

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)

**THE DIVISION OF RATEPAYER ADVOCATES' REPLY
COMMENTS ON SAFEGUARDS AGAINST MISUSE OF ENERGY
EFFICIENCY FUNDS**

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits the following reply comments in response to the "Assigned Commissioner's Ruling and Scoping Memo, Phase II" (ACR) issued September 22, 2010. The ACR invited parties to comment October 8, 2010, on the need for safeguards to ensure that utilities administer energy efficiency funds fairly and not in a way that adversely affects Community Choice Aggregation (CCA) programs. The ACR allows parties to file reply comments no later than October 15, 2010.

DRA recommends that:

The Commission should ensure that a neutral third party evaluates CCA applications for energy efficiency funding;
and

The Commission should resolve other outstanding issues related to CCA administration of energy efficiency programs.

II. DISCUSSION

A. The Commission should ensure that a neutral third party evaluates CCA applications for energy efficiency funding using the criteria set forth in Section 381.1 of the Public Utilities Code.

In addition to soliciting comments on the need for safeguards to ensure the fair administration of energy efficiency funds, the ACR discussed the related issue of CCA access to energy efficiency funds: whether the Commission's existing policies and procedures adequately and clearly provide third-parties, including CCAs, the opportunity to apply to administer cost-effective energy efficiency or conservation programs. In fact, there is significant overlap between the issue of access to energy efficiency funds and the need for safeguards, because a fundamental safeguard is to ensure that CCAs have a reasonable opportunity to apply to administer energy efficiency funds. Based on

comments at the September 27, 2010 workshop, it appears that the Utilities¹ believe that CCAs should apply for energy efficiency funds as part of the Utilities' existing third-party solicitation process for selecting energy efficiency contractors. Using this process to determine whether CCAs should receive energy efficiency funds would mean that Pacific Gas and Electric Company (PG&E) Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) would decide whether CCAs within their service territory receive funding.

This would not create a level playing field for the selection process. There is a potential conflict of roles/interest in allowing a Utility to decide whether a CCA should receive energy efficiency funds. That conflict resides in the fact that CCAs and the Utilities will compete with one another to provide electricity and other electricity-related services to retail customers. It would be more appropriate to have a neutral third party such as the Commission's Energy Division evaluate applications of CCAs to receive energy efficiency funding.

The City and County of San Francisco (CCSF) recommends that to prevent the Utilities from obtaining an unfair competitive advantage from their administration of ratepayer-funded energy efficiency, "the Commission should create a presumption that CCAs that solicit such funds will obtain ratepayer funds for energy efficiency within their service territory, particularly funds for programs that allow opportunities to target energy efficiency money geographically, and/or that provide for direct customer/utility interactions."² DRA disagrees that the Commission should create a special presumption that "CCAs should be presumed to be the appropriate entity to deliver these programs to their customers, absent a clear showing to the contrary."³ Instead, a neutral entity such as the Energy Division should consider a CCA's proposal to administer energy efficiency

¹ DRA's reply comments refer jointly to Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) as "Utilities." Although Southern California Gas Company filed joined comments with SDG&E, those comments acknowledge that currently Section 381 only applies to electric public goods charge funds.

² Comments of the City and County of San Francisco in Response to the Assigned Commissioner's Ruling and Scoping Memo, Phase II, filed October 8, 2010 (CCSF Comments), p. 9.

³ CCSF Comments, p. 9.

programs given the factors cited in Public Utilities Code Section 381.1, including the value of program continuity and program certainty; the value in allowing competitive opportunities for potentially new administrators; whether the program is consistent with existing programs established pursuant to Public Utilities Code Section 381, including whether the proposed CCA program advances the goals of the California Energy Efficiency Strategic Plan; whether the program advances the public interest in maximizing cost-effective electricity savings and related benefits, and whether it accommodates the need for broader statewide or regional programs.

The energy efficiency activities of CCA administrators should not be managed under the Utilities' portfolios. Instead, the energy efficiency activities of a CCA that is selected as an energy efficiency administrator and that receives energy efficiency funds should be overseen by the Commission, in the same way that the Commission oversees the current administrators.

B. The Commission should resolve other outstanding issues related to CCA administration of energy efficiency programs.

The comments of SDG&E and SoCalGas point out issues related to CCA funding that the Commission should clarify or resolve, including the actual availability of potential sources of energy efficiency funding and the extent of the Commission's authority over CCAs as administrators.⁴ DRA understands from the September 27, 2010 workshop discussion that once CCAs begin procuring power on behalf of retail customers, they would no longer pay the procurement charges that fund energy efficiency. However, it appears from the comments of SoCalGas/SDG&E that there is still some uncertainty on this issue, and the Commission should resolve it. DRA supports a process through which CCAs can obtain access to their fair share of energy efficiency funds as provided by Section 381.1 of the Public Utilities Code. Determining the amount

⁴ Comments of SDG&E and SoCalGas in Response to the Assigned Commissioner's Ruling and Scoping Memo, Phase II, filed October 8, 2010 (SDG&E/SoCalGas Comments), p. 3.

and source of those funds, and the CCA's obligation to continue paying them, are issues that deserve immediate resolution.

III. CONCLUSION

DRA respectfully requests that the Commission ensure that a neutral third party evaluate CCA applications for energy efficiency funding, consistent with requirements of Section 381.1 of the Public Utilities Code, and that it resolve other outstanding issues related to CCA administration of energy efficiency programs, including the funds available to CCAs and the Commission's jurisdiction over CCAs who successfully apply to administer ratepayer energy efficiency funds.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**DIVISION OF RATEPAYER ADVOCATES’ REPLY COMMENTS ON SAFEGUARDS AGAINST MISUSE OF ENERGY EFFICIENCY FUNDS**” to the official service list in **R.09-11-014** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **October 15, 2010** at San Francisco, California.

/s/ NANCY SALYER
NANCY SALYER