

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 15, 2009

To: The Commission
(Meeting of May 7, 2009)

From: Pamela Loomis, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1316 (Ma) – Low-Income Oversight Board.
Amended May 13, 2009**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would require the Low-Income Oversight Board (LIOB) to provide recommendations to the Legislature, as requested, on policy or legislation impacting low-income customers. This bill would also require the LIOB to monitor and evaluate proceedings before the California Public Utilities Commission (CPUC) that impact low-income electricity, gas, and water customers, to the extent possible. In addition, this bill would require the LIOB to actively solicit public input and recommendations through town hall meetings and other forums that target undeserved areas.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The LIOB was created to fulfill an advisory role to the CPUC on the implementation and administration of low-income assistance programs. This bill would expand the LIOB's role to include advocacy before the CPUC regarding open proceedings that may impact low-income ratepayers. This advocacy role would create an unacceptable conflict of interest for the CPUC staff that provide workload support for the LIOB while simultaneously executing their primary work responsibilities for the CPUC managing low-income programs and staffing proceedings related to those programs. It would also create an unacceptable conflict of interest for the CPUC commissioner appointed to the LIOB. The LIOB's advice to the CPUC on low-income programs is critical, and should not be diluted and overshadowed by an expanded mission to advocate on all issues affecting low-income customers.

SUMMARY OF SUGGESTED AMENDMENTS:

None

DIVISION ANALYSIS (Energy Division)

- **This bill would require that the LIOB review and make recommendations on the proposed budgets for low-income electricity, gas, and water programs prior to approval by the Commission.**

The requirement that the LIOB review and make recommendations regarding the proposed budgets for low income electric, gas and water programs would impose a significant new statutory responsibility and workload on this volunteer Board. Also, the Commission's process for approving low income program budgets may require additional time in order to accommodate the required submission of the LIOB's recommendations.

This bill would also require the LIOB to provide recommendations to the Legislature on legislation and policy issues, as well as advocate before the CPUC in open proceedings affecting low-income customers.

- **The LIOB's role as an advisory board to the Commission should not be modified.**

AB 1316 may result in the creation of the LIOB as an entity which competes with the Commission in its jurisdiction over the regulation of the utilities. The LIOB's legal history demonstrates that an advisory role is preferable to other roles requiring the Board to assume greater responsibility.

- **The requirement that the LIOB provide recommendations to the Legislature on policy and legislation, as requested, may be in constitutional conflict with the LIOB's role as advisory to the Commission.**

The LIOB should not advise the Legislature directly while also advising the Commission. The Commission has the jurisdiction to regulate the IOUs and to develop, design, implement, and monitor low income programs considering the interests of all stakeholders including low income ratepayers, non-low income ratepayers including residential, commercial, and industrial classes, and other interest groups. Thus, the interests of the much narrower constituency of the LIOB and the broader public interest that the Commission serves might come into conflict if the LIOB is to provide policy and legislative recommendations directly to the legislature.

Moreover, in its last meeting in March 2009, the LIOB had an extensive discussion on handling of legislative bills and decided that its appropriate role was to advise the

Commission on legislative matters but that since the legislative cycle moved rapidly, the amendments to various bills happened too quickly for the LIOB to comment on specific legislation, and because the Board lacked the expertise to evaluate the specifics of legislative bills, the Board would comment on general themes. The Commission believes this is the appropriate role of the LIOB.

- **The requirement that the LIOB monitor and evaluate all proceedings before the Commission that might potentially affect low income customers is untenable.**

The LIOB currently exists as an advisory body to the Commission, representing the interests of low income customers. Monitoring and evaluating the proceedings will distract from the main charter of the LIOB, namely, to provide input from low income communities to the Commission on low-income programs. Since the LIOB is voluntary, and a majority of Board members have other full time jobs, it is challenging for them to fulfill this primary responsibility effectively. Therefore, requiring the LIOB to review and monitor all proceedings would be a disservice to low-income customers by diverting the attention of the LIOB from low-income programs. Additionally, the LIOB does not have the resources or technical expertise to carry out this provision.

At the LIOB meetings, Commission staff informs the Board of the most important issues affecting low-income customers facing the Commission. For example, the LIOB receives regular briefings on the California Solar Initiative, the Telecommunications Lifeline Program, the status of the Energy Efficiency Strategic Plan, etc. In addition, as new issues arise, they are incorporated into the LIOB meeting agenda.

During the last LIOB meeting in March 2009, the LIOB agreed that it would not comment on specific proceedings because it does not have the time to do so. Rather, it would address general themes in these proceedings. At its January 2009 meeting, the LIOB agreed to concentrate its activities on focused areas rather than receive a lot of information on a variety of proceedings and topics.

- **The requirement to solicit recommendations and input through town hall meetings and other forums that target underserved areas is problematic.**

The members of the Board are selected from Community Based Organizations and other entities. Based on this experience, they interact with the low-income population and communities and bring input and insights from these communities to the Commission. The members who serve on the Board should not need additional forums to achieve this objective. A significant part of each LIOB meeting should be devoted to a discussion of such input from low income communities. This change can be easily implemented by restructuring the Board meetings rather than organizing town hall meetings which the Board members themselves do not have time to conduct nor attend.

It is unclear as to who will organize and facilitate town hall meetings and other forums that target underserved areas. The Commission does from time to time organize town hall meetings and other forums for specific purposes. The We-CARE Week is an example whereby the Commission informed low income communities of initiatives available to them from the CPUC to cope with the current economic crisis.

- **The LIOB's authority to establish an advisory committee to assist the board and request assistance from commission staff, utility representatives, low-income service providers and consumer organizations creates a conflict of interest for Commission staff, as well as others.**

Commission staff cannot be required to reveal recommendations on proceedings to the LIOB. Doing so would require these members of the regulatory advisory committee to wear a different hat when working with the LIOB than when working on behalf of the Commission, thereby creating a conflict of interest and potential legal problems. Also having utility representatives providing advice to the LIOB, which the LIOB will then pass on to the Commission, will create legal problems because the LIOB will be serving as a conduit between the IOUs and the Commission

- **The LIOB is currently supported by Energy Division staff, which does not have the resources to support an expanded role for LIOB.**

The LIOB, which currently meets four times a year, would need additional logistical and administrative support, per diem, and travel expenses for more frequent meetings to fulfill AB 1316's mandates.

Currently, the Commission's Energy Division acts as a resource for the LIOB explaining the issues affecting low-income customers under consideration by the Commission and the impact of various Commission decisions on low-income customers. This enables the LIOB to understand and convey the concerns of low-income customers and weigh in on these issues with the Commission. Energy Division's support allows the LIOB to fulfill its statutory role as an advisory body to the Commission and as a liaison between low-income communities and the Commission. The Energy Division organizes and facilitates the LIOB meetings and provides assistance to the Board in understanding the issues. The enhanced scope and budgets for the low income programs, particularly the Low Income Energy Efficiency Program is an example of the success of this consultative process.

Thus, the LIOB should continue to interact with the Commission and the Energy Division in an advisory role. Energy Division's mission to support the Commission in its decision making, and the LIOB's current mission to advise the Commission, are not in conflict but in fact are synergistic, with shared interests and commonalities.

PROGRAM BACKGROUND:

- Commission Decision 97-02-014 provided policy directives on the administration and funding of low-income services in a restructured electric industry environment. The Commission favored a structure that moved away from utility administration of low income programs over time, selecting a Governing Board to oversee the administrative process. The Governing Board was assigned the task of issuing a request for proposal (RFP) to hire a program administrator. Referred to as the Low Income Governing Board (LIGB), this entity was assigned the task of overseeing the administration of low-income programs, subject to Commission oversight. An Assigned Commissioner Ruling dated July 1, 1999, delineated a new role for the Energy Division of providing technical and administrative support to the board.
- On October 6, 1999, AB 1393 was signed into law requiring the utilities to continue administering the low-income programs. Therefore, the LIGB no longer held the responsibility of developing a RFP or other processes necessary to achieve the independent administration of low-income programs. Decision 00-02-045 disbanded the LIGB, replacing it with the Low Income Advisory Board (LIAB) entrusted with its new role of advising the Commission and serving as an important liaison to low-income communities. The Decision also reiterated the role of the Energy Division as that of providing technical and administrative support to the LIAB and endowed it with the authority to direct and set priorities for staff resources dedicated to the LIAB. The LIAB was directed to prioritize its projects in proportion with limited Energy Division resources.
- Passed in 2001, SBX2 2 (Alarcon) replaced the LIAB with a Low Income Oversight Board (LIOB). The new LIOB was assigned the task of advising the Commission on low-income electric and gas customer issues. As stated under PUC Section 382.1, the LIOB is designated to serve as a liaison for the Commission with low-income ratepayers and representatives and advise the Commission on low income electric and gas customer needs.
- Resolution No. L-299 (dated April 22, 2002) adopted a charter establishing the governing structure of the LIOB. The charter's Article 8 reads as follows:

“8.1: While the LIOB shall have the power and authority to function consistent with this Charter, and in particular, to carry out the duties and responsibilities specified in Article Four of this Charter, it shall not have the authority to direct Energy carriers to act or refrain from acting. Such authority shall remain solely with the Commission.

8.2 The activities of the LIOB shall be carried out under the Commission's direction, control and approval.”

LEGISLATIVE HISTORY:

AB 1393 (R. Wright, Ch. 700, Stats.1999) provided for continued utility administration of energy efficiency programs targeted to low-income gas and electricity customers, and specified quality of service factors to be used as bidding criteria for contracts funded under these programs.

SBX2 2 (Alcaron, Ch. 11, Stats. 2001) required the Commission to establish a Low-Income Oversight Board that shall advise the Commission on low-income electric and gas customer issues and shall serve as a liaison for the Commission to low-income ratepayers and representatives.

Decision 97-02-014

Decision 00-02-045

Resolution No. L-299

PUC Section 382 – 382.1

PUC Section 309.5

STATUS:

AB 1316 is scheduled to be heard in the Assembly Appropriations Committee on May 20, 2009.

SUPPORT/OPPOSITION:

Support: Latino Issues Forum (Sponsor)
Cal / Nevada Community Action Partnership
Division of Ratepayer Advocates

Opposition: None on file.

STAFF CONTACTS:

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Date: May 15, 2009

BILL LANGUAGE:

BILL NUMBER: AB 1316 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 13, 2009
AMENDED IN ASSEMBLY MAY 5, 2009
AMENDED IN ASSEMBLY APRIL 22, 2009

INTRODUCED BY Assembly Member Ma
(Coauthor: Assembly Member
Furutani)

FEBRUARY 27, 2009

An act to amend Sections 382 and 382.1 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, as amended, Ma. Public utilities: low-income customers.

Existing law requires the Public Utilities Commission to establish a program of assistance to low-income electric and gas customers, which is referred to as the California Alternate Rates for Energy (CARE) program. Existing law establishes the Low-Income Oversight Board, composed of 11 members, for the purpose of advising the commission on low-income electric, gas, and water customer issues and serving as a liaison for the commission to low-income ratepayers and representatives. Existing law requires the commission, with the assistance of the ~~Low Income Oversight Board~~ board, to conduct periodically an assessment of the needs of low-income electricity and gas ratepayers. The ~~Low Income Oversight Board~~ board is authorized to establish a technical advisory committee and to request utility representatives and the staff of the commission to assist the technical advisory committee.

This bill would require the board to report biannually to the Legislature regarding the status of low-income programs, and to the extent possible, the results of each assessment. The board would be required to review and make recommendations to the commission regarding the proposed budgets for programs provided to low-income electricity, gas, and water customers. The bill would delete the authority of the board to establish a technical advisory committee but would require the board to establish ~~a regulatory~~ an advisory committee to assist the board. The bill would also expand the membership of the board to include a member selected by the State Air Resources Board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 382 of the Public Utilities Code is amended to read:

382. (a) Programs provided to low-income electricity customers, including, but not limited to, targeted energy-efficiency services and the California Alternate Rates for Energy program shall be funded at not less than 1996 authorized levels based on an assessment of customer need.

(b) In order to meet legitimate needs of electric and gas customers who are unable to pay their electric and gas bills and who satisfy eligibility criteria for assistance, recognizing that electricity is a basic necessity, and that all residents of the state should be able to afford essential electricity and gas supplies, the commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures. Energy expenditure may be reduced through the establishment of different rates for low-income ratepayers, different levels of rate assistance, and energy efficiency programs.

(c) Nothing in this section shall be construed to prohibit electric and gas providers from offering any special rate or program for low-income ratepayers that is not specifically required in this section.

(d) The commission shall allocate funds necessary to meet the low-income objectives in this section.

(e) Commencing in 2002, an assessment of the needs of low-income electricity and gas ratepayers shall be conducted periodically by the commission with the assistance of the Low-Income Oversight Board. The assessment shall evaluate low-income program implementation and the effectiveness of weatherization services and energy efficiency measures in low-income households. The assessment shall consider whether existing programs adequately address low-income electricity and gas customers' energy expenditures, hardship, language needs, and economic burdens.

(f) The Low-Income Oversight Board shall report biannually to the Legislature regarding the status of low-income programs, including, but not limited to, CARE participation rates, the number of low-income households served, current and proposed outreach efforts, and, to the extent possible, the results of each assessment conducted pursuant to subdivision (e).

SEC. 2. Section 382.1 of the Public Utilities Code is amended to read:

382.1. (a) There is hereby established a Low-Income Oversight Board, which shall advise the commission on all low-income electric, gas, and water customer issues and shall serve as a liaison for the commission to low-income ratepayers and representatives. The Low-Income Oversight Board shall do all of the following to represent the needs and interests of low-income ratepayers:

(1) Monitor and evaluate implementation of all programs provided to low-income electricity, gas, and water customers.

(2) Review and make recommendations regarding the proposed budgets for programs described in paragraph (1) prior to approval by the commission.

(3) Assist the commission in the development and analysis of any assessments of low-income customer need.

(4) Encourage collaboration between state and utility programs for low-income electricity and gas customers to maximize the leverage of state and federal energy efficiency funds to both lower the bills and increase the comfort of low-income customers.

(5) Provide reports to the Legislature, as requested, summarizing the assessment of need, audits, and analysis of program implementation.

(6) Provide recommendations to the Legislature, as requested, on policy or legislation impacting low-income customers.

(7) Assist the commission in streamlining the application and enrollment process of programs for low-income electricity and gas customers with other nongas and electric low-income programs, including, but not limited to, the Universal Lifeline Telephone Service (ULTS) program and, including compliance with Section 739.1.

(8) Encourage the usage of the network of community service providers in accordance with Section 381.5.

(9) To the extent possible, monitor and evaluate all proceedings before the commission that impact low-income electricity, gas, and water customers.

(10) ~~Actively solicit~~ *Solicit* public input and recommendations through town hall meetings and other forums that target underserved areas.

(b) The Low-Income Oversight Board shall be composed of 12 members to be selected as follows:

(1) Five members selected by the commission who have expertise in the low-income community and who are not affiliated with any state agency or utility group. These members shall be selected in a manner to ensure an equitable geographic distribution.

(2) One member selected by the Governor.

(3) One member selected by the commission who is a commissioner or commissioner designee.

(4) One member selected by the Department of Community Services and Development.

(5) One member selected by the commission who is a representative of private weatherization contractors.

(6) One member selected by the commission who is a representative of an electrical or gas corporation.

(7) One member selected by the commission who is a representative of a water corporation.

(8) One member selected by the State Air Resources Board.

(c) The Low-Income Oversight Board shall alternate meeting locations between northern, central, and southern California.

(d) The Low-Income Oversight Board shall establish ~~a regulatory~~ an advisory committee to assist the board in its duties. The committee may request assistance from the commission staff, utility representatives, low-income service providers, and consumer organizations.

(e) The commission shall do all of the following in conjunction with the board:

(1) Work with the board, interested parties, and community-based organizations to increase participation in programs for low-income customers.

(2) Provide technical support to the board.

(3) Ensure that the energy burden of low-income electricity and gas customers is reduced.

(4) Provide formal notice of board meetings in the commission's daily calendar.

(f) (1) Members of the board shall be eligible for compensation in accordance with state guidelines for necessary travel.

(2) Members of the board who are not salaried state service employees shall be eligible for reasonable compensation for

attendance at board meetings.

(3) All reasonable costs incurred by the board in carrying out its duties pursuant to subdivision (a), including staffing, travel, and administrative costs, shall be reimbursed through the public utilities reimbursement account and shall be part of the budget of the commission and the commission shall consult with the board in the preparation of that portion of the commission's annual proposed budget.