at appropriate levels. In fact, practically speaking, it may be difficult for the utility administrators to spend all authorized funds in PY 1999. Our approval of Res. E-3592 on April 1, 1999 means that full roll-out of PY 1999 activities is already on an accelerated schedule. Currently, the utilities are authorized to spend in the remaining months of PY 1999 more than they were able to spend in all 12 months of 1998. The currently authorized amounts are similar between PY 1998 and PY 1999, but the amount of unspent and uncommitted funds from PY 1998 is significant.

We also share CBEE's concerns that incentives to spend even more funds in PY 1999 may lead to hasty or imprudent decisions, associated more with expending funds (and earning the performance incentives tied to spending) than effectively meeting the Commission's energy efficiency and market transformation objectives. In addition, given the newness of the programs, it is appropriate to ramp up program activities in an orderly fashion. We believe that this is best achieved by allocating carryovers to PY 2000 and PY 2001 programs, rather than adding amounts to PY 1999.

Finally, in response to CBEE's and PG&E's comments regarding accounting issues, we agree that the utilities should track, account and report on program activities on a program year basis,[6] rather than the accounting approach prescribed in Res. E-3581 and Res. E-3589. In those resolutions, we stated that all PY 1998 program funds must be fully encumbered before any PY 1999 program funds may be expended. In reviewing the comments, we now appreciate that this approach creates additional accounting requirements without substantively making any difference from a carryover funding perspective. Since dollars are fungible, the dollars available for PY 2000/2001 will remain the same either way. Therefore, we clarify in today's order that program accounting and reporting should return to the program year basis we have previously implemented.

5. Performance Incentive Design Recommendations

CBEE recommends that the Commission authorize performance incentives for PY 2000 and 2001 that shift the priority or weights among performance incentive design elements. In CBEE's view, the PY 1999 performance incentives appropriately emphasized rapid and effective roll-out of new programs and effective program administration, but did not place sufficient emphasis on achieving market changes and effects. For PY 2000 and PY 2001, CBEE argues that incentives for new program roll-out should not be necessary, although incentives for effective program administration will remain relevant. CBEE recommends that there should be increased emphasis on incentives for achieving the Commission's market transformation objectives (i.e., market changes and

[6] CBEE uses the term "calendar year basis" while PG&E prefers the term "program year basis." We agree with PG&E that both terms are intended to mean the same thing, i.e., accounting that enables tracking and aggregating of all costs (present and future) that are associated with a specific program year funding.

effects. In addition, CBEE recommends that the existing four milestone categories be simplified into two categories.

CBEE also recommends that the Commission consider adopting a competitive performance award for superior performance among utility administrators. A certain percentage of each administrator's maximum incentive would be placed into a common pool. At the end of each program year, administrators would each submit a description of accomplishments demonstrating their contribution to the achievement of the Commission's policy objectives as an application for the award. The CBEE would review these applications and make recommendations to the Commission for specific awards.

5.1. Position of the Parties

NRDC, ORA, PG&E, SCE and SDG&E/SoCal contend that CBEE's recommended changes to the performance incentive mechanism are not appropriate for this filing. They argue that the Commission has already specified that all reviews, modifications and adoption of performance awards and award mechanisms should be done in other forums, e.g., the Annual Earnings Assessment Proceeding. In particular, ORA argues that the performance award mechanism for 1998 and 1999 should not be modified until the Commission has the opportunity to review and verify the results for the initial years of the milestone-based performance awards.

PG&E, SCE and SDG&E/SoCal take issue with CBEE's recommendation to eliminate incentives for the roll-out of new programs. In SCE's view, this would dramatically change the structural framework to the incentive mechanism adopted by the Commission in Res. E-3592, which SCE contends was extended through 2000. SDG&E/SoCal and PG&E suggest that the need to eliminate the program roll-out category cannot be determined until the PY 2000 planning process is closer to completion.

Parties filing comments on CBEE's incentive recommendations are particularly concerned with the proposed "competitive performance award" on substantive grounds. In NRDC's view, this approach would provide CBEE the opportunity to divide among the utilities upwards of $10 million without any formal guidelines or performance objectives. ORA is also strongly opposed to delegating to the CBEE such a vast amount of discretion in ultimate distribution of the awards. PG&E argues that this approach would actually undermine the Commission's goal of consistent statewide programs by placing utilities in direct competition with each other.

5.2. Discussion

In response to CBEE's request for clarification of Res. E-3592, the assigned ALJ clarified the scope of the PY 2000 program planning process with respect to shareholder incentives. In particular, the assigned ALJ adopted CBEE's recommendation that "program specific adjustments in award mechanisms..., such as milestones and award levels for specific milestones be addressed in the program planning process." (April 23, 1999 ALJ Ruling, p. 2.) Therefore, we find that recommendations regarding priorities or weights among performance incentive design elements is within the scope of the selective changes that may be considered at this time.

We note that, in response to comments, CBEE has withdrawn its recommendation to simplify the four milestone categories into two categories. CBEE has also requested that the Commission take no action at this time regarding its proposed competitive performance award.

However, policy guidance is needed for the upcoming compliance applications regarding the priority or weights among performance incentive design elements. We agree with CBEE that increased emphasis should be placed on market transformation (as reflected in achievement of market changes and effects) as we enter the PY 2000 and PY 2001 program planning process. In addition, effective and efficient program administration should continue to be emphasized. While roll-out milestones should not be eliminated entirely, these types of milestones should diminish in emphasis relative to the achievement of market changes and effects. Otherwise, our incentive structure may inappropriately encourage the introduction of new programs or accelerated spending rather than steady progress towards market transformation. As CBEE and others recognize, effective performance incentives for market transformation may sometimes require a two-year performance program.

In their compliance filings, the utilities should discuss how their recommendations regarding performance incentives comply with this direction and address the problems with the current milestones described by CBEE.

6. Selected Program-Specific Refinements and Budget Revisions

CBEE recommends that the Commission direct the utilities to sharpen implementation of overarching program recommendations adopted in Res. E-3592 and D.99-03-056. In particular, CBEE recommends that the utilities monitor, modify and supplement, as appropriate, the non-residential SPC intervention strategy. CBEE recommends that the utilities consider the following modifications:

a. Limitations on participation for market segments that are or have now been sufficiently transformed (e.g., some large customer segments);

b. Increased targeting to smaller non-residential customers that may face different combinations of market barriers to cost-effective energy efficiency investments and practices than those addressed by current SPC designs;

c. Limitations on participation for customers that have participated extensively previously; and

d. Additional changes in pricing (such as reduction in incentive levels or elimination of a particular measure) or other design features in response to the diminishing (or increasing) need for ratepayer funding to support market transformation for specific technologies.

In addition, CBEE believes that an increased emphasis on other program elements and intervention strategies may be needed to capture market opportunities and segments for which the SPC strategy is not well-suited. Examples of these opportunities and segments include those targeted by the Commercial Remodeling and Renovation, Heating Ventilation and Air-Conditioning Turnover, and Motor Turnover programs.

CBEE also recommends that movement towards statewide consistency in programs be balanced with innovative or local approaches that will increase the effectiveness of programs. To further this policy objective, CBEE recommends that the utilities consider program offerings that:

a. Are available to under-served communities and customer groups,

b. Can take advantage of the unique expertise, relationships with customers, and ability to coordinate among related activities offered by individual or groups of local governments, or

c. Can explore promising concepts considered in the design of the statewide residential contractor programs, but which ultimately could not be implemented on a statewide basis (e.g., innovative approaches to duct sealing, contractor certification, and building performance metrics).

CBEE believes that targeted solicitations to third parties may be a particularly effective way to balance movement toward statewide consistency because they also support other overarching program design and implementation principles. These include the Commission's stated objectives of (1) continuing the transfer of program implementation away from program administrators and (2) relying on competitive processes in outsourcing program activities. (D.99-03-056, Conclusion of Law 4.)

CBEE recommends that the utilities propose revised program budget ranges, funding caps and funding floors necessary to implement CBEE's program-specific recommendations, described above. Revisions should be considered, based on the previously-identified considerations, in programs, program elements, and intervention strategies that address the following:

a. general and targeted third party solicitations (increases in funding);
b. activities targeted to smaller non-residential customers (increases in funding);
c. activities that benefit under-served communities and customer groups, such as renters (increases in funding);
d. SPC intervention strategies targeted to large customers (decreases in funding or decrease in the funding cap);
e. the residential contractor intervention strategy (potentially, increases in funding, if the program is performing well); and
f. the Commercial Remodeling and Renovation program (increases in funding).

6.1. Positions of the Parties

NAESCO contends that most of CBEE's recommendations in this area are well beyond the scope of the Assigned Commissioner's ruling, and therefore inappropriate. In particular, NAESCO believes that CBEE is effectively asking the Commission for permission to redesign the array of nonresidential programs offered in PY 2000 and PY 2001 despite the Commission's directive to offer PY 1999 programs with only minor modifications. Moreover, NAESCO asserts that it is premature to take any actions based on preliminary findings on the results of the SPC program. Instead, NAESCO recommends that the Commission do what it planned and give the SPC program more time to be implemented.

SDG&E/SoCal are concerned about language that limits participation in the SPC program for market segments "that are or have been sufficiently transformed" and for "customers that have participated extensively previously." They believe that these limitations are vague and impossible to implement. SDG&E/SoCal argue that current limitations on customer participation in the non-residential SPC programs are sufficient to manage the program funds and see no reason to develop a new criteria based on a customer's past participation.

NRDC believes that any changes in funding for specific activities should await more information on how funds will be spent, i.e., until the Commission and interested parties have had an opportunity to review the utilities' PY2000/2001 compliance applications. PG&E is concerned that CBEE's intent is to limit any program changes (and associated funding modifications) to those program areas discussed in CBEE's recommendations. PG&E believes that this is too limiting, and that the PY 2000/2001 compliance applications should cover all programs. SCE supports CBEE's recommendations at this time, but notes that market reaction to the 1999 program offerings and additional public input may render some of them inappropriate by the time SCE files its PY 2000/2001 compliance application.

ORA objects to CBEE's recommendations on program-specific modifications because CBEE uses, in ORA's view, untested program categories. ORA believes that the program categories and associated definitions must be revisited before addressing any program modifications.

UC and CEC believe that CBEE's proposal inappropriately omits adequate consideration of "emerging energy efficiency technologies", i.e., measures that are not yet commercial (but have successfully completed a pilot phase) or have very low penetration rates at this time. In their view, the utilities' energy efficiency activities during the 1999-2001 time frame should focus more on these technologies as an area that the Commission, CBEE, the utilities, the CEC and other interested stakeholders should be more actively promoting.

In particular, CEC and UC argue that stronger ties should be developed between the research, development and demonstration (RD&D) activities being funded by the CEC's Public Interest Energy Research (PIER) Program and the market transformation programs being funded by the Commission's energy efficiency public goods charge program. UC specifically recommends that $2 million of 1999 carryover funds be used to support emerging technologies by: (1) supporting at least one workshop on emerging technologies, (2) funding demonstrations of emerging technologies that were not implemented in PY 1999 for lack of funding, and (3) developing a strategic plan on funding emerging technologies for PY 2000 and PY 2001. UC recommends that the Commission use the resources of the California Institute for Energy Efficiency (CIEE) to assist CBEE in developing a more integrated, systematic and strategic approach to emerging technologies.[7]

CEC also recommends that the Commission increase PY 2000/2001 funding for the program element that supports codes and standards. This funding would go towards efforts to increase standards stringency, incorporate new technologies, provide training opportunities for builders and the building trades, and develop new quality construction and building commissioning infrastructures. In CEC's view, the PY 1999 efforts suffered from several problems, including under-funding and confusion about the scope of the program element related to local government initiatives. CEC recommends that the utilities be directed to allocate the full amount of 1999 funding to efforts in

[7] CIEE is funded by California's electric and gas utilities, the CEC and other sponsors. Technical and policy guidance is provided by a research board consisting of executive-level representatives of these organizations.

this area, budget an appropriate level for the 2000/2001 program element, and coordinate with the CEC and other utilities to ensure effective collaboration of efforts.

Finally, CEC recommends that the utilities be directed to develop a program tailored to the unique needs of industrial customers. CEC believes that the "one-size-fits-all" nature of the SPC program may not encourage energy service companies to tailor their services to the unique needs of the industrial sector, particularly regarding to the small and medium-sized facilities.

6.2. Discussion

Based on the response to CBEE's recommendations in this area, we believe that CBEE's intent may have been misconstrued. CBEE is making two very simple requests with regard to selected program-specific refinements and budget revisions. First, CBEE recommends that, as an overall principle, we direct utilities to "sharpen implementation of overarching program recommendations adopted in Res. E-3592 and D.99-03-056, including (a) to monitor, modify, and supplement, as appropriate, the non-residential SPC intervention strategy; and (b) to ensure that pursuit of statewide consistency is balanced with innovative or local approaches that will increase the effectiveness of programs."

Second, CBEE recommends that utilities *consider* a set of specific modifications to existing non-residential SPC design, and *consider* that increased emphasis on other program elements and intervention strategies may be needed to capture market opportunities and segments for which the SPC strategy is not well-suited. The corollary to these recommendations is CBEE's proposal that the utilities *consider* making budget modifications to reflect these changes as the PY 2000 and PY 2001 planning process unfolds.

We find nothing inappropriate about CBEE's recommendations, and believe that they comply fully with the direction articulated in the Assigned

Commissioner's ruling. NAESCO misinterprets our direction on changes appropriate for CBEE's recommendations. The March 26, 1999 Assigned Commissioner's ruling never uses the term "minor" to describe changes appropriate for CBEE recommendations. Instead, the ruling directs CBEE to develop "selective" changes of the highest priority, which was the standard CBEE used to develop its recommendations.

As discussed in D.99-03-056, our emphasis in program development has shifted to market transformation. This process requires that we work within markets with a toolbox of strategies, including SPC, and continually evaluate whether or not our goals are being met. The SPC program is currently the single largest intervention strategy funded via public goods charge energy efficiency funds. Yet, the SPC remains a relatively untested approach for transforming markets, and preliminary reports on the program indicate that ongoing monitoring and fine-tuning is warranted. As CBEE points out, certain segments of customers, e.g., smaller non-residential customers, may not be successfully reached with the current SPC design or strategy in general. It makes sense to us to take the best information available at this time into consideration in developing the PY 2000/2001 programs and to modify program design or place emphasis on alternative intervention strategies, as appropriate. This does not necessarily require a radical shift in current approaches, but rather, should facilitate targeted adjustments in program planning to better serve all market segments and market opportunities.

We direct the utilities to address the issues regarding non-residential SPC that CBEE raises, and to consider the types of modifications that CBEE proposes, among others. While we agree with NAESCO that programs should be given time to be implemented, obvious problems should be corrected without further delay. SDG&E/SoCal's concerns about the language regarding participation limits should also be addressed by the utilities, CBEE, and interested parties during the PY 2000/2001 planning process.

We also endorse CBEE's recommendation that movement towards statewide consistency in programs be balanced with innovative or local approaches that will increase the effectiveness of the programs. It is important to recognize that consistency can sometimes lead to "least-common-denominator" programs on which the utilities can agree. This may be counter-productive to fostering innovative or local program strategies. CBEE presents some examples that utilities should consider in creating this balance, such as targeted solicitations to third parties.

Nothing in CBEE's recommendations limits the utilities and other parties in their consideration and discussion of additional program changes during the PY 2000/2001 planning process. However, we reiterate the guidance presented in the Assigned Commissioner's ruling. Only a limited number of selected changes to PY 1999 programs and funding, i.e., those of the highest priority, will be considered by the Commission. We agree with CBEE that its recommendations have met that criteria.

With regard to CEC and UC recommendations, we find that it is premature to direct specific funding changes at this time. The appropriate forum for consideration and approval of budget changes will be the utilities' compliance filings this fall. However, we do note that emerging technologies have already been identified as a priority by the Commission (as reflected in its adoption of CBEE's program design and implementation principles). Emerging technologies are already eligible for inclusion in all current programs and program elements and the utilities have included them as part of the PY 1999 programs that were adopted in Res. E-3578 and E-3592. Moreover, our policy rule IV-8 directs that the utilities coordinate energy efficiency programs with CEC's PIER program.

As we noted above, current budget ranges provide sufficient and appropriate degrees of flexibility for mid-course adjustments in PY 1999 funding levels, including adjustments that would involve more emphasis on emerging technologies within markets. We believe it is premature to establish a funding set-aside for emerging technologies until more is known about the current role and opportunities for emerging technologies in the utilities' programs. The CBEE has scheduled a presentation by the utilities on this topic this summer. We direct the utilities to address explicitly, in their compliance applications, the role of emerging technologies in their programs, including the coordination of these activities with other utilities and the CEC. The utilities may also consider a more formal role for CIEE, as long as it is consistent with our determination that the utilities, not other entities, continue as program administrators for energy efficiency through December 31, 2001.

With regard to CEC's recommendations on increased attention to codes and standards, we note that CBEE agrees that this program element may have been neglected because of the compressed time schedule for PY 1999 program planning. (CBEE Reply Comments, pp. 23-24.) We will direct the utilities to address, in their compliance applications, intervention strategies and other activities (including budgets) to improve the implementation of the new standards and the development of the next round of standards. In addition, the utilities should describe ways to coordinate these intervention strategies and activities with the CEC and other utilities.

Finally, with regard to ORA's objections, we note that the program categories that ORA objects to have been adopted by the Commission. In fact, ORA's previous protest regarding program definitions and reporting requirements was denied. (See Res. E-3592, Findings 49, 51, Ordering Paragraph 30.) The 14 program categories we adopted in Res. E-3592 are appropriately organized around markets (e.g., residential heating and cooling systems, non-residential large retrofit, industrial and agriculture new construction), not intervention strategies (e.g., energy efficiency financial incentives/rebates). This is consistent with our intent to focus efforts, track progress and develop reporting requirements related to markets and their transformation. As we acknowledged in Res. E-3592, there must be a clear and coordinated transition to these new market-based program categories, and the Energy Division is facilitating this process in reporting requirements workshops. (Res. E-3592, pp. 31-32.)

7. Other PY 2000/2001 Planning Issues

CBEE recommends that continued opportunities for public input, through workshops and other forums facilitated by the utilities, should remain a central element of future program planning processes, including the process that will lead up to the utilities PY 2000/2001 compliance applications. As part of the PY 2000/2001 planning process, CBEE recommends that the utilities conduct and submit an analysis of the sources of public goods charge energy efficiency and gas demand-side management funds by customer class and sub-class in those applications. In addition, CBEE recommends that the utilities conduct the available funding analysis, including prior year(s) unexpended and uncommitted funds, that the CBEE performed for PY 1999 programs. CBEE recommends that this analysis be conducted jointly, and the information should summarize statewide, utility-specific, and electric and gas funds.

We find that CBEE's recommendations are consistent with our policies to encourage broad public input and to ensure that we continue to serve under-served communities and customer groups. (D.99-03-056, Conclusion of Law 4.) Moreover, we note that the utilities all indicate that they are already implementing CBEE's recommendations. We adopt these recommendations and encourage all interested parties to continue to actively participate in the utility-facilitated workshops, as well as in the public discussions concerning program planning that are regularly noticed by CBEE.

8. Utility Compliance Filings

As described in the Assigned Commissioner's March 26, 1999 ruling, the utilities will file compliance applications for budget and program changes to cover PY 2000 and PY 2001 programs within 30 days after the effective date of today's decision. We direct the utilities to file these applications at the Commission's Docket Office and to serve them on all appearances and the state service list in this proceeding. Unless otherwise directed by the Assigned Commissioner or ALJ, responses or protests are due within 30 days from the application file date. Utility replies are due 10 days thereafter. The role of CBEE in the application process will be addressed at the prehearing conference, to be scheduled as expeditiously as possible by the assigned ALJ.

9. Comments on Draft Decision

The draft decision of ALJ Gottstein in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed by NAESCO, UC, SDG&E and SoCal (jointly), ORA, and PG&E on July 21, 1999. No reply comments were filed. We have reviewed the comments and have made several language clarifications and edits in response to them. With one exception, however, we have not made major substantive changes to the draft decision. That exception is our decision to eliminate duplicative and potentially confusing language from CBEE's proposed policy rules (i.e., proposed Rule IX-6), and use existing utility affiliate rules to govern utility-affiliate relations.

PG&E, SDG&E, and SoCal raise an issue of coordination between the compliance applications and the Annual Earnings Assessment Proceeding

(AEAP) that warrants further discussion.[8] The utilities' compliance filings will address program specific adjustments in award mechanisms, such as milestones, weights among them, and award levels for specific milestones. As noted by PG&E, SoCal, and SDG&E, modifications to the overall level of performance incentives will be addressed in the AEAP. A final decision in the AEAP will not be made in time for the utilities to consider the adopted overall level of performance incentives in designing their PY 2000/2001 programs.

We believe that the utilities should be able to develop meaningful program designs, program-specific incentives and budgets without knowing the Commission's final determination on overall incentive levels. Moreover, the mechanics of doing this is relatively simple: the utilities can develop a table of milestones and indicate the percentage of total incentives that each milestone represents. When the total level is determined, that number can be used to finalize the milestone-specific performance incentive levels with minimal extra effect. While it may be preferable for the utilities to know the total incentive level up front, we do not consider it to be necessary. Therefore, we do not view the timing of the AEAP decision as a stumbling block to moving ahead expeditiously with the compliance applications.

We also do not anticipate delays in processing these applications and issuing a final decision by year-end. However, we did extend PY 1999 programs and budgets into PY 2000 to avoid any disruptions in program funding, should delays occur. (See Res. E-3592, Ordering Paragraph 14.) We reiterate our assurances to the marketplace that there will be no hiatus in program offerings as 1999 transitions into 2000.

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[8] The AEAP proceeding is Application 99-05-002 et al.

Findings of Fact

1. PG&E's response to other parties' comments was not provided for in the procedural schedule or by subsequent ALJ ruling or verbal consent. Approving PG&E's motion to accept its response would disadvantage other parties who did not have a similar opportunity to file additional comments.

2. The Commission will be considering policy rule changes that affect the role of CBEE in a separate forum. Subsequent modifications to today's adopted policy rules may be required on this issue.

3. The Public Purpose Test of cost-effectiveness has been adopted as the standard of cost-effectiveness for public goods charge efficiency funds. ORA's objection to this policy rule represents an attempt to relitigate an issue that has been decided, and is therefore not within the scope of this inquiry.

4. The program planning process is the appropriate forum for considering specific design issues for all programs and market intervention strategies. Therefore, it is no longer appropriate to maintain a policy rule that is limited in its application to the design of a single intervention strategy (e.g., SPC.)

5. Removal of the "interim" designation for utility program administrators in our policy rules appropriately reflects the reality that utilities will be the program administrators of energy efficiency programs through 2001.

6. CBEE has deleted language and rules intended for independent program administrators in an appropriate manner.

7. The Commission's affiliate rules, most recently adopted in D.98-08-035, Appendix B, Rule V.G.2, already require utilities to track and report employee movements between a utility and its affiliates.

8. Utilities already have considerable funding flexibility to respond to experience gained in implementing energy efficiency programs because of the budget ranges adopted in Res. E-3578 and E-3592.

9. In view of the level of committed and spent funds in 1998, the levels authorized for 1999 and the accelerated schedule for the roll-out of PY 1999 programs, the PY 1999 programs are already funded at appropriate levels without adding carryover funds.

10. Incentives to spend even more funds in PY 1999 may lead to hasty or imprudent decisions, associated more with expending funds (and earning performance incentives tied to spending) than effectively meeting the Commission's objectives.

11. Allocating carryovers to PY 2000 and PY 2001 represents a more orderly ramp up of program activities than adding carryover funds to PY 1999.

12. From a carryover funding perspective, the dollars available for PY 2000/2001 will remain the same whether you require that PY 1998 funds be fully encumbered before any PY 1999 program funds are expended, or not.

13. CBEE's recommendations regarding priorities or weights among performance incentive design elements is within the scope of the selective changes that may be considered at this time and in the upcoming PY 2000/2001 program planning process.

14. An incentive structure that emphasizes roll-out milestones relative to the achievement of market changes and effects or efficient program administration may inappropriately encourage the introduction of new programs or accelerated spending rather than steady progress towards market transformation.

15. CBEE's recommendations regarding selective changes to programs and budgets are consistent with the assigned Commissioner's guidance on this issue and appropriate for consideration at this time.

16. Although the SPC program is the single largest intervention strategy funded via public goods charge energy efficiency funds, it remains a relatively untested approach for transforming markets.

17. Preliminary reports on the SPC program indicate that ongoing monitoring and fine-tuning is warranted. In particular, certain segments of customers (e.g., smaller non-residential customers) may not be successfully reached with the current SPC design or strategy in general.

18. Consistency can sometimes lead to "least-common-denominator" programs on which the utilities can agree. This may be counter-productive to fostering innovative or local program strategies.

19. The Codes and Standards program element may have been neglected because of the compressed time schedule for PY 1999 program planning.

20. The appropriate forum for consideration and approval of budget changes to PY 1999 programs is the upcoming PY 2000/2001 program planning process.

21. Emerging technologies have been identified as a priority by the Commission in Res. E-3592. Emerging technologies are already eligible for inclusion in all current programs and program elements and the utilities have included them as part of PY 1999 programs that were adopted by Resolution.

22. It is premature to establish a funding set-aside for emerging technologies until more is know about the current role and opportunities for emerging technologies in the utilities' programs.

23. ORA's protest regarding CBEE's use of certain program definitions in its recommendations has been denied by the Commission in Res. E-3592.

24. CBEE's recommendation for an ongoing utility-facilitated public planning process is consistent with Commission policies to encourage broad public input. CBEE's recommendations that the utilities conduct certain funding analyses in preparation for program planning will help ensure that we continue to serve under-served communities and customer groups.

Conclusions of Law

1. PG&E's motion to accept a response to other parties' comments on CBEE's recommendations should be denied.

2. CBEE's proposed policy rule modifications appropriately respond to the directions given in Res. E-3592 and the Assigned Commissioner's ruling and should be approved, with one exception. Instead of adding Rule IX-6, our adopted affiliate rules will continue to serve as the basis for utility-affiliate relationships, including those that arise in the energy efficiency arena.

3. It is reasonable that all of the unallocated program funds in PY 1999 and all unexpended and uncommitted funds from PY 1998 should be carried over to PY 2000 and PY 2001.

4. It is reasonable that program accounting and reporting for PY 1998, PY 1999, PY 2000, and PY 2001 should be conducted on a program year basis.

5. In developing program-specific adjustments in award mechanisms in the upcoming PY 2000 and PY 2001 planning process, it is reasonable that the utilities should shift the priority or weights among program incentive design elements to:

   a. Emphasize effective and efficient program administration, as reflected in achievement of program activity-based milestones,

   b. Place greater emphasis on market transformation, as reflected in achievement of market changes and effects, and

   c. Reduce the degree of reliance on milestones associated with new program roll-out, without eliminating roll-out milestones entirely.

   In addition, the utilities should address the problems with the current milestones described by CBEE in its May 12, 1999 and June 14, 1999 filings.

6. In the PY 2000/2001 program planning process, it is reasonable that the utilities address the issues regarding non-residential SPC that CBEE raises, and consider the types of modifications that CBEE proposes, among others.

7. It is reasonable that programs be given time to be implemented, but obvious problems should be corrected without delay. SDG&E/SoCal's concerns

about CBEE's proposed language regarding participation limits should also be addressed during the PY 2000/2001 planning process. In addition, utilities should balance the move towards statewide consistency in programs with innovative or local approaches that will increase the effectiveness of the programs, as recommended by CBEE.

8. In their compliance applications, it is reasonable that the utilities address the role of emerging technologies in their programs, including the coordination of these activities with other utilities and the CEC. The utilities may also consider a more formal role for the California Institute for Energy Efficiency, as long as it is consistent with our determination that the utilities, not other entities, continue as program administrators for energy efficiency through December 31, 2001.

9. In their compliance applications, it is reasonable that the utilities address intervention strategies and other activities (including budgets) to improve the implementation of the new standards and the development of the next round of standards. In addition, the utilities should describe ways to coordinate these intervention strategies and activities with the CEC and other utilities.

10. Consistent with the Assigned Commissioner's Ruling of March 26, 1999, only a limited number of selected changes to PY 1999 programs and funding, i.e., those of highest priority, should be considered by the Commission during the PY 2000/2001 program planning process. CBEE's recommendations meet this criteria and should be approved.

11. In order to proceed expeditiously with the PY 2000/2001 program planning process , this order should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The June 14, 1999 motion of Pacific Gas and Electric Company (PG&E) to accept a response to other parties' comments on California Board For Energy Efficiency (CBEE) recommendations is denied.

2. CBEE's recommendations regarding policy rule changes, with minor corrections and modifications, are adopted and appended to this decision. (See Attachment 2).

3. The last sentences of Ordering Paragraph 7 from Res. E-3581 and Ordering Paragraph 6 from Res. E-3589 are deleted. PG&E, San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCal), and Southern California Edison Company (SCE), collectively referred to as "the utilities," shall implement Program Year (PY) 1999, 2000 and 2001 accounting and reporting on a program year basis.

4. The utilities shall carryover to PY 2000 and PY 2001 all unallocated program funds in PY 1999 and all unexpended and uncommitted funds from PY 1998.

5. Within 30 days from the effective date of this decision, the utilities shall file applications ("compliance applications") requesting approval of PY 2000 and PY 2001 energy efficiency programs in compliance with today's decision. Unless otherwise directed by the Assigned Commissioner or Administrative Law Judge (ALJ), responses or protests are due within 30 days from the application file date. Utility replies are due 10 days thereafter. The role of CBEE in the application process will be addressed at the prehearing conference, to be scheduled as expeditiously as possible by the assigned ALJ.

6. The utilities shall facilitate an ongoing public planning process in order to refine and develop proposals to implement specific CBEE recommendations, as well as others, that continue progress toward the Commission's energy efficiency and market transformation policy objectives.

7. In their compliance applications, the utilities shall submit an analysis of the sources of public goods charge energy efficiency and gas demand-side management funds by customer class and sub-class. The utilities shall conduct the available funds analysis, including prior year(s) unexpended and uncommitted funds, that the CBEE performed for PY 1999 programs. This analysis shall be conducted jointly, and the information should summarize statewide, utility-specific and electric and gas funds.

8. In their compliance applications, the utilities shall develop program-specific adjustments in award mechanisms that shift the priority or weights among program incentive design elements to:

a. Emphasize effective and efficient program administration , as reflected in achievement of program activity-based milestones, and

b. Place greater emphasis on market transformation, as reflected in achievement of market changes and effects, and

c. Reduce the degree of reliance on milestones associated with new program roll-out, without eliminating roll-out milestones entirely.

In addition, the utilities shall address the problems with the current milestones described by CBEE in its May 12, 1999 and June 14, 1999 filings.

9. In their compliance applications, the utilities shall monitor, modify, and supplement, as appropriate, the non-residential Standard Performance Contracting (SPC) intervention strategy. The compliance filings shall also describe efforts to ensure that pursuit of statewide consistency is balanced with innovative or local approaches that will increase the effectiveness of programs.

10. To further the objectives articulated in Ordering Paragraph 8, the utilities shall consider the following modifications in preparing program plans for PY 2000 and 2001:

a. Limitations on participation for market segments that are or have now been sufficiently transformed (e.g., some large customer segments);

b. Increased targeting to smaller non-residential customers that may face different combinations of market barriers to cost-effective energy efficiency investments and practices than those addressed by current SPC designs;

c. Limitations on participation for customers that have participated extensively previously; and

d. Additional changes in pricing (such as reduction in incentive levels or elimination of a particular measure) or other design features in response to the diminishing (or increasing) need for ratepayer funding to support market transformation for specific technologies.

In addition, the utilities shall consider increased emphasis on other program elements and intervention strategies that may be needed to capture market opportunities and segments for which the SPC strategy is not well-suited. Examples of these opportunities and segments include those targeted by the Commercial Remodeling and Renovation, Heating Ventilation and Air-Conditioning Turnover, and Motor Turnover programs.

11. To further the objectives articulated in Ordering Paragraph 8, the utilities shall also consider program offerings for PY 2000 and 2001 that:

a. Are available to under-served communities and customer groups,

b. Can take advantage of the unique expertise, relationships with customers, and ability to coordinate among related activities offered by individual or groups of local governments, or

c. Can explore promising concepts considered in the design of the statewide residential contractor programs, but which ultimately could not be implemented on a statewide basis (e.g., innovative approaches to duct sealing, contractor certification, and building performance metrics).

12. In their compliance applications, the utilities shall propose revised program budget ranges, funding caps, and funding floors, as appropriate, that result from considering the changes described in Ordering Paragraphs 9 and 10. In particular, the utilities shall consider revisions in programs, program elements and intervention strategies that address the following:

a. general and targeted third party solicitations (increases in funding);
b. activities targeted to smaller non-residential customers (increases in funding);
c. activities that benefit under-served communities and customer groups, such as renters (increases in funding);
d. SPC intervention strategies targeted to large customers (decreases in funding or decrease in the funding cap);
e. the residential contractor intervention strategy (potentially, increases in funding, if the program is performing well); and
f. the Commercial Remodeling and Renovation program (increases in funding).

13. In their compliance applications, the utilities shall address intervention strategies and other activities (including budgets) to improve the implementation of the new standards and the development of the next round of standards. In addition, the utilities shall describe ways to coordinate these intervention strategies and activities with the California Energy Commission (CEC) and other utilities.

14. In their compliance applications, the utilities shall address the role of emerging technologies in their program, including the coordination of these activities with other utilities and the CEC. The utilities may also consider a more formal role for the California Institute for Energy Efficiency, as long as it is

consistent with our determination that the utilities, not other entities, continue as program administrators for energy efficiency through December 31, 2001.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

ATTACHMENT 1

Administrative Law Judge	ALJ
Annual Earnings Assessment Proceeding	AEAP
California Board For Energy Efficiency	CBEE
California Energy Commission	CEC
Decision	D.
National Association of Energy Service Companies	NAESCO
Natural Resources Defense Council	NRDC
Office of Ratepayer Advocates	ORA
Pacific Gas and Electric Company	PG&E
Program Year	PY
Public Interest Energy Research	PIER
Research, Development and Demonstration	RD&D
Resolution	Res.
San Diego Gas & Electric Company	SDG&E
Southern California Edison Company	SCE
Southern California Gas Company	SoCal
Standard Performance Contracting	SPC
The California Institute for Energy Efficiency	CIEE
The University of California	UC

(END OF ATTACHMENT 1)

ATTACHMENT 2

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ATTACHMENT 2

Adopted Policy Rules for Energy Efficiency Activities[1]

Overview

The policy rules contained in this document are the California Public Utilities Commission's (Commission) guiding principles to the California Board for Energy Efficiency (CBEE) for use in pursuing the Commission's energy-efficiency policy objectives.

The policy rules are organized into nine sections:

I. Introduction
II. Policy Objectives
III. Roles and Responsibilities Under the Administrative Structure
IV. Program Design Requirements and Eligibility Guidelines
V. Measures of Value and Performance, Including Cost-Effectiveness
VI. Market Assessment, Evaluation, and Performance Measurement
VII. Compensation and Performance Incentives for Program Administrators
VIII. Administrator Code of Conduct
IX. Affiliate Rules for Program Administrators

Appendix A contains a list of definitions. Appendix B describes the Public Purpose Test, a cost-effectiveness test for use with Public Goods Charge (PGC)[2] funded energy-efficiency programs.

I. Introduction

I-1. These policy rules govern the use of Public Goods Charge (PGC) funds for promoting energy efficiency. These rules do not apply to the administration of PGC-funded programs in 1998. These rules do not apply to pre-1998 program commitments, which are to be funded using pre-1998 carryover funds, or to shareholder incentives associated with these commitments, both of which remain subject to the demand-side management (DSM) policy rules that were in place at the time the commitments were made.

I-2. The policy rules are to be used by the Commission, the CBEE, Administrators of PGC-funded energy-efficiency programs, and Implementors of PGC-funded energy-efficiency programs. The CBEE is the appropriate initial forum for parties to review and discuss policy rules and program implementation, and proposed changes to policy rules and programs.

I-3. The policy rules are supplemented by supporting documents that provide additional information on the application of these rules.

I-4. Supporting documents may be developed through CBEE-sponsored public workshops, on an as-needed basis. In view of the newness of the objectives, approaches, and needs of PGC-funded programs, these workshops should commence as soon as possible.

I-5. The policy rules are to be reviewed and modified, as necessary, by the CBEE, subject to approval from the Commission.

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[1] These rules may be changed further, based on the outcome of pending workshops on the role of the Boards.

[2] The policy rules use the term "Public Goods Charge" to refer to (1) electric PGC funds for energy efficiency as set forth in AB 1890, (2) energy efficiency funds resulting from a gas surcharge mechanism, and (3) gas DSM funds for energy efficiency authorized in the interim until a gas surcharge mechanism is implemented.

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II. Policy Objectives

II-1. The goal of PGC-funded energy-efficiency programs is to provide in-state benefits through cost-effective energy-efficiency and conservation programs.

II-2. The objectives for energy-efficiency policies have changed from trying to influence utility decision makers, as monopoly providers of generation services, to trying to transform the market so that individual customers and suppliers in the future, competitive generation market, will be making informed and cost-effective energy choices.

II-3. PGC-funded energy-efficiency programs should play a strategic and, ideally, transitional role in the development of a fully competitive market for energy-efficiency products and services.

II-4. The mission of PGC-funded programs is to transform markets and ultimately privatize the provision of cost-effective energy-efficient products and services so that customers seek and obtain these products and services in the private, competitive market. Energy-efficient products and services are currently sought and obtained by customers in the private, competitive market. Yet, a variety of features or conditions of the structure and functioning of the current market, called market barriers, prevent customers from *fully* seeking and obtaining *all* cost-effective energy-efficient products and services. Success in transforming markets means reducing or eliminating market barriers in ways that allow the private competitive market to supply and customers to obtain all cost-effective products and services in a self-sustaining fashion - that is, without a continuing need for PGC-funded programs.

II-5. Elements of such a fully transformed, well-functioning, and self-sustaining market include: (1) workable competition that motivates rival sellers to supply a variety of energy-related products and services, including different levels of energy efficiency, that satisfy diverse customer needs and societal environmental goals at competitive prices; (2) a customer-friendly environment in which customers can readily obtain and process trustworthy information or professional services that allows them to compare the prices and energy-efficiency qualities of different services and products; (3) a positive legal and regulatory structure that (a) minimizes undue barriers to the entry of new service providers or the development of new and more efficient products; (b) provides for the internalization of environmental damages in energy prices; and (c) provides for the expeditious redress of legitimate customer complaints related to defective energy-efficiency products and services or fraudulent performance claims; (4) an innovative environment in which rival entrepreneurs compete and profit by innovatively discovering untapped energy-efficiency marketing opportunities; and (5) a learning environment in which customers learn how new energy-efficient investments and practices may better satisfy their needs and circumstances.

II-6. Achieving the objectives of market transformation will require a balanced portfolio of programs that collectively will: (1) promote a vibrant energy-efficiency products and services industry that can be self-sustaining without a continuing need for PGC-funded programs; (2) encourage direct interaction and negotiation between private market participants (including energy-efficiency service providers) and customers, building lasting relationships that will extend into the future; (3) transform the "upstream" market (e.g., manufacturers, distributors, retailers, and builders) so that energy-efficient products and services are made available, promoted, and advertised by private market participants; (4) be in the broader public interest, with support for activities that would not otherwise be provided by the competitive market (e.g., capturing lost opportunities and avoiding cream-skimming); (5) empower customers, especially residential and small commercial customers, with meaningful information on the costs and benefits of energy-efficiency measures; (6) align the benefits of PGC programs with the customers providing PGC funds; (7) transform markets in an expeditious manner, in view of the limited time horizon over which PGC funding is guaranteed; and (8) maximize the societal and in-state energy-efficiency-related benefits achievable through PGC funding.

II-7. PGC-funded programs are no longer warranted when they cannot further transform the market in a cost-effective manner.

II-8. Common definitions and reporting requirements are necessary to allow the CBEE to: (1) track progress in meeting the market transformation objectives outlined in this section; and (2) ensure consistency in treatment of Administrators and Implementors.

Appendix A includes a list of definitions developed by the CBEE. The CBEE will sponsor public workshops to discuss and develop further definitions and reporting requirements.

III. Roles and Responsibilities Under the Administrative Structure

III-1. The entities responsible for overseeing, administering, and implementing the expenditure of PGC funds for energy efficiency include the following: (1) the Commission; (2) the CBEE; (3) entities performing analytic and other technical services for the CBEE, known as technical support; (4) Program Administrators; (5) subcontractors hired by the Administrators to perform specific tasks that are the responsibility of the Administrator; and (6) Implementors, or entities delivering energy efficiency services under the direction of Program Administrators.

III-2. The following rules describe the general role of the CBEE, technical support of the CBEE, Program Administrators, Subcontractors and Implementors. It should be noted, however, that the role of each of these parties will vary somewhat both over time, as experience with the new policy rules accumulates, and over different types of programs.

III-3. The responsibilities of the CBEE shall include the following: (1) making recommendations to the Commission regarding the expenditure of PGC funds; (2) overseeing the development of PGC-funded programs and budgets, including overseeing periodic or as-needed joint planning processes facilitated and led by Program Administrators; (3) overseeing Program Administrators and their oversight of program implementation; (4) overseeing the preparation and submittal of reports to the Commission, including reports drafted by CBEE technical support and submitted by the CBEE, reports prepared and submitted by Program Administrators, and reports prepared and submitted jointly by the CBEE and Program Administrators; and (5) overseeing analysis tasks performed by CBEE technical support, including strategic planning, market assessment, and program evaluation.

III-4. The responsibilities of CBEE technical support shall include the following: (1) assisting the CBEE in the tasks described in III-3; (2) performing analysis tasks useful to and identified by the CBEE, including strategic planning, market assessment, and evaluation; (3) providing information, where requested, that Administrators could use to assess and verify implementor performance and help determine implementor compensation; (4) developing and drafting CBEE recommendations to the Commission on policy and program issues; and (5) assisting the CBEE in the preparation and submittal of CBEE reports to the Commission, in the oversight of reports prepared and submitted by the Administrators, and in the oversight and preparation of reports submitted jointly by the CBEE and Program Administrators.

III-5. The responsibilities of Program Administrators shall include the following: (1) facilitating program development, planning, and budgeting, including leading program development and joint planning processes, and being responsible for preparing program designs and budgets for CBEE review and recommendation, and CPUC approval; (2) administering and overseeing program implementation, including management of programs using Administrator staff or subcontractors, development and oversight of quality assurance standards and tracking mechanisms, development and oversight of dispute resolution processes, review and approval of implementor invoices, and assessment and verification of implementor performance; (3) providing reports on the results of these activities to the CBEE and the Commission; and (4) providing general program administration and coordination services, including monitoring of budgets, management of Administrator staff and subcontractors, invoicing, expenditure approval, financial accounting, maintenance of financial records consistent with accounting standards, and having audits prepared by independent auditors on an annual basis.

III-6. The responsibilities of Implementors shall include the following: (1) participating in program development and joint planning processes led by Program Administrators; (2) implementing programs and activities agreed to under contract with either the Program Administrator or the CBEE; (3) working cooperatively with Program Administrators to resolve any customer complaints; and (4) providing periodic market data and program reports to Administrators.

III-7. The responsibility of Administrative subcontractors shall include the following: (1) performing the assigned tasks in compliance with the contract; (2) meeting performance expectations of the Administrator; (3) providing periodic reports to Administrator; and (4) performing their roles in a nondiscriminatory fashion.

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IV. Program Design Requirements and Eligibility Guidelines

IV-1. PGC-funded activities are expected to be cost effective using the public purpose test (as the standard of cost effectiveness) which is defined in rule V-2 and Appendix B. A prospective showing of cost effectiveness for the entire portfolio of PGC-funded activities and programs (i.e., individual programs, plus all costs not assignable to individual programs, such as overhead, planning, evaluation, and administrator compensation and performance incentives) is a threshold condition for eligibility for PGC funds. In PY99, this rule is applied to the entire portfolio of each interim administrator.

IV-2. PGC-funded programs are expected to be capable of transforming markets. That is, programs should strive to achieve sustainable changes in the market place that will increase the supply of and/or demand for cost-beneficial energy-efficient products and services.

IV-3. On-going demonstration of continued expectations for cost effectiveness of the portfolio using the public purpose test, as the standard of cost effectiveness (on at least an annual basis), is a condition for continued receipt of PGC funds.

IV-4. For individual programs within an administrator's portfolio, cost effectiveness using the public purpose test (as the standard of cost effectiveness) is important but not the only criteria for eligibility for PGC funds. In addition, other considerations, such as those identified in Policy Rule II-6, must also be taken into account.

IV-5. To assist in assessing a program's potential to or actual performance in transforming markets, program descriptions must include the following: (1) which customer segments (and customer market segments) and what market events are being targeted by the program; (2) what conditions or features of the market (or market barriers) currently prevent customers from fully seeking and obtaining all cost-effective energy-efficiency products and services in the private, competitive market and why; (3) whether these conditions can be expected to change (and, if so, in what way) in the absence of the proposed program, including an explanation of why or why not; (4) what activities are proposed for the program, and why and to what extent these activities are expected to reduce or eliminate the market barriers described; (5) what intermediate and/or ultimate indicators will be used to determine to what extent (and why) the program has reduced or eliminated market barriers in a sustainable manner; and (6) what indicators will be used to determine when it is appropriate (and why) to modify, change, or terminate the program.

IV-6. Programs that involve transactions or exchanges with individual customers must be cost-effective from the participating customer's point of view. This may be demonstrated by showing that these program activities pass the Participant Test (including financial assistance), as defined in the Standard Practice Manual.[3] This rule is suspended for PY99 programs.

IV-7. Contracts that combine receipt of PGC-funded programs or services with any non-PGC funded products, programs, or services shall clearly disclose in an affidavit or other mechanism that 1) the PGC is the source of funds, and 2) receipt of the non-PGC-funded products, programs, or services is not a condition for receipt of PGC-funded programs or services.

IV-8. Programs shall also be designed to facilitate coordination, as appropriate, with related activities, including: (1) the electricity Customer Education Plan; (2) the Electric Education Trust; (3) the CPUC outreach and education efforts; (4) PGC-funded low income activities; (5) PGC-funded renewable energy activities; (6) PGC-funded research, development, and demonstration energy-efficiency activities; (7) local, state, regional, and federal energy-efficiency programs, such as regional market transformation activities; and (8) local, state, and federal energy-efficiency laws and standards.

V. Measures of Value and Performance, Including Cost Effectiveness

V-1. Measuring the value of PGC-funded programs and the performance of Administrators serves six purposes: (1) to assist in determining whether a program (prospectively or on a continuing basis) is warranted; (2) to assist in determining prospectively what program activities are appropriate; (3) to assist in determining funding allocations for various programs; (4) to assist in modifying programs during operation to increase their effectiveness; (5) to

[3] CPUC/CEC. *Standard Practice Manual for Economic Analysis of Demand-Side Management Programs.* December, 1987.

establish one set of basis for determining compensation for Administrators and/or Implementors; and (6) to assist in assessing retroactively to what extent programs have been successful in achieving the Commission's policy objectives.

V-2. Cost effectiveness, both for entire portfolios of PGC-funded programs and for individual programs, is an important measure of value and performance. In view of the policy objectives for PGC-funded programs, a modified measure of cost effectiveness is used, called the Public Purpose Test (PPT). The PPT is generally based on the Societal Test and is also similar to aspects of the Total Resource Cost Test (TRC), as defined in the Standard Practice Manual.[4] However, the PPT explicitly recognizes the appropriateness of including certain elements that have not traditionally been included in the practice of calculating the TRC. The new elements may include: (1) program spillover savings; (2) non-energy costs and benefits; (3) externalities, including environmental costs and benefits; and (4) reductions in the cost of measures or practices caused by the program.

See Appendix B for a more detailed description of the PPT and a comparison of the PPT to the Societal Test and TRC.

V-3. The PPT may be calculated by treating programs as multi- (rather than single) year activities so that programs explicitly designed as integrated, multi-year strategies, which may have modest benefits (and/or high start-up costs) in early program years, can be evaluated considering the expected larger benefits (and/or lower costs) in later program years.

V-4. Inclusion of new elements in the PPT may lead to greater imprecision in the calculation of the PPT. However, imprecision in the calculation of the PPT should not prevent its use in determining the cost effectiveness of PGC-funded programs to society (Section IV, Program Design Requirements and Eligibility Guidelines) or in helping to establish compensation for Administrators (Section VII, Compensation and Performance Incentives for the Program Administrators). There are many ways to address the risks associated with imprecise calculation of the PPT. For example, for program planning purposes, risks can be mitigated through the use of scenario analysis, direct comparison of risks to opportunities, inclusion of explicit safety factors (e.g., requiring that the PPT exceed some threshold ratio greater than 1.0), and rigorous testing of the strength of a program's underlying theory of how it seeks to transform a market(s); see V-6.

V-5. The PPT shall not be relied on exclusively in making funding allocation decisions among programs and/or Administrators, or in determining compensation for the Administrator(s) and Implementors.

V-6. The ability or actual performance of programs in transforming markets by removing the market barriers customers and other market participants currently face which prevent customers from fully seeking and obtaining all cost-effective energy-efficiency products and services in a well-functioning, private, self-sustaining, competitive market, is another important measure of the value of programs. The reduction or removal of market barriers is evidenced by market effects, which are the changes in the structure or functioning of markets caused by a program (e.g., level of efficiency realized, changes in availability, stocking, pricing, attitudes, awareness, etc.). Whether a market effect(s) is indicative of market transformation depends upon having a plausible explanation of the link between a program's interventions, all market changes focusing on those caused by the program (i.e., the resulting market effects), and their effects on market barriers (both immediately, as well as on a lasting or self-sustaining basis).

V-7. Although it may take time to transform markets, there is a need to assess the performance of Administrators and to revise program designs in a timely manner. Therefore, shorter-term indicators of market change (with special emphasis on those caused by the program or market effects) are also appropriate to use in measuring the effectiveness of programs and performance of Administrators.

V-8. The CBEE will sponsor public workshops to discuss and refine the Public Purpose Test and other measures of the value and performance of PGC-funded program, as well as discuss how application of measures might differ at different stages in a program's life-cycle. These workshops, in part, will contribute to refinements to the current Standard Practice Manual regarding calculation of measures of cost effectiveness.

[4] CPUC/CEC. *Standard Practice Manual for Economic Analysis of Demand-Side Management Programs.* December, 1987.

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VI. Market Assessment, Evaluation, and Performance Measurement

VI-1. Market assessment, evaluation, and performance measurement under California's policy objectives for PGC-funded energy-efficiency programs support the following activities: (1) measuring the level of savings realized; (2) measuring the cost-effectiveness; (3) the planning and design of programs, including providing up-front market assessments and baseline analysis; (4) providing ongoing feedback, and corrective and constructive guidance regarding the implementation of programs; (5) measuring indicators of the effectiveness of specific programs, including testing of the assumptions that underlie the explanation of sustainability that support the program; (6) assessing overall levels of performance and success of programs designed to transform markets; (7) informing decisions regarding compensation and performance incentives provided to Administrators and/or Implementors; and (8) helping to assess whether, in specific markets, there is a continuing need for PGC-funded programs. The Commission expects the CBEE to gather information and conduct analysis in order to support these activities, both independently and in conjunction with Administrators of PGC-funded programs.

VI-2. The primary purpose of market assessment and evaluation is to document changes in the structure and functioning of markets and assess the sustainability of these changes in the market and to evaluate the success of programs. These efforts should focus on measuring the market effects caused by programs and testing the assumptions and explanations that underlie them. These efforts logically begin with assessments of current markets and evaluations of the market barriers that prevent the adoption of all cost-effective energy-efficient products and services through the natural operation of the private, competitive market. A critical area to document is the current scope, level, and comprehensiveness of energy-efficiency activities that are naturally being provided by the private, competitive market. This information must be combined with information on the operation of PGC-funded programs to help determine whether the market changes caused by the programs can be expected to be self-sustaining, if PGC funding is no longer available.

VI-3. In view of possible imprecision associated with measuring market effects and the reduction in market barriers, it is necessary to: (1) articulate specific theories about what market effects and reductions in market barriers specific interventions are expected to have, and test the assumptions that support these theories; (2) measure a wide range of market indicators, both before, during, and after interventions, using a variety of methods[5] -- it is unlikely that there is a single indicator that can be used to determine whether a market has been transformed to the point where intervention is no longer necessary or appropriate; (3) compare observed changes in market indicators and the sequence of these changes, to what would be expected if the program is working as intended, as well as to estimates of what would have occurred in the absence of the intervention (i.e., identify market effects caused by the program); (4) link observations of market changes and market effects to reductions in market barriers; (5) develop a system for ongoing feedback, so that indicators of market changes and market effects, as well as the theories which underlie them, can be assessed, or modified along the way; (6) use forecasts and scenario analysis to assess likely future outcomes and inform interim decisions because it is not practical to wait for longer term results; (7) focus efforts on the causal role of the program in increasing market adoption of measures, in addition to on estimating the net savings per measure adopted when quantifying environmental and resource benefits; (8) recognize that changes can take place in multiple markets and market segments, and can result from multiple interventions over several years (rather than from one program in a single year); and (9) recognize that some changes can take place in a market regardless of the intervention.

VI-4. In view of the lack of formal experience with transforming markets as an objective of energy-efficiency policy and in view of the imprecision associated with all measurements, it is appropriate to hold public workshops in which market assessment, evaluation, and performance measurement can be discussed and appropriate research activities identified and planned.

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[5] For example, methods for evaluating market changes and market effects may include: (1) surveys or interviews of manufacturers, other market actors in the distribution chain, and customers; (2) surveys or compilation of existing data on manufacturer and distributor shipments; (3) surveys or compilation of existing data on retail or wholesale sales; (4) surveys of product/service availability, floor stock, and shelf space; (5) surveys of prices and changes in prices; (6) surveys of changes in advertising practices, marketing materials, and catalog offerings; and (7) approaches for analyzing many of these data (which may include stated/revealed preference, discrete choice, and conjoint, trend, and scenario analysis).

VII. Compensation and Performance Incentives for Program Administrators

VII-1. A two-part compensation structure, which includes both a base-level of compensation and a performance incentive, is appropriate for Administrators of PGC-funded programs. Total compensation for all administrative services, including both base compensation and performance incentive compensation, shall be included under the cap on administrative expenses in the Administrator RFP and Contract.

VII-2. Effective performance incentives encourage an Administrator to work enthusiastically and aggressively to achieve the Commission's objectives because they are rewarded when they are successful and penalized when they are not. To be effective in encouraging an Administrator to perform as desired, a targeted performance incentive mechanism should be, first and foremost, carefully and thoughtfully aligned with the policy objectives. Once this threshold is satisfied, mechanisms should also strive to be: (1) clear in their intended message; (2) understandable and accessible; (3) composed of rewards and/or penalties tied to outcomes the Administrator can affect; (4) reasonably balanced between risks and rewards for the Administrator and society as a whole; (5) large enough to attract and retain the attention of the Administrator; (6) timely; and (7) relatively easy to monitor with respect to evaluating the performance of the Administrator.

VII-3. Definitions of performance for Administrators should be consistent with the policy objectives. In general, performance or success can be defined, assessed, measured, and rewarded using several different metrics, including: (1) effective and efficient performance of planned activities (e.g., good-faith implementation of planned tasks); (2) interim and leading indicators of ultimate effects (e.g., indicators of market effects and/or reductions in market barriers; indicators of lasting effects); and (3) ultimate effects (e.g., energy and demand savings, product sales as a proxy for energy and demand savings, market penetration, lasting reductions in market barriers, and transformed markets).

VII-4. The choice of which metric to use as the basis for a performance incentive for an Administrator should depend on: (1) the nature and level of the Administrator's responsibilities; (2) the timing and reliability of the estimates or indicators of effects of the programs; (3) the ability of the Administrator to impact the specific metrics; (4) the degree of risk for both the Administrator and the public; and (5) the role of the Administrator and other participating organizations (e.g., the degree to which success depends on the participation of other organizations).

VII-5. Special attention is required to ensure that performance incentives are aligned with the objectives of transforming markets and privatization of the market. An effective performance incentive mechanism should: (1) focus the Administrator on achieving lasting market effects and reductions in market barriers; (2) encourage strategic activities that work within markets, with existing market transactions, and with market participants; (3) ensure that feedback on the process of the activity, the changes in the market, and the indicators of effects is available and incorporated on a ongoing basis; and (4) provide information on the costs, benefits, and performance of the activities.

VII-6. The criteria for implementation of planned activities, which should achieve measurable results when possible, can be applied at two levels: (1) to the overall performance of the Administrator (e.g., participation in national and statewide activities, coordination with others on joint actions, sponsoring and supporting market assessment and baseline studies, etc.); and (2) to the performance related to individual programs and activities (e.g., developing specific technology standards, offering planned training sessions, etc.).

VII-7. The level of incentive needed to be effective depends on the mix and magnitude of opportunities and risks that influence the Administrator. Incentive caps for Administrator compensation (such caps linked to a maximum percentage of direct program costs) are appropriate to limit the potential for excessive compensation.

VII-8. An overall base compensation and performance incentive mechanism for Administrators of PGC-funded programs may be comprised of several components, such as: (1) base compensation based on competent management and implementation of planned tasks; (2) minimum performance standards, based on readily observable measures (such as the completion of identified tasks), that an Administrator would need to exceed in order to be eligible for any performance incentive and penalties for not exceeding them; (3) performance incentives for individual programs based on indicators of market effects and reductions in market barriers (especially for indicators of lasting effects); (4) a bonus incentive for exceptional overall performance (e.g., if the Administrator met or exceeded individual program goals for more than 75% of the programs under its management); and (5) penalties for failing to implement specific programs or other shortcomings in Administration.

VIII. Administrator Code of Conduct

VIII-1. The following Code of Conduct (Section VIII-2 through VIII-9) applies to Administrators in their interaction with non-affiliated persons, Implementors and other entities. This Code of Conduct is intended to ensure that an Administrator does not unfairly discriminate against any person or entity; does not inappropriately use knowledge, data, information, or strategic plans acquired in performing the functions set forth in the Scope of Services in Section I.D. of the RFP to gain an unfair competitive advantage in energy efficiency or other markets, and does not cross-subsidize its non-CBEE related business or activities by the use of PGC funds. Unless the context otherwise requires, the definitions set forth in Appendix A of these Rules govern the construction of those Rules.

VIII-2. An Administrator shall not use its own name, logo, service mark or "brand", trademark or trade name, or other corporate identification in association with its performance of the functions as a Program Administrator without the prior written recommendation of the CBEE and approval by the Commission. The CBEE shall develop the corporate identification to be used by an Administrator to identify activities to perform the Scope of Services for an Administrator, subject to Commission approval. The CBEE may also recommend that this corporate identification for an Administrator be used by Implementors. Corporate identification includes, but is not limited to, name, logo, service mark or "brand", trademark or trade name, or other corporate identification.

VIII-3. An Administrator shall maintain separate books and records for functions necessary to perform the duties of Program Administrators according to generally accepted accounting principles.

VIII-4. An Administrator shall not perform non-administrative functions (e.g., implementation and other) without the prior approval of the Commission.

VIII-5. An Administrator shall not condition or otherwise tie access to PGC-funded programs or services to the taking of any non-PGC funded products, programs, or services that it otherwise provides or offers for sale.

VIII-6. An Administrator shall present a plan to the CBEE, and obtain Commission approval prior to acquiring information from Implementors or market actors that will ensure that non-public and confidential or proprietary information acquired in the performance of its duties as an Administrator will not be inappropriately transferred or conveyed in any manner to employees of the Administrator or others for purposes other than the discharge of the duties set forth in the Scope of Services for an Administrator.

VIII-7. An Administrator may request information from PGC-funded Implementors and/or other market actors to perform its duties as a Program Administrator. An Administrator and/or a Utility shall provide a non-discriminatory process which allows Implementors access to Utility Customer Information without prior affirmative written consent of a Customer, but with adequate customer privacy protections, as necessary and appropriate. This process shall be presented to CBEE for review, and be subject to Commission approval.

Utility Customer Information received through this process may be used only for PGC-funded programs and purposes. A violation of the use of Utility Customer Information for purposes other than PGC-funded programs and purposes may result in penalties, including but not limited to revocation of an Administrator's or Implementor's ability to participate in PGC-funded efforts.

The Administrator has the burden of proof, if challenged, to demonstrate why any requested information is necessary and appropriate to the performance of its duties as a Program Administrator. The CBEE shall be the final arbitrator in any dispute.

VIII-8. An Administrator shall not unfairly discriminate in its treatment of any entity, market actor, or Implementor through the design, processing, evaluation and selection, administration of bids, requests or negotiation of contacts, or in the performance of any of the functions necessary to provide the Scope of Services for an Administrator. An Administrator shall establish internal procedures to accomplish the above objectives prior to receiving information from or contracting with any Implementor or market actor and shall submit such internal procedures for review by the CBEE and approval by the Commission.

VIII-9. An Administrator shall not violate federal or state anti-trust laws or engage in fraudulent business practices.

VIII-10. A violation of this Code of Conduct may, at the discretion of the Commission, result in any contract or agreement made in violation of the Code being void; the requirement that all funds received under said contract being immediately repaid with interest; and the imposition of penalties, including but not limited to, the remedies set forth in the Administrator's contract, which may include revocation of the Administrator's contract. Violation of this Code may also require reimbursement by the Administrator for the costs of the enforcement of this Code.

IX. Affiliate Rules for Program Administrators

IX-1. Affiliates of a Program Administrator in aggregate may not receive under any circumstances, on a program year basis, more than 5% of the authorized PGC funds expended for Administrative Services in a program administered by an affiliated Program Administrator.

IX-2. Affiliates of a Program Administrator in aggregate may not receive under any circumstances, on a program year basis, more than 5% of the authorized PGC funds expended for Market Assessment and Evaluation activities across all programs administered by an affiliated Program Administrator.

IX-3. Affiliates of a Program Administrator in aggregate may not receive under any circumstances, on a program year basis, more than 15% of the authorized PGC funds expended for implementation and non-administrative activities in a program administered by an affiliated Program Administrator.

IX-4. An affiliate of a Program Administrator may not use the independent statewide corporate identification developed by the CBEE and approved by the Commission, except and to the extent that the CBEE recommends, subject to Commission Approval, that other Implementers are permitted to use such corporate identification. Corporate identification includes, but is not limited to, name, logo, service mark or "brand" trademark or trade name, or other corporate identification.
An Administrator shall not trade upon, promote, or advertise its Affiliate's affiliation with the Administrator's independent statewide corporate identification developed by the CBEE nor shall an Affiliate trade upon, promote or advertise its affiliation with the Administrator's independent statewide corporate identification developed by the CBEE, except as authorized by the Commission.

IX-5. In addition to the requirements and limitation of Sections X-1 through X-4, the requirements and limitations set forth in this section [Section X-5, numbers (1) through (4)] shall apply to a utility Program Administrator. Existing Commission rules for each Utility and its Affiliates shall apply except to the extent that they conflict with these Rules. In such cases, these Rules shall supersede other existing rules and guidelines, except as expressly stated by the Commission.

(1) A Utility Administrator shall provide access to Utility information and services on the same terms for all Market Participants. If a Utility Administrator provides services or information to its Affiliate(s) acting as Implementors within the area subject to the control or supervision of the Utility Administrator, it shall contemporaneously make the offering and/or information available to all Implementors and other Market Participants.

(2) A Utility Administrator shall provide Utility Customer Information to its Affiliate(s) and non-affiliated Implementors on a strictly non-discriminatory basis consistent with Section IX-6 (20), as appropriate.

(3) Non-customer specific information, including but not limited to information about a Utility's natural gas or electricity purchases, sales, or operations or about the Utility's gas-related goods or services, electricity related goods and services shall be available to a Utility Affiliate only if the Utility makes the information contemporaneously available to all other Market Participants and keeps the information open to the public.

(4) A Utility Administrator and its Affiliate Implementor(s) shall keep separate books and records. The books and records of Affiliates shall be open for examination by the CBEE and the Commission, and their staffs, consistent with the provisions of Public Utilities Code Section 314.

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ATTACHMENT 2: APPENDIX A

Policy Rules Definitions

Administrator: A person, company, partnership, corporation, association, or other entity selected by the Commission and any Subcontractor that is retained by an aforesaid entity to oversee and administer Energy Efficiency Programs funded in whole or in part from PGC funds.

Administrative Services: The services to be provided by the Administrator, separate from the limited implementation or other services an Administrator may perform with prior approval of the Commission.

Affiliate: Any person, corporation, utility, partnership, or other entity 5% or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by an Administrator or any of its subsidiaries, or by that Administrator's controlling corporation and/or any of its subsidiaries as well as any company in which the Administrator, its controlling corporation, or any of the Administrator's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly and indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management of policies of a company. A direct or indirect voting interest of five percent (5%) or more by the Administrator, its subsidiaries, or its Affiliates in an entity's company creates a rebuttable presumption of control.

Analysis Agent: An entity or entities selected to perform analytic functions such as strategic planning, market assessment, and evaluation.

California Board for Energy Efficiency (CBEE): The advisory board established by the Commission to advise it on and assist it with the development and implementation of ratepayer-funded Energy Efficiency Programs.

California Public Utilities Commission or the Commission: The state agency charged with regulating California Utilities, and with overseeing ratepayer-funded public purpose Energy Efficiency programs.

Cost-Beneficial: (Definition to be developed during the public workshops.)

Cost-Effectiveness: An indicator of the relative performance or economic attractiveness of any Energy Efficiency investment or practice when compared to the costs of energy produced and delivered in the absence of such an investment. In the Energy Efficiency field, the present value of the estimated benefits produced by an Energy Efficiency Program as compared to the estimated total program's costs, either from the perspective of society as a whole or from the perspective of individual customers, to determine if the proposed investment or measure is desirable from a variety of perspectives, e.g., whether the estimated benefits exceed the estimated costs. *See* Public Purpose Test and Participant Test.

Cream Skimming: Cream skimming results in the pursuit of only the lowest cost or most cost-effective energy efficiency measures, leaving behind other cost-effective opportunities. Cream skimming is inappropriate when lost opportunities are created in the process.

Customer: Any person or entity that is the ultimate consumer of Utility Services and/or other goods and services including Energy Efficiency products, services, or practices.

Customer Information: Non-public information and data specific to a Utility Customer which the utility acquired or developed in the course of its provision of Utility Services.

Demand Side or Demand Side Management (DSM): Programs that reduce the use of energy by the use of Energy Efficiency products, services, and practices, or that change the timing of energy use.

Energy Efficiency: The use of energy efficiency products, services, and practices or an energy-using appliance or piece of equipment, to reduce energy usage while maintaining a comparable level of service when installed or applied on the Customer side of the meter.

Energy Efficiency Measure: Any product, service, or practice or an energy-using appliance or piece of equipment that will result in reduced energy usage at a comparable level of service when installed on the Customer side of the meter.

Energy Efficiency Program: An activity, strategy, or course of action undertaken by a Program Administrator using PGC funds.

Evaluation: The performance of studies and activities aimed at determining the effects of a program, including program-induced changes in energy efficiency markets, energy savings, and program cost-effectiveness.

Implementor: An entity or person selected and contracted with or qualified by a Program Administrator to receive PGC funds for providing products and services to Customers or for providing services for integrated and upstream market transformation efforts.

Integrated Market Transformation: A program designed to integrate the needs of both sellers and buyers of more efficient products and services to ensure that the desired market effects from the program are sustainable even if the primary focus of intervention is to work with the manufacturers, distributors, or sellers of a product. *Also see* Upstream Market Transformation.

Lost Opportunities: Energy efficiency measures that offer long-lived, cost-effective savings that are fleeting in nature. A lost opportunity occurs when a customer does not install an energy efficiency measure that is cost-effective at the time, but whose installation is unlikely to be cost-effective (or is less cost-effective) later.

Market Actors: Individuals and organizations in the production, distribution, and/or delivery chain of Energy Efficiency products, services and practices. This may include, but is not limited to, manufacturers, distributors, wholesalers, retailers, vendors, dealers, contractors, developers, builders, financial institutions, and real estate brokers and agents.

Market Assessment: An analysis function which provides an assessment of how and how well a specific market or market segment is functioning with respect to the definition of well-functioning markets or with respect to other specific policy objectives. Generally includes a characterization or description of the specific market or market segments, including a description of the types and number of buyers and sellers in the market, the type and number of transactions that occur on an annual basis, and the extent to which Energy Efficiency is considered an important part of these transactions by market participants. This analysis may also include an assessment of whether or not a market has been sufficiently transformed to justify a reduction or elimination of specific program interventions. Market assessment can be blended with strategic planning analysis to produce recommended program designs or budgets. One particular kind of market assessment effort is a *baseline study*, or the characterization of a market before the commencement of a specific intervention in the market, for the purpose of guiding the intervention and/or assessing its effectiveness later.

Market Barrier: Any characteristic of the market for an energy-related product, service, or practice that helps to explain the gap between the actual level of investment in, or practice of, Energy Efficiency and an increased level that would appear to be cost-beneficial.

Market Effect: A change in the structure or functioning of a market or the behavior of participants in a market that is reflective of an increase in the adoption of Energy-Efficient products, services, or practices and is causally related to Market Interventions.

Market Event: The broader circumstances under which a Customer considers adopting an Energy Efficiency product, service, or practice. Types of market events include, but are not necessarily limited to, the following: (i) *new construction*, or the construction of a new building or facility; (ii) *renovation*, or the updating of an existing building or facility; (iii) *remodeling*, or a change in an existing building; (iv) *replacement*, or the replacement of equipment, either as a result of an emergency such as equipment failure, or as part of a broader planned event; and, (v) *retrofit*, or the early replacement of equipment or refitting of a building or facility while equipment is still functioning, often as a result of an intervention into Energy Efficiency markets.

Market Participants: The individuals and organizations participating in transactions with one another within an Energy Efficiency market or markets, including Customers and Market Actors.

Market Segmentation: The division of the Customers, Market Actors, products, services, or types of transactions that a marketing agent seeks to influence into discrete elements that facilitate marketing efforts and relate closely to the boundaries of actual markets.

Market Transformation: Long-lasting, sustainable changes in the structure or functioning of a market achieved by reducing barriers to the adoption of energy efficiency measures to the point where further publicly-funded intervention is no longer appropriate in that specific market. Using the terms in this section, Market Transformation is a reduction in Market Barriers resulting from a Market Intervention, as evidenced by a set of Market Effects, that lasts long after the intervention has been withdrawn, reduced, or changed.

New Construction: Residential and non-residential buildings that have been newly built or have added major additions subject to Title 24, the California building standards code.

Non-Residential: Facilities used for business, commercial, agricultural, institutional, and industrial purposes.

Performance Measurement: The determination of the extent to which a person, organization, or program is successfully meeting specified goals and objectives.

Participant Test: As discussed in the Policy Rules, a cost-effectiveness test intended to measure the cost-effectiveness of Energy Efficiency Programs from the perspective of those Customers (individuals or organizations) participating in them.

Parties or Interested Parties: Persons and organizations with an interest in Energy Efficiency that comment on or participate in the CBEE's and the Commission's efforts to develop and implement ratepayer-funded Energy Efficiency Programs.

Privatization: A process through which PGC-funded Energy Efficiency Programs are used to transform Energy Efficiency markets so that private transactions between private providers and Customers constitute an increasing portion of all energy efficiency transactions without a continuing need for the use of public funds.

Program: An activity, strategy, or course of action undertaken by a Program Administrator using PGC funds.

Program Administrator: An entity that administers Energy Efficiency Programs funded in whole or in part from PGC funds. *See Administrator.*

Program Design: The method or approach for making, doing, or accomplishing an objective by means of a Program.

Program Development: The process by which ideas for new or revised Energy Efficiency Programs are converted into a design to achieve a specific objective.

Program Management: The responsibility and ability to oversee and guide the performance of a Program to achieve its objective.

Project: An activity or course of action undertaken by an Implementor.

Project Development: The process by which an Implementor identifies a strategy or creates a design to provide Energy Efficiency products, services, and practices directly to Customers or to implement Market Transformation efforts.

Public Goods Charge (PGC): Ratepayer funding for energy efficiency activities and programs, including: (1) electric PGC funds for energy efficiency, (2) any energy efficiency funds resulting from a gas surcharge mechanism, and (3) gas DSM funds for energy efficiency authorized in the interim until a gas surcharge mechanism is implemented. Per Assembly Bill (AB) 1890, a universal charge applied to each electric utility Customer's bill to support the provision of public goods. Public goods covered by California's PGC include public purpose Energy Efficiency Programs, low-income services, renewables, and energy-related research and development. These Policy Rules apply only to Energy Efficiency PGC funds.

Public Purpose Test: A cost-effectiveness test intended to measure the overall cost-effectiveness of Energy Efficiency Programs from a societal perspective.

Residential: Existing single family residences, multi-family dwellings (whether master-metered or individually metered), and buildings that are essentially residential but used for commercial purposes, including, but not limited to, time shares, vacation homes, etc.

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Standard Performance Contracting (SPC) Program: An Energy Efficiency Program consisting of a set of agreements between an Administrator and a number of Project sponsors (either Implementors or Customers) to deliver energy savings from the installation of Energy Efficiency measures and technologies at a Customer facility or set of facilities for a pre-specified price per unit of energy savings which is to be measured using a pre-specified set of Measurement and Verification (M&V) protocols. A SPC program is an open-ended offer with a pre-specified price and set of terms.

Strategic Planning: An analysis function designed to produce recommendations to the CBEE or its Administrator to help guide its policy objectives, program priorities, program designs, and/or resource allocations to capitalize on market opportunities and/or increase the effectiveness of current programs.

Subcontractor: A person or entity who has a secondary contract undertaking some obligations of another contract executed by another person or entity.

Upstream Market Transformation: A term sometimes used to classify programs that primarily work with Market Actors upstream of end use Customers to increase the adoption rate of energy efficient products, services, or practices. *Also see* Integrated Market Transformation.

Utility: Any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined by California Public Utilities Code Sections 218 and 222.

Utility Services: Regulated Utility Services including gas and electric energy sales, transportation, generation, distribution or delivery, and other related services, including, but not limited to, administration of Demand Side Services, scheduling, balancing, metering, billing, gas storage, standby service, hookups and changeovers of service to other energy suppliers.

ATTACHMENT 2: APPENDIX B
Comparison of the PPT to the TRC and Societal Tests

This appendix compares the Total Resource Cost (TRC) and Societal Tests to the Public Purpose Test (PPT) along three dimensions. First, the elements included in the calculation of the three tests are compared. Second, current practice in calculating the TRC Test is compared to proposed practice in calculating the PPT. Third, the ways in which the TRC and PPT tests are used in the Policy Rules are compared.

Table B-1. Comparison of Elements Included in the Calculation of the TRC, Societal, and PPT Tests[6]

		Total Resource Cost Test	Societal Test	Public Purpose Test
Benefits	Net Energy and Demand Savings	Yes	Yes	Yes
	Economic Value of Energy and Demand Savings	Yes	Yes	Yes
	Non-Energy Benefits (can also be a cost)	No	Yes	Yes
	Externalities, including Environmental (can also be a cost)	No	Yes	Yes
Costs	Utility Costs	Yes	Yes	Yes
	Incremental Participant Costs	Yes	Yes	Yes
	Indirect Costs (can also be a benefit)	Yes	Yes	Yes
Discount Rate		Utility Weighted Average Cost of Capital	Societal Discount Rate	Societal Discount Rate

The comparison presented in Table B-1 indicates that the PPT is based on the Societal Test, which also includes environmental externalities and relies on a societal discount rate. As currently described in the Standard Practice Manual, however, the Societal Test does not clearly allow for the inclusion of all non-energy benefits or costs (although it does appear to allow for the inclusion of some non-energy benefits and costs).

More importantly, current practice in calculating the TRC differs from that proposed for the PPT. See Table B-2.

Finally, as described in Section IV, application of the PPT in the modified policy rules also differs from application of the TRC in the existing DSM rules. See Table B-3.

6 CPUC/CEC. *Standard Practice Manual for Economic Analysis of Demand-Side Management Programs.* December, 1987

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Table B-2. TRC versus PPT - Comparison of Practices in Calculating the Tests

		Total Resource Cost Test	Public Purpose Test
Benefits	Energy and Demand Savings	Though spillover can be included, typically focused only on savings associated with non-free-riding program participants.	In addition to savings from non-free riding participants, attempt to include spillover - report precision. New methods may be needed to determine an appropriate baseline.
	Economic Value of Energy and Demand Savings	Administratively-determined avoided costs	Taken from competitive market or forecasts of competitively determined prices, except when prices are regulated, such as those for T&D. T&D costs based on utility costs displaced by programs.
	Non-Energy Benefits (can also be a cost)	Not included	Attempt to include directly-related non-energy benefits and costs - report precision.
	Externalities, including Environmental (can be both a benefit and a cost)	Not included	Yes.
Costs	Utility Costs	In addition to direct program costs, includes overhead, measurement and evaluation, and shareholder incentives	Utility costs, per se, are no longer relevant; however, principle of including all costs associated with Administrator/Implementor delivery remains the same.
	Incremental Participant Costs	Included; reductions in costs induced by program only increase net benefits for future year programs - see "unit of analysis"	Included; reductions in the costs measures resulting from a program are counted as a benefit since term of the program may span over multiple program years - see "unit of analysis" and "term of analysis"
	Indirect Costs (can also be a benefit)	Rarely included because difficult to quantify; reductions in O&M sometimes included as an indirect benefit	Attempt to include a wide variety of indirect costs and benefits - report precision.
Unit of analysis		Individual program years without exception	Depends on the design of a program, typically a single year, but can include multiple years in the case of an integrated multi-year set of activities.
Term of analysis		Lifecycle of measures or activities installed or undertaken in single program year	Initially, lifecycle of measures or activities installed or undertaken in current or set of program years, but also may include measures or activities undertaken outside the term of the program

Table B-3. TRC versus PPT - Application to Policy Rules

		Total Resource Cost Test under Existing DSM Rules	Public Purpose Test under Modified Policy Rules
To What Are The Tests Applied on a Prospective Basis?	Measure Program Elements (e.g., under existing DSM rules: a three T-8 lamp fixture with electronic ballast replacing a four T-12 lamp fixture with energy-efficient magnetic ballast)	Required, except for New Construction, Information, and Direct Assistance programs.	Not necessarily. (Other tests may apply to measures, such as participant test)
	End-Use Program Elements (e.g., under existing DSM rules: commercial lighting retrofit program, but not PG&E Retrofit Express Program)	Required, except for New Construction, Information, and Direct Assistance programs. Calculated using the sum of measure program elements	Not necessarily.
	Programs (e.g., under existing DSM rules: Commercial Energy Efficiency Incentives)	Required, except for Information and Direct Assistance programs. Calculated using the sum of end-use program elements, plus non-measure costs	Not necessarily; used in conjunction with other priority-setting criteria for funding allocation purposes.
	Total portfolio of PGC-funded programs	Not required.	Yes, as the sum of incremental participant, program, plus non-allocable costs (e.g., overhead)
Relationship Between Ex Ante Versus Ex Post Measurement of Energy Savings	Measure Program Elements	Ex post measurement of first year savings update future ex ante estimates; Ex post persistence and measure lifetime studies update ex ante measure lifetime estimates	Same, but evaluation efforts will generally not be focused only on measuring first year savings and measure lifetimes for individual measures
	End-Use Program Elements	Ex post calculation of cost effectiveness calculated as the sum of measure elements, but only insofar as necessary to support shareholder earnings claims	Same as above
	Programs	Same as program elements	Yes
	Administrator's portfolio of programs	Not reported	Yes
		Total Resource Cost Test under Existing DSM Rules	Public Purpose Test under Modified Policy Rules
Link Between Cost Effectiveness and Compensation to Administrator	Measure Program Elements	Yes, for measures eligible for shared savings	None
	End-Use Program Elements	Yes, for end-use program elements eligible for shared savings	None
		Total Resource Cost Test under Existing DSM Rules	Public Purpose Test under Modified Policy Rules
Link Between Cost Effectiveness and Compensation to Administrator	Measure Program Elements	Yes, for measures eligible for shared savings	None
	End-Use Program Elements	Yes, for end-use program elements eligible for shared savings	None
	Programs	Yes, for programs eligible for shared savings	No direct link, but can be included, yet not as the primary determinant, in establishing compensation
	Administrator's portfolio of programs	No, only for programs eligible for shared savings	No direct link, but can be included, yet not as the primary determinant, in establishing compensation

(END OF ATTACHMENT 2)