

COM/JLN/sid

Decision 97-04-044 April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on )  
the Commission's Proposed Policies )  
Governing Restructuring )  
California's Electric Services ) R.94-04-031  
Industry and Reforming Regulation. ) (Filed April 20, 1994)

Order Instituting Investigation on )  
the Commission's Proposed Policies )  
Governing Restructuring ) I.94-04-032  
California's Electric Services ) (Filed April 20, 1994)  
Industry and Reforming Regulation. )

(See Attachment 1 for appearances.)

**INTERIM OPINION APPOINTING MEMBERS TO THE GOVERNING AND  
INDEPENDENT BOARDS FOR PUBLIC PURPOSE PROGRAMS**

**1.0 Summary**

By today's decision, we make appointments to the Independent and Governing Boards established pursuant to Decision (D.) 97-02-014 to oversee the administration of energy efficiency and low-income programs. We also authorize start-up funding and provide guidance on other issues that affect Board operations.

In addition, we make minor corrections to D.97-02-014, including modifications to Conclusion of Law 2 and Ordering Paragraph 1 to bring them into conformance with the decision text. We also address Southern California Edison Company's (SCE) February 26, 1997 Petition for Modification of D.97-02-014.

**2.0 Background**

In D.97-02-014, we described our vision for the provision of public purpose programs in a restructured electric services industry. As part of that vision, we established Independent and Governing Boards to oversee energy efficiency and low-income programs, respectively. The Independent Board was structured to consist of regulatory representatives, two from this Commission and one from the California Energy Commission (CEC), and up to six members of the public to oversee contracts for the administration of market transformation programs. Among other things, this Board will be responsible for developing and issuing a request for proposal (RFP) articulating policy and programmatic guidelines for one or more administrators, subject to our approval.

We also created a Governing Board to oversee low-income programs, including rate assistance and low-income energy

efficiency services. This Governing Board will coordinate closely with the Independent Board, particularly with regard to weatherization and education programs, but will have the specific mission of assisting low-income ratepayers with managing their energy bills. The Governing Board was structured to include two representatives from this Commission and up to five members of the public. Among other things, the Governing Board will issue an RFP, subject to our approval, to hire an Administrator. The Administrator will be responsible for (1) collecting and disbursing funding for rate discounts, (2) verifying customer eligibility, and (3) making energy efficiency and education services available to eligible low-income ratepayers.

On March 11, 1997, the assigned Commissioner and assigned Administrative Law Judge (ALJ) held a workshop to develop a procedural roadmap for implementing D.97-02-014. The procedural roadmap was issued in an ALJ Ruling mailed on March 19, 1997 (Roadmap Ruling).

In response to our solicitation in D.97-02-014 for Board nominations, we received 30 nominees for Independent Board members and 21 nominees for Governing Board members. The nominees represented a broad range of experience and expertise, and we thank them all for their interest in serving on the Boards. We have had the difficult task of choosing among very fine candidates. Our selections are based on our best judgment of which candidates, individually and collectively, will bring the needed balance of skills to the specific responsibilities of these Boards. We encourage the Boards to consider those nominees not selected as potential candidates for Advisory Committee membership.

Because we received so many nominations of qualified individuals, we will reduce the number of PUC representatives

from two to one. This will allow one additional public member for each Board, with the same number of overall members.

### **3.0 Board Appointments**

Board appointments will be as individuals, except for institutional slots filled from this Commission and the CEC. The Commission's Board appointments will not be employed in the Office of Ratepayer Advocates (ORA), which acts in the capacity of an independent consumer advocate. However, ORA staff may be appointed as public members to either Board. Our selections for Board members are as follows:

#### **Independent Board For Energy Efficiency Programs**

##### CPUC:

David Gamson, Commissioner Advisor

##### CEC:

Michael Messenger

##### Public:

1. Peter Miller, NRDC
2. Sara Steck Myers, CEERT
3. Professor Mark Thayer, San Diego State University
4. Ortensia Lopez, Greenlining Institute
5. Charles Goldman, Lawrence Berkeley Laboratory
6. Michael Shames, UCAN
7. Don Schultz, ORA

**Governing Board For Low-Income Programs:**

CPUC:

Geoff Meloche, Consumer Services Division

Public:

1. Diana Brooks, ORA
2. Susan Brown, Latino Issues Forum
3. Yole Whiting, San Diego Gas and Electric
4. Henry Knowls, LA County Community Action Agency
5. Maggie Cuadros, North Peninsula Neighborhood Services Center (San Mateo County)
6. Nancy Brockway, National Community Law Center (Boston)

Sara Steck Myers and Diana Brooks will serve as acting chairpersons for the Independent and Governing Boards, respectively, until such time as chairpersons are selected by the Boards.

**4.0 Board Guidelines**

Today's decision provides guidance to the Independent and Governing Boards. We draw upon our experiences with other boards authorized by this Commission, such as the Universal Lifeline Telephone Service Board and the Deaf and Disabled Telecommunications Program Administrative Committee, in providing the following guidance to the Boards. We also consider relevant parallels to the boards that are being created for consumer education purposes related to electric restructuring (the Consumer Education Advisory Panel and Electric Education Trust). Both the Independent Board and the Governing Board will be considered advisory boards to the Commission. We note that we use the names referenced here for convenience; one early task of each Board will be to determine its own official name.

The following guidelines are applicable to both Boards, unless otherwise noted.

#### **4.1 Conflict of Interest**

While we expect the Boards to develop conflict-of-interest rules as part of their start-up filings, subject to Commission approval, we offer the following guidelines for the Boards' consideration. Board members should not have a pecuniary interest in any firm coming before the Board or Administrator seeking program funds. We will leave it to the Boards in the formation of their charters to establish specific rules for exclusion or recusal from specific matters before the Boards. The Boards should use the Political Reform Act (Government Code §§ 81000-91014) as a model in developing their conflict-of-interest rules; however, the Boards may choose to propose different disclosure rules for our consideration. The Commission's adopted disclosure and conflict of interest policy for the Deaf and Disabled Telecommunications Program may be suitable, in whole or in part. We have attached this policy, along with the associated disclosure and reporting form, for the Boards' consideration.

(Attachment 2.)

By D.97-02-014, utilities and energy service companies (ESCOs) are specifically excluded from serving on the Independent Board but may serve on the Governing Board. However, we believe it is prudent, in advance of specific conflict-of-interest rules, to appoint Governing Board members without significant affiliations with likely potential recipients of Governing Board funds. Regulated utilities, ESCOs and other firms may bid for the administration of programs governed by the Boards. Our selections to the Governing Board reflect a cautious approach; we will select nominees (now and in the future) with such potential conflicts only if such conflicts are mitigated upfront, such as a

written pledge not to bid for Board-awarded projects.

Specifically, our selection of Yole Whiting - a San Diego Gas and Electric employee - for the Governing Board is contingent upon SDG&E not bidding to be an administrator of low-income programs.

#### **4.2 Indemnification**

Members of the Boards who are not members of the Commission staff are uncompensated servants of the Commission and the State of California within the meaning of Section 810.2 of the Government Code. The State will accordingly indemnify them as it indemnifies its compensated employees and will provide them representation for their acts done within the course and scope of the services they perform for the Boards, as provided in Government Code §§ 825-825.6 and §§ 995-996.6. The Boards may, in addition, use funds to purchase Errors and Omissions Insurance for its members and employees and for any members of Advisory Committees or task forces reporting to the Boards, for their acts done within the course and scope of the services they perform for the Boards, to the extent that such activities are held to be indemnified by the State under Government Code §§ 810.2, 825-825.6, or 995-996.6.

#### **4.3 Open Meetings**

The Boards are required to comply with the Bagley-Keene Open Meeting Act as contained in the Government Code §§ 11120-11132. Importantly, this Act requires ten days public notice of meetings (including a brief, general description of the business to be transacted or discussed), and prohibits most deliberations of a quorum of Board members outside of such public meetings. Notice may be satisfied through the use of the Commission's Daily Calendar.

#### **4.4 State Procurement Rules**

The Boards will comply with state procurement rules that govern the awarding of contracts and hiring of consultants. A copy of the States Procurement rules will be provided to each Board. The rules will provide guidelines to the Boards with regard to the timelines required in the procurement process. The Boards should pay particular attention to these requirements while developing their internal schedules necessary to achieve the milestones established by the assigned ALJ rulings and Commission orders.

#### **4.5 Term of Board Members**

The term of Board members shall run through December 31, 1999. New Board member nominations shall be forwarded to the Commission by September 1, 1999 to allow the Commission to appoint new Board members with terms beginning January 1, 2000 running through December 31, 2001. Board vacancies shall be filled by the Board subject to approval by the Commission's Executive Director using procedures preferred by the Commission. Current Board members may be reappointed. Institutional members shall be replaced by persons nominated by the institution. The public members are named as individuals and may not be substituted for at meetings. Institutional members may be replaced by the institutions as may be required, however only one person can fill a slot at any time (i.e., no sharing or substitution without replacement).

#### **4.6 Time Commitment of Board Members**

We wish to state clearly that these Board appointments are not full-time appointments, although the start-up phase will demand greater time from Board members than we envision for the regular administration of the Boards. We expect that the Boards will assign tasks to consultants and among themselves. The

Boards, through the Commission representatives, may also seek technical and legal advice from the Commission to help them, among other things, comply with applicable state laws and regulations.

Members are expected to attend all Board meetings. We will leave it to the Board to establish specific requirements for meeting attendance.

#### **4.7 Start-up Funds and Procedures**

We recognize that there will be financial needs for the Boards prior to submission and approval of a proposed budget. We will authorize start-up funds in the amount of \$250,000 for each Board to allow the Boards to meet necessary expenses as they undertake their charge. These funds shall be provided by the utilities in the following amounts:

Pacific Gas and Electric	\$100,000
Southern California Edison	\$100,000
San Diego Gas & Electric	\$ 50,000

As stated in the ALJ's Roadmap Ruling, the Boards will file a proposed 1997 budget as part of their start-up filings within 40 days from the effective date of this decision.<sup>1</sup> The start-up funding levels authorized today are intended to be more than necessary for the pre-budget period. The funds left over when the budget is approved will be folded into the budget for the

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<sup>1</sup> Our reference to the dates in the roadmap ruling in today's decision does not preclude the assigned ALJ, in consultation with the assigned Commissioner, from making necessary modifications to the roadmap schedule, as circumstances warrant.

rest of 1997 and, if appropriate, for 1998. As directed in the Roadmap Ruling, the utilities will file procedures for effectuating the transfer of these start-up funds within seven days from the date of this decision.

The start-up funds are considered an advance from the utilities from expected 1998 funds from the public goods surcharge. In their start-up filings, the Boards shall propose the method by which the utilities shall transfer the surcharge-collected funds (e.g., in equal monthly installments) once that surcharge is in place. The Boards shall take all steps necessary to establish bank accounts or trusts to receive and disburse funds, including the immediate establishment of accounts to receive the start-up funds.

As described in the Roadmap Ruling, the Boards will file proposed 1997 budgets, conflict-of-interest rules and other operating procedures for our consideration within 40 days from the effective date of today's decision. In order to avoid any disruption in Board operations during the comment period and our consideration of the Board's proposals, we will authorize the Boards to operate under the filed start-up procedures and budget until Commission action. The Boards' operations will, of course, be subject to audit at the Commission's discretion.

#### **4.8 Per Diem**

At the March 11 workshop, one of the most-discussed issues was the question of per diem for Board members. We were concerned that the per diem be high enough to ensure a broad spectrum of available candidates. On the other hand, Board membership should be considered a public service. Therefore, we will not set levels so high as to substitute for all comparable

employment. Further, we do not intend the per diem to be open-ended, so that members could use Board membership to collect money for work not performed.

We will establish a per diem of \$300 for each day of meetings. The per diem will be \$200 if the meeting lasts less than approximately two hours. We will not provide per diem for preparation work, as proposed by some parties at the workshop. Employees of state governmental agencies and utilities will not receive per diem. Other government employees (including from academic institutions) may receive per-diem if appropriate arrangements are made with their employers. As part of its operating rules to be approved by the Commission, we expect the Boards to establish reasonable rules for reimbursing members' legitimate expenses incurred as a result of Board duties. The Boards should use the standards adopted in Resolution F-621, the Commission's Interim Advisory Committee Standard Of Expense Reimbursement, as their guidelines. (See Attachment 3.) Members with funding available to Support Board activities should use such funding to defray their expenses, as appropriate.

#### **4.9 Voting Procedures**

We anticipate that much of the advisory work of the Boards will take place in a consensus-building environment. That is to say, votes will not be taken very often. We will leave it up to the Boards to develop voting procedures, for when needed, as part of their operating rules.

Each Board will have one PUC representative. We do not see any actual conflict in having this person be a voting member of a Board. However, some believe that a vote of the PUC representative could unduly influence the Commission's actions when considering the advice of the Board. Following the examples of other advisory boards to the Commission, we recommend that the

Boards consider making the PUC representative a non-voting member.

#### **5.0 Corrections and Clarifications to D.97-02-014**

Minor corrections to D.97-02-014 will be made in today's decision. We will delete Conclusion of Law 14 which was inadvertently retained from a prior draft. We also modify Conclusion of Law 13 as follows (additions in **bold**):

"Further consideration of program design options for **CARE and** low-income energy efficiency services."

In addition, we will conform Conclusion of Law 2 to the text of the decision by adding the following language to the end of the paragraph:

"As we explore development of a gas surcharge, we will allow the gas utilities to continue to operate their own energy efficiency and low-income assistance programs with the option to transfer funding to the Board, and ultimately, to the selected administrators. If gas utilities choose not to transfer funding for these programs, the gas utility should work with the selected administrators to ensure coordination of delivery of services."

Similarly, Ordering Paragraph 1 will be conformed to the text by adding the following language to the end of the paragraph:

"As described in this decision, gas utilities have the option to transfer funding to the newly created boards and administrative entities or continue to operate their own programs as we explore development of a gas surcharge. If gas utilities choose not to transfer funding for these programs, the gas utility shall work with the selected administrators to ensure coordination of delivery of services."

We believe that these modifications address the concerns expressed by Southern California Gas Company (SoCal) in its March 20, 1997 Petition For Modification of D.97-02-014 (Petition). We do not agree with SoCal, however, that it is unnecessary to determine funding levels until the actual transfer of program functions to the new administrative structure occurs. (SoCal's Petition, p. 2.) Therefore, we do not adopt in today's decision the additional language changes suggested by SoCal, which represent more than a minor conformance of language. We may reconsider this aspect of SoCal's Petition after receiving parties' responses.

On February 26, 1997, SCE filed a Petition For Modification of D.97-02-014 requesting clarification of language that referred to research, development and demonstration (RD&D) funding.<sup>2</sup> SCE and other parties point out that the reference in D.95-12-063 to a 1997 cut-off date for ratepayer funding of generation-related RD&D is not consistent with our subsequent funding authorizations in SCE's general rate case decision (D.96-01-011), our subsequent roadmap decision (D.96-12-088), or Assembly Bill (AB) 1890, which initiates surcharge funding for public interest RD&D activities on January 1, 1998. We acknowledge this inconsistency, and modify page 37 in D.97-02-014 to reference January 1, 1998,

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<sup>2</sup> Because of the potential effect of this language on current RD&D program activities, the assigned ALJ reduced the time for responses to this petition. (See ALJ ruling dated March 4, 1997.) SDG&E, CEC and the University of California filed timely responses, which we have considered in today's decision.

rather than January 1, 1997, as the cut-off date for ratepayer funding of generation-related RD&D.

In its Petition, SCE also requests us to clarify whether future regulated RD&D expenditures by the utilities, whether from existing authorization levels or from augmented authorizations, will be governed by prior "refund-if-not-spent" balancing account requirements or by the new performance-based ratemaking (PBR) treatment. We believe that this issue must be deferred to the respective PBR proceedings, e.g., as a petition to modify D.96-09-092. Each utility's PBR mechanism represents a unique balance of risks and rewards that may affect the resolution of this issue. We wish to clarify, however, that funding for public purpose RD&D should not be subject to PBR treatment but must remain in separate balancing accounts under the terms of the RD&D surcharge authorized by AB 1890.

#### **Findings of Fact**

1. Thirty nominees for the Independent Board and 21 nominees for the Governing Board were submitted for our consideration, pursuant to D.97-02-014.

2. Our appointments to the Independent and Governing Boards bring an appropriate balance of skills to the specific responsibilities of these Boards.

3. Although D.97-02-014 did not explicitly exclude utilities or ESCOs from Governing Board membership, prudence dictates that appointments to the Governing Board be without significant affiliations with likely potential recipients of low-income program funds, particularly in advance of specific conflict-of-interest rules, or that such conflicts be mitigated upfront.

4. The Independent and Governing Boards will serve as an advisory board to the Commission.

5. Inadvertent errors and the omission of conforming language in D.97-02-014 requires that we make minor modifications to that order.

6. A \$300 per meeting (\$200 for meetings lasting less than approximately two hours) per diem enables a broad spectrum of qualified individuals to participate on the Board while at the same time does not substitute for all comparable employment.

**Conclusions of Law**

1. Today's appointments to the Independent and Governing Boards are reasonable.

2. Board members should not have a pecuniary interest in any firm coming before the Board or Administrator seeking program funds.

3. The Boards should use the Political Reform Act (Government Code §§ 81000-91014) as a model in developing their conflict-of-interest rules; however, the Boards may choose to propose different disclosure rules for our consideration.

4. As described in this decision, members of the Boards who are not members of the Commission staff should be indemnified as the State indemnifies its compensated employees.

5. The Boards should comply with the Bagley-Keene Open Meeting Act as contained in the Government Code §§ 11120-11132.

6. The Boards should comply with state procurement rules that govern the awarding of contracts and hiring of consultants.

7. The term of Board members should run through December 31, 1999.

8. Board vacancies should be filled by the Board subject to approval by the Commission's Executive Director using procedures preferred by the Commission. Institutional members should be

replaced by persons nominated by the institution; public members should be replaced by persons nominated by the Board.

9. Public members should not be substituted for at meetings. Institutional members may be replaced by the institutions as may be required; however, only one person may fill a slot at any time (i.e., no sharing or substitution without replacement).

10. The Boards should establish specific requirements for meeting attendance consistent with our general expectation that members attend all Board meetings.

11. As described in this decision, the Boards should be authorized start-up funds to allow them to meet necessary expenses as they undertake their charge. These funds should be treated as an advance from the utilities from expected 1998 public surcharge funds.

12. As part of their start-up filing, the Boards should propose the method by which the utilities shall transfer the surcharge-collected funds once that surcharge is in place.

13. In order to avoid any disruption in Board operations during the comment period and our consideration of the Boards' proposals, the Boards should be authorized to operate under the filed start-up procedures and budget until Commission action.

14. The Boards' operations should be subject to audit at the Commission's discretion.

15. The per diem established in today's decision is reasonable.

16. SCE's February 26, 1997 Petition for Modification of D.97-02-014 should be granted, in part, as described in this decision. SCE's request that we clarify the ratemaking treatment for regulated RD&D should be directed to each utility's

respective performance-based ratemaking proceeding. Funding for public purpose RD&D should not be subject to PBR treatment but should remain in separate balancing accounts under the terms of the RD&D surcharge authorized by AB 1890.

17. So that the Boards may begin their operations as expeditiously as possible, this order should be effective today.

**INTERIM ORDER**

**IT IS ORDERED** that:

1. The following individuals are appointed to the Independent and Governing Boards established by Decision (D.)97-02-014:

**Independent Board For Energy Efficiency Programs**

CPUC:

David Gamson, Commissioner Advisor

CEC:

Michael Messenger

Public:

1. Peter Miller, NRDC
2. Sara Steck Myers, CEERT
3. Professor Mark Thayer, San Diego State University
4. Ortensia Lopez, Greenlining Institute
5. Charles Goldman, Lawrence Berkeley Laboratory
6. Michael Shames, UCAN
7. Don Schultz, ORA

**Governing Board For Low-Income Programs:**

CPUC:

Geoff Meloche, Consumer Services Division

Public:

1. Diana Brooks, ORA
2. Susan Brown, Latino Issues Forum
3. Yole Whiting, San Diego Gas and Electric
4. Henry Knowls, LA County Community Action Agency
5. Maggie Cuadros, North Peninsula Neighborhood Services Center (San Mateo County)
6. Nancy Brockway, National Community Law Center (Boston)

Sara Steck Myers and Diana Brooks shall serve as acting chairpersons for the Independent and Governing Boards, respectively, until such time as chairpersons are selected by the Boards.

2. The Independent and Governing Boards shall comply with the guidelines set forth in this decision.

3. By September 1, 1999, the Independent and Governing Boards shall submit new board member nominations to the Commission to allow the Commission to appoint new Board members with terms beginning January 1, 2000. These nominations shall be filed at the Commission's Docket Office and served on all appearances and the state service list on the Special Public Purpose service list in this proceeding. Should this proceeding be closed at the time this filing is due, nominations should be served on the Chief Administrative Law Judge.

4. Start-up funds in the amount of \$250,000 for each Board shall be provided by the utilities in the following amounts:

Pacific Gas and Electric Company:	\$100,000
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Southern California Edison Company:	\$100,000
San Diego Gas & Electric Company:	\$ 50,000

The utilities shall file procedures for effectuating the transfer of these start-up funds within seven days from the date of this decision. The Independent and Governing Boards shall take all steps necessary to establish bank accounts or trusts to receive and disburse these funds.

5. Decision 97-02-014 is modified to read as follows:

- a) Conclusion of Law 14 is deleted.
- b) The first sentence of Conclusion of Law 13 is modified to read as follows:

"Further consideration of program design options for CARE and low-income energy efficiency services, including education, should be undertaken by the new Governing Board with assistance from the Low-Income Advisory Committee"

- c) The following language is added to the end of Conclusion of Law 2:

"As we explore development of a gas surcharge, we will allow the gas utilities to continue to operate their own energy efficiency and low-income assistance programs with the option to transfer funding to the Board, and ultimately, to the selected administrators. If gas utilities choose not to transfer funding for these programs, the gas utility should work with the selected administrators to ensure coordination of delivery of services."

- d) The following language is added to the end of Ordering Paragraph 1:

"As described in this decision, gas utilities have the option to transfer funding to the newly created boards and

administrative entities or continue to operate their own programs as we explore development of a gas surcharge. If gas utilities choose not to transfer funding for these programs, the gas utility shall work with the selected administrators to ensure coordination of delivery of services."

- e) The following language is added to the end of the first paragraph of Section 5.0 (RD&D), page 37:

"The January 1, 1997 cut-of date for generation-related research has been effectively extended by subsequent RD&D funding decisions that authorize expenditures through 1997 and by our Roadmap Decision (D.96-12-088), which modified the restructuring schedule for the creation of separate business segments (generation, transmission and distribution). Accordingly, the effective cut-off date for ratepayer funding of this research is January 1, 1998."

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, Jr.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners

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See Formal Files for Attachments 1, 2 and 3