

**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.

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

**WOMEN'S ENERGY MATTERS
COMMENT ON SAFEGUARDS TO PREVENT MISUSE
OF ENERGY EFFICIENCY FUNDS**

October 8, 2010

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**WOMEN'S ENERGY MATTERS
COMMENT ON SAFEGUARDS TO PREVENT MISUSE
OF ENERGY EFFICIENCY FUNDS**

Women's Energy Matters (WEM) appreciates this opportunity to comment on safeguards to prevent misuse of energy efficiency (EE) funds, pursuant to the 9-22-10 Scoping Memo. The Memo asked parties to respond to the following questions:

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.

The structural issues boil down to this: *the IOUs control EE funds. They have myriad opportunities to use them for their corporate objectives.* Even when IOUs are using the funds to conduct genuine EE-related activities, the activities can be conducted in a way that undermines or interferes with CCAs,

As an appendix to this comment, WEM provides a list of the ways that WEM has witnessed a utility misusing EE funds to discourage or interfere with CCA formation.¹

The list is generic; there is a wealth of anecdotes underlying it. The major topics are:

- Offer "extra" EE as an inducement to reject CCA
- Use IOUs' control over Local Government Partnerships to fight CCAs
- Use Account Reps to market against CCA
- Use Public Events to Market against CCAs and Greenwash the IOU
- Influence the Media with advertising dollars
- Misuse EE education programs
- Influence community groups against actively promoting CCAs

The items in this list can all be seen as functions of the IOUs' role as administrators of EE. They plan and execute programs; they control budgets for marketing, education, advertising, events; they have discretion to choose Local Government Partners and Third Party Programs.

¹ Some of these types of EE misuse have also occurred in IOU efforts to oppose municipalization — which is closely related; in some jurisdictions there are overlapping efforts to form a CCA and/or a muni.

It simply doesn't work to put the fox in charge of the henhouse, or the pedophile in charge of the playground. You don't necessarily lock them up and throw away the key; there are places they could be useful and productive, but they either have to be carefully supervised (like the pedophile) or fenced out of civilized areas (like the fox).

One of the devilish aspects of the misuse of EE funds by IOU administrators — like many anti-social activities — is that there is largely an absence of rules that would prevent the behavior. There are mostly gray areas. *CPUC would have to micromanage everything that an administrator does to prevent all the misuse.*

Unfortunately, even when there are major violations (for example, gross negligence, bribery or fraud), they may have been overlooked for so long that many people who are part of the system don't even see them. They can be hard to prove, all but impossible if there is no venue to address them.

WEM calls out utilities' conflict of interest with EE, which is obvious to most lay observers. However, many inside the system have convinced themselves that the conflict has been solved by shareholders incentives.

Problems often occur in the context of "leadership;" when unscrupulous, self-serving individuals (or corporations) are elevated to a position of great power it becomes more and more costly and difficult for anyone to question what they do. Leaders are honored and celebrated as a matter of course. Too often, "leaders" are not held to the same standards as others — the "too big to fail" syndrome.

Why are utilities allowed to run programs when they have failed to meet their many-times-reduced goals? Why are no penalties even being considered for their 2006-08 failures?

If California had a healthy appreciation for the utilities' conflict of interest with EE, the number one priority would be independent non-utility administration of these programs.

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.

D0909047 and Resolution E-4250 attempted to address the problem as follows:

Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall not use energy efficiency funds in any way which would discourage or interfere with a local government's efforts to consider becoming, or to become, a Community Choice Aggregator. **D0909047 (EE portfolios) Ordering paragraph 39, subparagraph 11, p. 386:**

Resolution E-4250 p. 12:

In this letter, PG&E outlines a proposed collaboration between PG&E and the city of Novato.² Contained in this proposal are the following commitments made by PG&E:

"We reiterate our commitment to Novato to provide, free of charge, a one-half time equivalent staff to support the City in the implementation of this Collaboration, AB 32, SB 375, AB 811 and other related programs and efforts". (p2)

"PG&E will partner with the City and Novato residents and businesses to expand PG&E's existing Energy Efficiency programs with energy savings achieved through Mass Market, Target Market, and Third-Party channels. Through a PG&E point person, approved by the city, a task force will be created to help navigate through the utilization of existing opportunities and the creation of new programs". (p6)

Resolution E-4250, p. 12

Resolution E-4250, p. 13:

This letter raises the appearance that a utility is seeking to link the utility's provision of services to a decision by a local government not to participate in a cca. We want to promote a level playing field in competition between the investor owned utilities and ccas. Accordingly, we will take this opportunity to provide direction to the utilities. The utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. Resolution E-4250, p. 13

Peer Review Groups (PRG):

As described in D.05-01-055 and D.07-10-032, members of each PRG

² The city of Novato was initially mentioned as part of Marin County's CCA efforts in its "Final Report – CCA Business Plan" issued April 2008. The city of Novato has not joined Marin County's CCA program per the December 4, 2009 filing of Marin Energy Authority's CCA Implementation Plan submitted to the CPUC for review.

will be expected to: (1) oversee the development of criteria and selection of government partnership programs, (2) review the IOUs' submittals to the Commission and assess the IOUs' overall portfolio plans, their plans for bidding out pieces of the portfolio per the minimum bidding requirement and (3) review the bid evaluation utilized by the IOUs and their application of that criteria in selecting third-party programs...

Policy Manual v. 4, pp. 18-19.

The Commission recognized that the PRGs were not sufficiently protecting Local Government Partners and tried to coax utilities to treat them better:

5. Future partnership programs need to be developed in a manner that places the Program Administrator and local government (or private) partner on more equal footing, in terms of involvement in program design and planning, information sharing and program implementation. ...

6. Standard contract language should improve the effectiveness of future partnership programs. The standard language should establish the rights and responsibilities of the partners with sufficient flexibility to enable each partner to make improvements to program performance, as circumstances warrant. T...[etc.]
Policy Manual v. 4, pp. 16-17.

The Blue Consulting Audit of 2004 found problems of bias and "irregularities" in selecting and working with their contractors including Local Governments and Third Parties, and recommended a variety of measures.

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

In GRC hearing testimony, PG&E witnesses claimed that neither D0909047 nor E-4250 were applicable to anything that they did in Marin. They gave the standard defense "that PG&E provides EE where there is interest" and the offers to the County of Marin and the City of Novato were just "responding to requests" from government officials. The elaborate showing at the Marin Co. Fair was just support for community that was interested in the environment.

Another argument was that the Novato offers were marketing against CCA administration of EE – thus they weren't directed against CCA formation itself, and weren't subject to the prohibitions in D0909047 and E-4250.

PRGs

(a) PRG protections are inadequate, as revealed by the following examples:

The PG&E PRG report on Local Government Partnerships for the current cycle noted that the utility intended to provide only two years out of their three-year requested budgets, requiring LGPs to demonstrate “success” in order to obtain funding for the third year. (We note that the utilities themselves are under no such restrictions — they are fully funded for 2010-12 in spite of gross under-achievements in both 2004-05 and 2006-08 cycles.)

The lack of consistent funding created uncertainties among LGPs that negatively impacted staff morale, their ability to attract talent, as well as their ability to assure customers that they would be able to follow through with longer-term projects. While WEM has heard conflicting reports as to the current status of LGP budgets, the PRG report by itself was clearly not sufficient to prevent PG&E from imposing these requirements and causing many months, if not years, of harmful impacts.

In the 2006-08 cycle, the PRG report mentioned that PG&E was treating LGPs unfairly, refusing to even meet with them until Feb., 2006 (a month *after* the programs were supposed to begin), then slashing their budgets in half and altering their program plans significantly. Contracts for LGPs in San Francisco and Marin — communities interested in CCA — were the last LGP contracts that were signed - in September that year.

An EE provider that delivered successful programs in both 2002-03 associated with the city of Davis and with Yolo County in 2004-05, was rejected in its application for a third party program in 2006-08. The PRG did not prevent any of these unfair outcomes.

(b) *The utilities select all members of the PRGs:* “The Program Administrators should put together the advisory groups...” Program Manual v. 4, p. 17. How nice, to be able to appoint your regulators! Need we say more?³

4. What specific additional safeguards, if any, are needed to

³ WEM is one of only about four public interest parties that have participated actively in all EE proceedings for the past ten years; and the only one that makes a point of representing CCA customers. WEM has never been asked to join a PRG.

protect against misuse of energy efficiency funds to discourage or interfere with a local government's efforts to consider or to become a CCA?

The Commission should establish an EE system that is fully independent of IOU administration. As long as IOUs administer EE funds, there is really no way to fully protect against misuse of funds to fight CCAs.

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

There should be full investigations, including hearings, on specific instances of misuse and heavy penalties for misuse of funds.

Dated: October 8, 2010

Respectfully Submitted,

/s/ Barbara George

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**CERTIFICATION OF SERVICE
R0911014**

I, Barbara George, certify that on this day October 8, 2010 I caused copies of the attached **WOMEN'S ENERGY MATTERS COMMENT ON SAFEGUARDS TO PREVENT MISUSE OF ENERGY EFFICIENCY FUNDS** to be served on all parties by emailing a copy to all parties identified on the electronic service list provided by the California Public Utilities Commission for this proceeding, and also by efilng to the CPUC Docket office, with a paper copy to Administrative Law Judge Darwin A. Farrar, and Presiding Commissioner Dian Grueneich.

Dated: October 8, 2010 at Fairfax, California.

/s/ Barbara George

DECLARANT

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