

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric  
Company for Approval of the 2009-11  
Low Income Energy Efficiency and  
California Alternative Rates for Energy  
Programs and Budget (U39M)

Application 08-05-022  
(Filed May 15, 2008)

DISABILITY RIGHTS ADVOCATES' COMMENTS ON THE PROPOSED  
DECISION OF ADMINISTRATIVE LAW JUDGE KIM DENYING THE PETITION  
OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA  
GAS COMPANY TO MODIFY DECISION 08-11-031

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October 18, 2010

## **I. INTRODUCTION**

Pursuant to the Public Utilities Commission (“Commission”) Rule of Practice and Procedure 14.3, Disability Rights Advocates (“DisabRA”) files these Comments on the Proposed Decision (“PD”) of Administrative Law Judge (“ALJ”) Kim. DisabRA respectfully asks the Commission to modify its Proposed Decision by either modifying Ordering Paragraph (“OP”) 31 of D.08-11-031 as set forth in opening comments, or in the alternative, to clarify the section of the PD that discusses what the utilities are currently permitted to ask customers. As written, the PD’s discussion of Sempra’s Petition regarding disability issues is ambiguous, and leaves the utilities uncertain about the legality of certain inquiries regarding a customer’s disability status as they work toward their goal of having 15% of new Low Income Energy Efficiency (“LIEE”) enrollees each year being disabled households. This uncertainty limits the utilities’ ability to effectively enroll and track people with disabilities in the LIEE program.

## **II. THE COMMISSION SHOULD REMOVE AMBIGUITY ABOUT WHAT THE IOUS ARE PERMITTED TO ASK CUSTOMERS ABOUT THEIR DISABILITY STATUS, EITHER BY GRANTING SEMPRA’S PETITION ABOUT DISABLED CUSTOMER LANGUAGE OR BY MODIFYING THE PD’S DISCUSSION OF THIS ISSUE**

DisabRA has previously articulated its strong support for the goal that IOUs should increase their enrollment of disabled households so that disabled customers comprise 15% of new LIEE enrollments each year for the 2009-11 program years. It is important that people with disabilities enroll in the LIEE program and that they self-identify on a voluntary basis, both for the health of the program and so that disabled customers can enjoy the intended benefits of the program. It is also critical that the Commission give clear guidance to the IOUs about how they can appropriately solicit this information from customers.

In its analysis, the PD states that OP 31, as it appears in D.08-11-031, already “allows for ‘customers who voluntarily self-identify as disabled’”<sup>1</sup> and that it sees no need for further clarification of how customers can self-identify to the IOUs beyond the original language of OP 31:

We will allow IOUs to count customers they enroll in LIEE as a result of leveraging with CBOs that serve the disabled community, or with the DDTP, toward the 15% annual disabled enrollment goal. IOUs may also count customers who voluntarily self-identify as disabled or whom the IOUs enroll from the Medical Baseline program, but should not ask customers whether they are disabled. Rather, the IOUs may count as disabled persons who voluntarily describe themselves as having a disability, persons who have an observed disability such as a mobility, vision or hearing disability, and persons who use TTY/TDD or request accessible formats of written materials (*i.e.*, large print and/or Braille).<sup>2</sup>

Sempra proposed language to modify OP 31 so that it would explicitly permit the IOUs to ask customers about their disability status in non-face-to-face interactions, such as written communication. This request indicates the IOUs’ current uncertainty and need for guidance on how they may appropriately invite voluntary disclosures about a customer’s disability status. As the PD notes, DisabRA supports the basis for Sempra’s proposed modification, while offering slightly different language to achieve the same purpose.<sup>3</sup>

The PD denies Sempra’s request to modify the language of OP 31, stating that OP 31 “allows for ‘customers who voluntarily self-identify as disabled,’”<sup>4</sup> and confirming

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<sup>1</sup> Proposed Decision Denying Petition of San Diego Gas and Electric Company and Southern California Gas Company to Modify Decision 08-11-031 (“PD”), A.08-05-022, September 28, 2010, at 5 (citing Decision on Large Investor-Owned Utilities’ 2009-11 Low Income Energy Efficiency (LIEE) and California Alternative Rates for Energy (CARE) Applications (“D. 08-11-031”), A.08-05-022, November 6, 2008, at 225.)

<sup>2</sup> D. 08-11-031 at 225.

<sup>3</sup> PD at 4.

<sup>4</sup> *Id.* at 5 (citing D.08-11-031 at 225). The PD also declines to adopt the slightly different language proposed by DisabRA.

that the Commission need not “specify each and every method and/or question that may be employed by the Petitioners to secure such information such that those contacts do not place the disabled persons in potentially embarrassing, uncomfortable, humiliating or stigmatizing situations.”<sup>5</sup> This implies, but does not state clearly, that the means discussed in the petition for modification and clarified in DisabRA’s proposed language, are permissible under the existing decision.

However, the PD then goes on to describe the clarification requested in the petition for modification as untimely,<sup>6</sup> stating that “[a]ny further policy directive and clarification we make to this issue can and should wait till the imminent next set of LIEE budget applications which will be the ideal time to bring up any issue where clarity in the OP should be made.”<sup>7</sup> DisabRA believes that this discussion of pushing back the timeline for clarification confuses the discussion of whether the types of inquiries identified in the petition for modification are already permissible under OP 31. If so, the Commission should make this clear so that Sempra and the other IOUs can implement these methods for inquiring about disability status. If it is not or if the Commission is not sure, it also needs to make that known to the IOUs.

Without a clear answer about whether Sempra’s proposed modifications to OP 31 are unnecessary because they are already permissible or necessary (but potentially untimely), the existing ambiguity is likely to lead the utilities to err on the side of under-asking about disability status or to abandon or never implement certain methods of inquiry that are perfectly legal under OP 31. This is especially likely given that OP 31 is a new initiative, and disability can be a sensitive topic for some individuals. A lack of guidance will also limit the number of ways the IOUs can capture data about their customers, yield less accurate data, and hinder the IOUs’ ability to make progress toward

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<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

their goal of 15% enrollment of disabled households. Overall, this ambiguity will make the utilities less likely to meet the goal established in D.08-11-031, and may make the data they do collect less reliable. This negative outcome could be avoided simply by providing greater clarity here.

### **III. CONCLUSION**

As written, the PD leaves the IOUs in a quandary over what actions they can permissibly take to invite customers to voluntarily self-identify as disabled, consistent with OP 31. DisabRA recommends that the Commission modify the language of OP 31, or in the alternative, modify the discussion in the body of the PD, as addressed in these Comments to make clear that such inquiries are permissible.

Respectfully submitted,

DATED: October 18, 2009

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## CERTIFICATE OF SERVICE

I certify that I have, by electronic mail to the parties to which an electronic mail address has been provided, served a true copy of “Disability Rights Advocates’ Comments On The Proposed Decision of Administrative Law Judge Kim Denying The Petition of San Diego Gas & Electric Company and Southern California Gas Company to Modify Decision 08-11-031,” on all known parties on A.08-05-022, et al..

Dated October 18, 2010, at Berkeley, California.

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