

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of its 2009-2011 Energy Efficiency Program Plans And Associated Public Goods Charge (PGC) And Procurement Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And related matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES AND
THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION ADDRESSING
PETITION FOR MODIFICATION OF DECISION 09-09-047**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rule of Practice and Procedure, the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) submit these reply comments regarding Administrative Law Judge Gamson’s “Proposed Decision Addressing Petition for Modification of Decision 09-00-047” (PD). DRA and TURN respond to opening comments of Pacific Gas and Electric Company (PG&E),¹ Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas), and San Diego Gas & Electric Company² (SDG&E).³

II. THE PD’S PROPOSED USE OF PROXY DATA FOR BENCHMARKING PURPOSES WOULD ALLOW MORE BUILDINGS TO BE BENCHMARKED AND ITS USE FOR MULTI-TENANT BUILDINGS WOULD BE CONSISTENT WITH SECTION 394.4(A) OF THE PUBLIC UTILITIES CODE.

In response to the Utilities’ Petition for Modification of D.09-09-047, in which the Utilities claimed it was impossible to meet that Decision’s benchmarking requirements because the process is “customer-driven” and because of confidentiality concerns,⁴ the PD adopted the use of proxy data as a solution:

“[w]e do understand the concern of the IOUs that some customers, such as buildings with multiple tenants, may not consent to benchmark and release their energy usage data. By setting targets for benchmarking buildings in D.09-09-047, we have implicitly

¹ Comments of Pacific Gas and Electric Company on Proposed Decision of ALJ Gamson, filed March 12, 2011 (PG&E Comments).

² Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company’s Comments on the Proposed Decision of Administrative Law Judge Gamson Addressing the Petition for Modification of D.09-09-047, filed March 12, 2011 (SCE, SoCalGas, SDG&E Comments).

³ DRA and TURN’s Reply Comments refer collectively to PG&E, SCE, SoCalGas and SDG&E as Utilities.

⁴ Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company and San Diego Gas and Electric Company’s Petition for Modification of Decision 09-09-047, filed September 17, 2010 (PFM), p. 11.

recognized that release of customer information cannot be forced upon customers. However, while desirable, it is not always necessary to obtain the permission of customers to benchmark buildings. Instead, the IOU can use information (energy usage, square footage, building type and address) already available to develop a reasonable proxy for the energy efficiency benchmark.”⁵

PG&E claims that “the proxy data would also be subject to customer confidentiality protections and in most cases could not be released publically absent customer consent.”⁶ SCE, SoCalGas, and SDG&E raise similar concerns that “data confidentiality concerns with the ESPM would also apply to other tools and even to proxy data developed by the” Utilities.⁷

The Utilities correctly observe that they must comply with Section 394.4(a) of the Public Utilities Code, which prohibits disclosure of confidential customer information in the absence of the customer’s written consent. However, while the confidentiality protections of Section 394.4(a) apply to “customer specific billing, credit and usage information,” the Section specifically allows disclosure of “generic information regarding usage...unless the release of that information would reveal customer specific information.”⁸

The PD’s proposed use of proxy data would allow the Utilities to develop benchmarking data in the absence of customer consent without running afoul of Section 394.4(a)’s prohibition against disclosing customer specific information. For example, the Utilities Petition for Modification pointed out the multi-tenant scenario as a problem for benchmarking:

“[d]ue to the fact that benchmarking is a “whole building” activity, certain building owner customers who are interested in benchmarking may nevertheless be precluded from doing so due to the inability to obtain required consent from tenants for disclosure of their customer specific information under customer privacy standards adopted by the Commission and the Legislature.”⁹

The PD’s proposed use of proxy data offers a solution to this problem. Even if some or all of the customers do not consent to release their energy usage, the aggregation of energy usage

⁵ PD, p. 10.

⁶ PG&E Comments, pp. 5-6.

⁷ SCE, SoCalGas, SDG&E Comments, p. 3.

⁸ Public Utilities Code Section 394.4(a) (emphasis added).

⁹ PFM, p.14.

data by a utility would mask the energy usage of individual tenants within the building. Such aggregation would be consistent with Section 394.4(a)'s explicit recognition that its prohibition on disclosure does not apply to "generic information regarding usage." The Utilities acknowledge that Section 394.4(a) "permits the disclosure of generic or aggregated information regarding usage."¹⁰

PG&E raises additional concerns about the PD's proposed proxy solution, claiming that customers "often hold necessary data that the IOUs do not have access to, such as square footage data and identification of distinct building characteristics."¹¹ While it would be preferable to obtain building data from customers, square footage data and information about building characteristics are available from public sources and would provide a reasonable substitute for instances when the building owner refused to provide information.

Thus, the Utilities have failed to show that the PD's proposed proxy solution would not work "in most cases."¹² While the PD's proposed proxy solution would not be viable in the case of a building with a single tenant, it appears workable in the case of multitenant buildings. DRA and TURN suggest revising Finding of Fact 4 as shown below to reflect instances in which the use of proxy data would be infeasible because of Section 394.4(a)'s prohibition against the disclosure of confidential customer information.

4. It is feasible to benchmark ~~all~~ most commercial buildings in the 2010-2012 timeframe either through working with customers or by using customer data to develop benchmarking proxies. If a utility is unable to benchmark a commercial buildings in the 2010-2012 timeframe either through working with customers or by using customer data to develop benchmarking proxies because it is unable to obtain necessary data from customers or by using proxy data because of confidentiality concerns, it shall maintain records substantiating its inability to benchmark such buildings, which shall be subject to Commission audit.

Alternatively, the Commission could adopt DRA's recommendation that receipt of energy efficiency incentives be contingent on providing information that would allow

¹⁰ PG&E Comments, p. 5; SCE, SoCalGas, SDG&E Comments, p. 3.

¹¹ PG&E Comments, p. 5.

¹² PG&E Comments, p. 6.

benchmarking, thus, creating a strong incentive for building owners to provide the requested information.¹³

III. CONCLUSION

DRA and TURN support the PD's proposed use of customer data to develop a reasonable proxy for the energy efficiency benchmark, but recommend revising the requirement to benchmark all commercial buildings to reflect that fact there may be some cases in which it is inconsistent with the requirements of Section 394.4(a) of the Public Utilities Code.

Respectfully submitted,

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¹³ PD, p. 9