

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION G-3245
DECEMBER 3, 1998**

RESOLUTION

RESOLUTION G-3245. SOUTHERN CALIFORNIA GAS COMPANY REQUESTS APPROVAL TO COMPETITIVELY BID THE WEATHERIZATION PORTION OF ITS 1999 LOW-INCOME PROGRAM. DENIED WITHOUT PREJUDICE.

BY ADVICE LETTER 2731-G, FILED ON AUGUST 4, 1998

SUMMARY

1. By Advice Letter 2731-G, Southern California Gas Company (SoCal Gas) requests approval to bid competitively the weatherization portion (WP) of its 1999 low-income program known as the direct assistance program (DAP). SoCal Gas will provide a further description of its bid process along with its program design in its October 1, 1998 Advice Letter filing.
2. The Office of Ratepayer Advocates (ORA) filed comments supporting SoCal Gas Advice Letter 2731-G with one caveat. ORA believes that in order for these programs to be fully competitive, SoCal Gas should open up the Outreach and Assessment portion of the WP to all qualified bidders, and not just licensed contractors and non-profit organizations.
3. The following parties filed protests to Advice Letter 2731-G: Winegard Energy Inc. (Winegard); the Community Action Commission of Santa Barbara (CACSB); the Association of Southern California Environmental and Energy Programs (ASCEEP); the Orange County Community Development Council (OCCDC); the Residential Service Companies' United Effort and SESCO, Inc. (RESCUE/SESCO); the Veterans in Community Service, Inc. (VICS); the Community Services Department of San Bernadino County (CSD); the East Los Angeles Community Union, the Maravilla Foundation, and Latino Issues Forum (LAMLIF); and TELACU Weatherization (TELACU). Many of the protestants alleged that competitively bidding out the programs at this time will cause: the quality of work to suffer; increased expenses; program disruptions; customer confusion and frustration; increased costs to Southern California Edison Company (Edison); and/or increased expenses and unemployment for current service providers. Some protestants are concerned that the proposed program lacks pay-for-performance incentives, should not restrict to bidders with experience in the SoCal Gas service area, is

premature since the 1999 programs are just being designed, and/or should not bind the Independent Administrator (IA). Certain protestants claimed that San Diego Gas & Electric Company (SDG&E) and Edison should also be required to competitively bid 1999 programs with pay-for-performance incentives, and /or that SoCal Gas and Edison should combine competitively bidding the WP.

4. This Resolution denies SoCal Gas' Advice Letter 2731-G without prejudice.

BACKGROUND

1. In Decision (D.) 95-12-063,¹ the Commission described its vision of low-income energy efficiency programs, "[E]nergy service companies or nonprofit community-based organizations would compete for use of the funds to provide low-income efficiency services."

2. In a subsequent decision, D.97-02-014,² the Commission reiterated its intent that "...funds disbursed by the Administrator for low-income energy efficiency or education services be allocated by competitive procurement."

3. SoCal Gas' current program is not a competitively bid program. Pursuant to D.93-10-043,³ SoCal Gas competitively bid 25% of its program for a two year pilot program.

4. The term for interim utility administration of low-income assistance programs was extended by D.98-05-018⁴ to December 31, 1999.

5. The Low Income Governing Board (LIGB) considered SoCal Gas' request for Board approval of its intent to competitively bid components of its DAP at several meetings. The motion to support SoCal Gas' proposal ultimately failed 4 to 4 at the July 21, 1998 LIGB meeting. Another motion for the LIGB to file a response setting out the Board's positions pro and con and why the Board deadlocked also deadlocked.

6. The Commission, in structuring the implementation of its goals for energy efficiency and low income assistance programs, relied on the passage of

¹ In Rulemaking (R.) 94-04-031 and (I.) Investigation 94-04-032, dated December 20, 1995, as modified by D.96-01-009 on January 10, 1996, p. 167

² In R.94-04-031/I.94-04-032, dated December 20, 1995, as modified by D.96-01-009 on January 10, 1996, p. 67.

³ SoCal Gas Test Year 1994 Rate Case

⁴ In Rulemaking (R.) 94-04-031 and (I.) Investigation 94-04-032, dated December 20, 1995, as modified by D.96-01-009 on January 10, 1996, p.1

Assembly Bill (AB) 2461 to, among other things, provide for the Public Goods Charge funds⁵ to be transferred to the State treasury and used for programs run by an IA, starting July 1, 1999.

7. A September 23, 1998 Assigned Commissioner's Ruling (ACR) established a procedural forum and a schedule for the energy efficiency and the low-income assistance programs.

8. On September 28, 1998, AB 2461 was vetoed by the Governor. This veto calls into question how the Commission's policy preferences, as expressed in D.97-02-014, for independent administration of these programs can be realized.

9. An October 1, 1998 ACR scheduled a Public Hearing to provide input on what the Commission should do to implement the programs required by Public Utilities Code Sections 381(c) and 382. The earlier September 23, 1998 ruling was not reversed. Pursuant to this ACR, structural alternatives for implementing the Commission's policy goals for low-income assistance programs would be investigated at the Public Hearing.

10. The Public Hearing was held on October 27, 1998. Various views were presented, but no consensus was reached on appropriate future action. The Assigned Commissioner indicated that he would consider the comments and form a recommendation to the full Commission at some later time.

NOTICE

1. SoCal Gas Advice Letter 2731-G was served on other utilities, government agencies, and to all interested parties who requested such notification, in accordance with the requirements of General Order 96-A. Public notice of this filing has been made by publication in the Commission's calendar.

PROTESTS

1. On August 26, 1998, the ORA filed comments in support of SoCal Gas Advice Letter 2731-G, with the caveat that SoCal Gas open up the Outreach and Assessment portion of the program to all qualified bidders, and not just licensed contractors and non-profit organizations. ORA noted that competitive bidding is the Commission's policy preference. ORA believes that the delivery of service to customers should be able to continue uninterrupted if SoCal Gas' proposal is implemented soon, and in so doing will bring SoCal Gas' programs into uniformity with other utility programs, improve cost

⁵ Provided for in Public Utilities Code Sections 381(c) and 382 for energy efficiency low-income programs.

effectiveness, and make the eventual transfer to the IA easier. ORA believes that results from the competitive bid process required by D.93-10-043 clearly demonstrate cost savings throughout SoCal Gas' entire DAP. However, ORA is concerned that there are organizations which could qualify to participate in SoCal Gas' proposed program if the bid process for Outreach and Assessment is opened to all who have experience in serving low-income communities and have knowledge of conservation and weatherization measures.

2. On August 20, 1998, Winegard and CACSB each filed a protest to SoCal Gas Advice Letter 2731-G. Winegard believes splitting the installation from outreach functions will result in customer confusion and increased costs, and will require significant time to establish itself. Winegard believes overheads are minimized when outreach and installation are combined. Winegard asserts that the LIGB will design a program where the contractor will provide both outreach and installation. Winegard is also concerned that individuals currently employed by the contractors will lose their jobs as a result of the program being separated. CACSB echoed most of these concerns. In addition, CACSB points to D.98-07-060,⁶ wherein SoCal Gas was ordered to expend an additional \$6 million in program money in 1998. CACSB expressed concern that with itself and SoCal Gas managing this increase, it is questionable whether or not a new bid process can be administered effectively at this time. Additionally, CACSB alleges that training new contractors that may or may not be involved in the future program after January 1, 2000 may be inefficient. CACSB claims it did not have notice of SoCal Gas' intent to bid out the programs for 1999 and claims it has already expended funds for outreach for the 1999 program.

3. On August 21, 1998, TELACU, ASCEEP, and OCCDC each filed a protest to SoCal Gas Advice Letter 2731-G. TELACU claims splitting outreach from installation will cause poor customer service and possibly high cancellation rates. ASCEEP believes implementing a new bid program, at this time, will cause loss of services and discontinuities, and asserts costs for the program are already at market. OCCDC alleges SoCal Gas' former pilot increased costs, and caused customer confusion and program disruptions. OCCDC believes putting the 1999 programs out to bid in such a hurried fashion will result in similar problems. OCCDC pointed to an inter-utility agreement with Edison and wondered if SoCal Gas' proposal could have an effect on that agreement.

4. On August 24, 1998, CSD, VICS, RESCUE/SESCO, and LAMLIF each filed a protest to SoCal Gas Advice Letter 2731-G. CSD also alleges SoCal Gas' former pilot program increased costs and caused customer confusion and program disruptions and is concerned that putting the 1999 programs out to bid could have similar results. CSD

⁶ In A.95-06-002, dated July 23, 1998.

alleges bidding out the 1999 programs could cause service disruption in territories overlapping with Edison. VICS asserts that training, new materials, and purchasing new computer software and equipment are examples of items that could increase program costs and possibly cause program disruptions. RESCUE/SESCO believe splitting the program into outreach and installation elements will impair the efficiency of the program and increase costs. RESCUE/SESCO allege that if the programs are competitively bid, pay-for-performance incentives should be implemented, Edison and SDG&B should also be required to bid out their 1999 DAP, and SoCal Gas and Edison should be required to combine their DAP since the utilities serve predominantly overlapping service areas. LAMLIF voiced concerns similar to other protestants. Along with possible program disruptions, LAMLIF believes that any potential cost savings will be outweighed by the costs associated with changing to the new program because of the short duration of the contracts. LAMLIF asserts that by putting the programs out to bid in 1999, start-up costs may end up being incurred twice. LAMLIF alleges that SoCal Gas' proposal is inconsistent with Commission decisions and would not provide a uniform starting place for all of the utilities when the programs transition to the IA. LAMLIF alleges the bidding process could impact the \$6 million increase ordered for SoCal Gas' 1998 DAP. LAMLIF is also concerned that Edison may be forced to bid its 1999 program as well, increasing costs to its ratepayers. Finally, LAMLIF points to the LIGB not formalizing an opinion on SoCal Gas' proposal.

5. On August 28, 1998 and September 14, 1998, RESCUE/SESCO filed supplemental protests, as they became aware of additional information about SoCal Gas' proposed program. RESCUE/SESCO protests the minimum qualifications for bidders. RESCUE/SESCO claims the effect of the minimum qualifications would limit bidding to firms already under contract to SoCal Gas or Edison. RESCUE/SESCO alleges that the restrictive qualifications are in violation of the Commerce Clause of the U.S. Constitution.

6. On August 31, 1998, September 4, 1998, and September 21, 1998, SoCal Gas submitted responses to the protests. SoCal Gas responded to the recurring issues raised by the protestants:

- a) SoCal Gas believes its decision to pursue competitive bidding is consistent with and furthers the Commission's goals. The LIGB did not approve or disapprove SoCal Gas' proposal. SoCal Gas states it intends to incorporate several program design elements adopted by the LIGB for its 1999 program;
- b) SoCal Gas asserts it is establishing appropriate performance standards to hold contractors accountable for producing a steady stream of qualified customers and completed jobs. SoCal Gas asserts it does not believe there will by any

program disruptions if its proposal is adopted. SoCal Gas intends to detail its estimated expenditures in its October 1, 1998 filing;

- e) SoCal Gas points to findings from its pilot program which indicate positive effects from previously bidding a portion of the program. SoCal Gas claims on a per-measure basis, contractors who bid the program had more lower-priced measures than the other contractors. SoCal Gas claims it intends to institute quality control standards and procedures to identify and promptly resolve start-up problems so that contractors will produce in a timely and continuous manner;
- d) SoCal Gas alleges that overall administrative costs will at the worst remain the same with or without bidding. SoCal Gas asserts administrative costs may actually improve since there will be a smaller number of contractors to oversee. SoCal Gas alleges it does not expect to incur significant costs to accommodate the bid program. SoCal Gas asserts that training costs should not be a factor because many of the currently-trained workforce will continue to provide services or new contractors will hire from the existing trained workforce;
- e) SoCal Gas alleges SDG&E has efficiently and effectively operated outreach and assessment separate from installation. SoCal Gas points out SDG&E's pilot program indicated clients being served at a lower cost with independent assessment. SoCal Gas identifies several ways the split program would reduce costs and increase energy efficiencies. SoCal Gas alleges customers requiring only low-cost measures are not now being serviced. Additionally, some measures are being routinely installed when they may not be necessary. SoCal Gas asserts splitting the program will reverse these problems;
- f) SoCal Gas claims the LIGB has not yet determined whether or not to recommend splitting the program for 2000;
- g) SoCal Gas claims its analysis indicates overpriced current installation and outreach measures should decrease with competitive bidding;
- h) SoCal Gas asserts a Class B General Contractor's license is a strong indication that a contractor possesses the knowledge and skills to install a measure, which are useful in determining the feasibility of installing any given measure. Additionally, SoCal Gas alleges licensing assures the provider is established in business;

- i) SoCal Gas plans on issuing one-year contracts in order to allow for transition of the program to the IA. SoCal Gas would have the option of a contract change order process to extend those contracts should the need arise;
- j) SoCal Gas asserts recommendations for pay-for-performance, a bid process by SDG&E, and a combined DAP for SoCal Gas and Edison do not directly address SoCal Gas' proposal to bid; and
- k) SoCal Gas modified its pre-qualification criteria to remove the "Southern California" requirement and redirected the focus to two years or more of weatherization and outreach experience in low-income communities. SoCal Gas mailed a notice of such to interested parties.

7. On September 3, 1998, Edison submitted a response to RESCUE/SESCO's protest. Edison asserted that the protestants' recommendation to combine its DAP program with SoCal Gas' is inappropriate and should not be implemented. Edison recommends any pay-for-performance approach to DAP be fully reviewed and recommended by LIGB. Edison asserts it has utilized a competitive bid process. Edison claims it plans to work closely with SoCal Gas to continue the inter-utility cooperative approved by the Commission.

8. On August 31, 1998, Sempra Energy, on behalf of SDG&E, submitted a response to RESCUE/SESCO's protest. SDG&E contends its program is administered by a third-party contractor, who was selected through a competitive procurement process. SDG&E asserts that resolution of issues raised in protests to SoCal Gas' advice letter should not be applicable to SDG&E.

DISCUSSION

1. The Commission, in D.95-12-063 and in D.97-02-014, expressed its policy goals of moving the disbursement of funds to provide low-income efficiency services to a competitive procurement process. D.97-02-014 relayed the Commission's intent for the funds to be disbursed through an IA.

2. The Commission has not pronounced a change in its policy goal of moving the disbursement of funds to provide low-income efficiency services to a competitive procurement process. The veto of AB 2461 may delay or change implementation of the Commission's policy goals of the funds being disbursed through the IA.

3. Some of the Protestants question whether or not a new bid process can be administered effectively at this time. The point is well taken. Due to the many questions raised by Protestants regarding the administration of the competitive bid process of this

time, we will defer making a decision at this time. Accordingly, we will deny SoCal Gas AL2731 without prejudice.

4. Since we are denying SoCal Gas' request due to the uncertainty surrounding the competitive bid process, we do not address any of the other issues raised by Protestants.
5. To the extent parties raise the issue of uncertainty, their protests are granted. In all other respects, these protests are moot.
6. The Commission, in setting up the LIGB, envisioned receiving recommendations from the Board on low-income assistance programs. The Commission notes that the LIGB did review SoCal Gas' proposal before it filed an advice letter and deadlocked on both approving or disapproving the proposal and for submitting to the Commission a list of the pros and cons related to the proposal and why the Board deadlocked. However, the Board met several times after SoCal Gas' advice letter was filed and yet did not pursue recommending approving or disapproving SoCal Gas' advice letter filing or submitting to the Commission a list of the pros and cons related to the advice letter and why the Board deadlocked, if it did so again. We expect in the future for the LIGB to submit comments and recommendations on any advice letter or application submitted with regards to the programs under its oversight.

FINDINGS

1. On August 4, 1998, in Advice Letter 2731-G, SoCal Gas requested approval to competitively bid the weatherization portion of its 1999 low-income program known as the direct assistance program.
2. The Commission's policy goal is to move the disbursement of funds to provide low-income efficiency services to a competitive procurement process.
3. The current schedule and implementation plan to realize that goal was formulated by the Commission, based on the Commission's reliance on the passage of AB 2461.
4. On September 28, 1998, AB 2461 was vetoed by the Governor.
5. The veto of AB 2461 may delay or change implementation of the Commission's policy goals of a competitive procurement process, and the funds being disbursed through an IA.

6. The ORA conditionally supported Advice Letter 2731-G. The ORA's recommendation to open the outreach and assessment portion of the program to providers who do not have a Contractors' B License should be denied.

7. Winegard, CACSB, ASCEEP, OCCDC, RESCUE/SESCO, VICS, CSD, LAMLIF, and TELACU protested Advice Letter 2731-G. Winegard's, CACSB's, ASCEEP's, OCCDC's, RESCUE/SESCO's, VICS's, CSD's, LAMLIF's, and TELACU's protests should be granted to the extent they raise the issue of the uncertainty of whether the competitive bid process can be administered of this time .

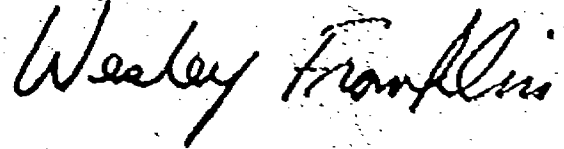
THEREFORE, IT IS ORDERED that:

1. Southern California Gas Company (SoCal Gas) Advice Letter 2731-G is denied without prejudice.
2. The Office Of Ratepayer Advocates' recommendation is moot.
3. The protests of Winegard Energy Inc.; the Community Action Commission of Santa Barbara; the Association of Southern California Environmental and Energy Programs; the Orange County Community Development Council; the Residential Service Companies' United Effort and SESCO, Inc.; the Veterans in Community Service, Inc.; the Community Services Department of San Bernadino County; the East Los Angeles Community Union, the Maravilla Foundation, and Latino Issues Forum; and TELACU Weatherization are granted on the issue of the uncertainty of administering the competitive bid process at this time.
4. SoCal Gas Advice Letter 2731-G shall be marked to show that it was denied without prejudice by Commission Resolution G-3245.

This Resolution is effective today.

December 3, 1998

I certify that the foregoing Resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the state of California held on December 3, 1998; the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

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