

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the
Commission's Post-2008 Energy Efficiency
Policies, Programs, Evaluation, Measurement,
and Verification, and Related Issues Order

Rulemaking 09-11-014
(Filed November 20, 2009)

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M)
AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON ASSIGNED RULING
AND SCOPING MEMO, PHASE II**

Steven D. Patrick

Attorney for

**SAN DIEGO GAS & ELECTRIC COMPANY and
SOUTHERN CALIFORNIA GAS COMPANY**

555 W. Fifth Street, Suite 1400

Los Angeles, CA 90013-1046

Phone: (213) 244-2954

Fax: (213) 629-9620

E-Mail: SDPatrick@semprautilities.com

October 8, 2010

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**I.
INTRODUCTION**

Pursuant to direction provided in the September 22, 2010 *Assigned Ruling and Scoping Memo, Phase II* ("Ruling"), San Diego Gas & Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas") (also referred to as "Joint Utilities") appreciate the opportunity to provide their comments on the two issues identified in the Ruling.

In the Ruling, the Commission requests parties to "file comments on the need for additional safeguards to prevent program administrator misuse of energy efficiency funds."¹ While the Joint Utilities respond to the issue in this submittal, the Joint Utilities believe that there are additional and more significant overarching questions that must be resolved *prior* to addressing safeguards, and more importantly, *prior* to resolution of the issues discussed and to be summarized from the September 27, 2010 workshop.

For example, if the Commission determines its authority over CCAs concerning the expenditure of EE funds is the same that it exercises over the IOUs, then the Commission should conclude that the same kinds of oversight and safeguards that apply to the IOUs as EE program administrators would also apply to the CCAs. Consequently, if the CCAs are under the same rules and oversight as the IOUs, then there should be no greater concern over any additional "recourse" applicable to CCAs per se. SDG&E submits that, in any event, a potential threat to

¹ Ruling, Ordering Paragraph 2.

CCAs losing funding at an undetermined future time under yet to be determined conditions is a grossly insufficient ratepayer protection and fails to address how the Commission can or will assure itself that the expenditure of EE funds by CCAs will contribute to the state meeting its EE and GHG goals.

Related questions are: (1) Whether the Commission’s authority is limited to *electric* PGC funds, as only electric PGC funds are identified in the statute; (2) Whether the Commission’s authority can be extended to so-called “procurement” funds; and (3) Whether such authority can be extended to natural gas PPP funds?. It is essential for the Commission to determine the actual availability of the potential sources EE funding. Indeed one of the most discussed topics discussed at the Commission’s September 27 workshop was: “How big is the pie?” This question deserves an answer ab initio, not at some later date.

SDG&E believes another significant issue the Commission must resolve immediately is what is an “administrator” of PGC funds under AB117. The Commission initially defined such an administrator as: “any party that receives funding for and implements EE programs pursuant to Section 381.1.”² There is no doubt that this definition has been applied loosely, but this is not just a question of how accurately the word is defined; it is a question of protecting ratepayer interests. If the Commission determines it has full regulatory authority over a CCA as a recipient of EE funds, then the definition of EE “administrator”, with all the extant oversight exercised by the Commission related to the expenditure of EE funds, if applied to CCAs as it is currently applied to IOU’s may be adequate. Resolving this issue now is necessary to better insure that any EE funds entrusted to CCAs will be subject to the same standards required for IOU EE expenditures.

Interestingly, the Ruling at p. 6 refers to the procedures that were adopted in D.03-07-034, and states that: “while the procedures adopted by that decision remain in place, it is also correct that much of the energy efficiency policy-making landscape has changed since 2003.” SDG&E agrees that things have changed significantly since that time, and one of those changes was a Commission decision to use the IOU’s in a continued administration role,³ a key reason

² Decision 03-07-034

³ (administration decision)

being the Commission lacked the jurisdiction over third parties it has over the IOU's in protecting the use of the EE funds.

There are other questions for which the Commission should develop an adequate record so that it can reach a reasoned determination concerning the CCs use of ratepayer EE funds. These The Joint Utilities submitted comments on some other of these key issues in its March 15, 2010 response to the March 3, 2010 Administrative Law Judge's Ruling Setting Prehearing Conference.⁴ The following are the issues raised by the Joint Utilities in its March 15, 2010 Comments: (1) Allocation of Energy Efficiency Savings Goals; (2) Program Oversight; (3) Program Planning and Statewide Coordination; and (4) IOU and CCA Program Coordination. In addition to these, other issues that need to be addressed as the overarching questions are addressed include, but are not limited to: (1) Does the EE Policy Manual apply to a CCA? If not, why not? (2) Should the portfolio rules for IOU's apply to CCA's? If not, why not? (3) Should the EM&V rules applied to the IOU's also apply to CCA's? If not, why not?

Resolution of these issues and questions early will likely ensure a better implementation result later.

II.

THE JOINT UTILITIES' RESPONSES TO QUESTIONS POSED BY THE RULING ⁵

- 1. How might utilities use energy efficiency funds in a way that would discourage or interfere with a local government's efforts to consider or to become a CCA? Responses to this question should focus on structural aspects of program rules, rather than offering anecdotal instances of alleged abuses.**

Response: The Joint Utilities are not aware of means by which utilities would use energy efficiency funds to discourage or interfere with a local government's efforts to consider or become a CCA.

⁴ Comments of Sand Diego Gas & Electric Company (U 902 M) and Southern California Gas Company (U 904 G) Regarding Administrative Law Judge's Ruling Setting Prehearing Conference, March 15, 2010.

⁵ Question #6 is specifically not addressed here, as it gives direction to Parties for their Reply Comments.

2. Please identify each specific safeguard in existing Commission Decisions that protects against possible utility misuse of energy efficiency funds to discourage or interfere with a local government's efforts to consider or to become a CCA.

Response: The Joint Utilities operate and manage their energy efficiency portfolios consistent with the current Energy Efficiency Policy Rules and various Energy Efficiency decisions and rulings. The Policy Rules, decisions and rulings provide specific direction on the appropriate uses of energy efficiency funds. In addition, the Commission conducts regular financial audits, which includes verification of appropriate expenditures. To date, the Commission has conducted three financial audits for the 2006-2008 program cycle. The Joint Utilities have also been notified of an upcoming financial audit for 2009.

In addition, the Commission has mechanisms by which parties can raise concerns regarding the inappropriate use of energy efficiency funds such as the formal protest process and the complaint process. If warranted, the Commission has various means at its disposal to discipline the utilities under its jurisdiction.

3. Why, or why not, are the existing safeguards adequate? Please be specific in responding to this question.

Response: The Commission has in the past exercised its authority in dispensing discipline and sanctions against its regulated entities for various violations of PUC codes, rules and decisions. This serves as a deterrent for noncompliance with PUC codes, rules and decisions. Therefore, the Joint Utilities believe that adequate safeguards already exist.

4. What specific additional safeguards, if any, are needed to protect against misuse of energy efficiency funds to discourage or interfere with a local government's efforts to consider or to become a CCA?

Response: Based on their response to the above questions, the Joint Utilities do not believe additional safeguards are necessary.

5. How should the Commission, or its staff, enforce any applicable safeguards?

Response: As stated in their response to Question 2, the Joint Utilities believe that the Commission can verify through its regular financial audits to ensure that energy efficiency program expenditures are consistent with the Policy Rules, decisions and rulings. The Joint

Utilities believe that the Commission has the appropriate means to enforce compliance with PUC codes, rules and decisions.

III. CONCLUSION

The Joint Utilities believe that the Commission's current Energy Efficiency Policy Rules, decisions and rulings adequately provide direction for the appropriate use of energy efficiency funds. No additional safeguards and processes need to be created to protect against the misuse of energy efficiency funds. Furthermore, the Commission has the appropriate means to enforce compliance with PUC codes, rules and decisions.

The Joint Utilities appreciate this opportunity to provide their comments on the issues identified in the Ruling and look forward to developing an appropriate process by which a CCA can contribute to achieving California's aggressive energy efficiency goals.

Dated: October 8, 2010

Respectfully submitted

By /s/ Steven D. Patrick
Steven D. Patrick

Attorney for:

**SAN DIEGO GAS & ELECTRIC COMPANY and
SOUTHERN CALIFORNIA GAS COMPANY**

555 W. Fifth Street, Suite 1400

Los Angeles, CA 90013-1011

Telephone: (213) 244-2954

Facsimile: (213) 629-9620

E-mail: SDPatrick@semprautilities.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON ASSIGNED RULING AND SCOPING MEMO, PHASE II** on all parties of record in **R.09-11-014** by electronic mail and by U.S. mail to those parties who have not provided an electronic address to the Commission.

Copies were also sent via Federal Express to Administrative Law Judge D. Farrar and Commissioner D. Grueneich.

Dated at Los Angeles, California, this 8th day of October, 2010.

/s/ Marivel Munoz

Marivel Munoz

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists: R.09-11-014 - Last changed: October 7, 2010

dgilligan@naesco.org; andrew.mcallister@energycenter.org; andy@efficiency20.com;
michael.sachse@opower.com; SDPatrick@SempraUtilities.com; larry.cope@sce.com; mtierney-
lloyd@enernoc.com; eric@harpiris.com; dil@cpuc.ca.gov; jeanne.sole@sfgov.org;
lettenson@nrdc.org; bfinkelstein@turn.org; MIke@pge.com; ssmyers@att.net;
jerryl@abag.ca.gov; rknight@bki.com; jody_london_consulting@earthlink.net;
samuelk@greenlining.org; erasmussen@marinenergyauthority.org; wem@igc.org;
tconlon@geopraxis.com; blaising@braunlegal.com; ABesa@SempraUtilities.com;
achang@efficiencycouncil.org; stephaniec@greenlining.org; sschiller@efficiencycouncil.org;
mrw@mrwassoc.com; ashley.watkins@energycenter.org; pstoner@lgc.org;
irene.stillings@energycenter.org; Jennifer.Barnes@Navigantconsulting.com;
jennifer.green@energycenter.org; mokeefe@efficiencycouncil.org;
nehemiah@benningfieldgroup.com; PVillegas@SempraUtilities.com;
sephra.ninow@energycenter.org; bkates@opiniondynamics.com; nfeller@BlankRome.com;
Lewis@BlankRome.com; Sharp@BlankRome.com; puja@opower.com;
Cynthiakmitchell@gmail.com; GHealy@SempraUtilities.com; Jazayeri@BlankRome.com;
marilyn@sbesc.com; sbccog@southbaycities.org; susan.munves@smgov.net;
mbaumhefner@nrdc.org; Alyssa.Cherry@sce.com; case.admin@sce.com;
Jennifer.Shigekawa@sce.com; liddell@energyattorney.com; CentralFiles@SempraUtilities.com;
JYamagata@SempraUtilities.com; sthompson@ci.irvine.ca.us; cheryl.collart@ventura.org;
Jeff.Hirsch@DOE2.com; pcanessa@charter.net; ann.kelly@sfgov.org;
cal.broomhead@sfgov.org; theresa.mueller@sfgov.org; tburke@sflower.org; mang@turn.org;
nlong@nrdc.org; RegRelCPUCCases@pge.com; efm2@pge.com; yxg4@pge.com;
j1pc@pge.com; rafi.hassan@sig.com; cem@newsdata.com; lhj2@pge.com; rfg2@pge.com;
slda@pge.com; SRRd@pge.com; cjn3@pge.com; msutter@opiniondynamics.com;
service@spurr.org; cadickerson@cadconsulting.biz; vien@greenforall.org;
enriqueg@greenlining.org; craigtyler@comcast.net; ELVine@lbl.gov; mmyers@vandelaw.com;
Shayna.Hirshfield@sanjoseca.gov; mary.tucker@sanjoseca.gov; mgillette@enernoc.com;
owen_howlett@h-m-g.com; lmh@eslawfirm.com; abb@eslawfirm.com; bhopewell@peci.org;
9watts@gmail.com; CBE@cpuc.ca.gov; MWT@cpuc.ca.gov; Mjaske@energy.state.ca.us;
ppl@cpuc.ca.gov; aeo@cpuc.ca.gov; los@cpuc.ca.gov; cfl@cpuc.ca.gov; cxc@cpuc.ca.gov;
edf@cpuc.ca.gov; jl2@cpuc.ca.gov; cln@cpuc.ca.gov; jst@cpuc.ca.gov; jnc@cpuc.ca.gov;
kwz@cpuc.ca.gov; keh@cpuc.ca.gov; kmb@cpuc.ca.gov; ks3@cpuc.ca.gov; lp1@cpuc.ca.gov;
mmw@cpuc.ca.gov; mkh@cpuc.ca.gov; pcf@cpuc.ca.gov; seb@cpuc.ca.gov; zap@cpuc.ca.gov;
ztc@cpuc.ca.gov; awp@cpuc.ca.gov; sbender@energy.state.ca.us; bjunker@energy.state.ca.us;
dschultz@energy.state.ca.us; ckavalec@energy.state.ca.us; mulloa@semprautilities.com;
luluw@newsdata.com; centralfiles@semprautilities.com; mmunoz@semprautilities.com;

Dennis J. Herrera
City and County of San Francisco
City Hall, Room 234
San Francisco, CA 94102

Vien Truong, Esq.
Green for All
1611 Telegraph Avenue, Suite 600
Oakland, CA 94612