

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency
Policies, Administration and Programs

Rulemaking 01-08-028
Filed August 23, 2001

WOMEN'S ENERGY MATTERS
COMMENT ON DRAFT DECISION ON
ADMINISTRATIVE STRUCTURE

December 20, 2004

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Women's Energy Matters (WEM) appreciates this opportunity to comment on the November 29, 2004 Draft Decision of Commissioner Kennedy and ALJ Gottstein on the Administrative Structure for Energy Efficiency: Threshold Issues (Proposed Decision, or "PD") on behalf of its client Ardys De Lu and by extension other residential and small business customers of California's investor-owned utilities (IOUs).

Kafka Comes to California

The Proposed Decision seems to offer "competitive" opportunities for "superior" non-utility energy efficiency programs:

36. Decisions [by IOUs] on whether non-IOUs should be program implementers responsible for designing and delivering the program (rather than working to implement IOU-designed programs) should be made based on an evaluation [by IOUs] of whether the program designs and delivery mechanisms proposed by non-IOUs are superior to those currently being implemented or planned for the future.

37. Competitive bidding in energy efficiency [controlled by the foxes, the IOUs, who have an insoluble conflict of interest with energy efficiency and a strong motive to eat their true competitors] should focus on soliciting good, new program ideas...

38. A 20% minimum requirement for open bidding, as described in this decision, captures the potential benefits of competition and serves as an added safeguard against selection bias.

[What evidence should non-IOUs offer to their IOU evaluators that their proposals are superior, having no opportunity to demonstrate their value? The fact that nearly all the non-IOU residential programs were superior during the 2002-3 cycle? Does the Commission really imagine that the IOUs will respond to that when the CPUC itself ignored that information and awarded all program choice to IOUs? No doubt this does offer a nice opportunity for IOU sweethearts to cozy up to their captors and lord it over the other inmates. For sweethearts, IOUs require no evidence, they just feel their value. And the PD does not provide for "open bidding" at all but instead allows the IOUs to put out to bid only specific sectors or types of savings or types of programs. This will destroy innovation and competition.] ("Findings of Fact" #36-38PD, 11/29/04, p. 124, emphasis and annotations added)

If this proposed decision is adopted, the travesty above is all that will be left of the great California experiment with independent energy efficiency programs. Meanwhile, the polar ice is melting from global warming caused by fossil fuel emissions, the world is in flames thanks to America's insatiable greed for oil and natural gas, and genuine

competition in energy efficiency programs in Texas, of all places, is providing opportunities for hundreds of independent EE providers to demonstrate the superiority of their good, new program ideas with all EE program funds — and delivering 40% more energy savings per dollar than California’s current programs.

Attempts to justify this PD in terms of Procurement are false and misleading

Arguments in this proceeding for utility control of EE have long been based on a supposed need for compatibility with Procurement and promotion of “integrated resource planning.”

Returning the IOUs to the program choice and portfolio management roles for energy efficiency is also a logical corollary to the market structure we have recently adopted for supply-side resource procurement... It is instructive that the debate over this issue in our Procurement Rulemaking focused in large part on the same threshold issue in this proceeding: The role of IOUs as both the “program choice/portfolio manager” and a potential “implementer” of supply-side resources, e.g., through dispatch of existing IOU resources or IOU construction of new power plants... (PD, p. 57-58)

The logic is deeply flawed. This is not the “same threshold issue” at all; the premise is exactly backwards. In procurement, the question was whether IOUs would be allowed to design and build power plants — in EE, the question is whether anyone BUT the IOUs would be allowed to do so. This PD, if translated into procurement, would put a utility in charge of choosing and overseeing Calpine to build a power plant that the utility has designed. Of course, Calpine does those things itself. (The utility’s “choice” is merely whether to buy power from Calpine’s plant or one of its own, and the Commission has imposed tight parameters on those choices, including “least-cost” requirements.)

The dispute about “competition” in the EE proceeding is not comparable to the competition issue in the procurement proceeding, which primarily involves competition among suppliers of supply-side resources. The PD references the energy crisis as reason to avoid “competitive market manipulations or abuse”:

[T]he Commission determined that IOUs should participate in both functions “in order to have the assurance of more state control over resources and an effective check against competitive market manipulations and abuses.” (PD, p. 57-58)

Independent generators were involved in the energy crisis manipulations and abuse — and there is also evidence of utility involvement — but independent energy efficiency providers had absolutely nothing to do with the energy crisis. IOUs’ failure to provide substantial energy savings in the years prior to the crisis — failure to even spend all their EE dollars — was a cause of the crisis. In fact, this Rulemaking was instituted for the purpose of developing competition amongst EE providers in order to escape the failures of EE programs under IOU monopoly control.

The PD abusively insinuates that independent EE providers will manipulate the market like independent generators did, and uses that excuse to strip them of their independence and force them into a charade of competition against utilities, with the IOUs in control of the bidding.

Further, there is far greater need for independence from the IOUs on the EE side than on the power supply side. On the supply side, the Commission can see whether an IOU that chooses its own power plant over those of competitors is actually producing cost-effective energy, because both the cost (as included in rate requests) and the output (in kWh) are precisely and objectively measurable. On the EE side, however, measurement of savings is often a jumble of “what-if” assumptions, coupled with failures to inspect the work done or its longevity, performed by consultants who, even if not hired by the IOUs, are otherwise under the IOU thumb due to other contracts and programs.

PG&E’s San Francisco “Pilot” partnership shows why IOUs should not control EE

The PD’s corollary with procurement is invalid on other counts. Unlike supply-side procurement, the utility has no “choice” about whether to accept the power “produced” by EE, it’s in their system whether they want it or not. However, if the utility controls what, where, and by whom the EE work is performed, it can greatly influence both the amount of “negawatts” produced, and whether or not they present any real “competition” to its own supply side resources, including transmission (existing or planned).

These means and opportunities for a utility to minimize the amount of EE produced and reduce the impacts on its power system — whether or not they are actually utilized — are a key reason why utilities must not be allowed to control program choice and other administrative functions.

For an example of how this works in real life, see WEM’s many filings on the San Francisco (SF) “Pilot” partnership. Summarizing briefly: PG&E proposed to spend all \$16.3m of this “emergency” EE program in downtown SF. It justified the project as essential in order to close the ancient Hunters Point Power Plant (HPPP) that severely pollutes the nearby low-income African-American community of Bayview Hunters Point, where children are sick and dying from the highest rate of asthma in the U.S.

The Commission approved the project, citing the need to close HPPP and admonishing PG&E to “political grandstanding.” However, an investigation by WEM and Community First Coalition discovered, and confirmed in meetings with ISO and PG&E, that the downtown area was served by separate transmission lines that import power from outside SF and EE there would be little help in closing HPPP.

EE in large downtown buildings, however, could allow PG&E to provide favors for its corporate allies who supported its recent anti-public power campaigns. (The company even requested a waiver on a ban on buildings over 500kw in one program; this was rejected but the company still bypassed the ban by reconfiguring the program.)

PG&E's "partner" in the project is the SF Dept. of Environment (SFE), which is the subject of a whistleblower complaint and an investigation by the CPUC for fraudulently inflated energy efficiency claims in a State-funded EE program. PG&E has an unusually close relationship with SFE, including a recent PG&E employee in a top position in charge of SFE's work on the Pilot.

PG&E proposed to install compact fluorescent light bulbs (CFLs) for a large portion of the EE savings in the pilot. PG&E savings claims from these bulbs have been disputed by parties in this proceeding, including WEM, who have proved they are vastly overstated. The Commission partially mitigated the false claims in the Pilot but has failed to correct or even institute a process for correcting the larger problem of flawed savings claims, which exists in many programs and measures, and manifests statewide.

In addition to the above problems, the Pilot is a murky muddle of funding, marketing and delivery mechanisms associated with a variety of programs — including the Pilot itself, regular PG&E programs, low-income programs, City programs and those of City grantees — which will need to be untangled in order to verify the achievements and expenditures of the Pilot.

The above example illustrates how the potential for "manipulation and abuse" in EE arises most seriously from utility control of EE decisions, not third party competition. It demonstrates why the PD should not grant IOUs any control over EE, much less a monopoly over program choice and other administrative functions.

The Energy Action Plan's "loading order" has no weight and is not being followed

Today, the Energy Action Plan has placed energy efficiency back at the forefront of resource procurement activities in California. In particular, the plan establishes a loading order of energy resources that requires California to first optimize "all strategies for increasing conservation and energy efficiency to minimize increases in electricity and natural gas demand" before turning to supply-side resources. (PD, p. 53?)

The above statement is an error and a deception. Supply-side fossil fuel resources remain at the forefront of resource procurement activities in California. The procurement of \$400m of energy efficiency every two years is a drop in the bucket compared to the utilities' vast financial commitment to fossil fuel power and transmission to move that power around.

On certain levels, the procurement and EE proceedings are in synch. They both provide assurance to utilities that they need not take energy efficiency seriously as an alternative to other resources.

The procurement Decision approved December 16th, 2004, emphasizes more power plant construction (and long-term contracts to lock in contracts for power from those plants) without requiring utilities to utilize EE and Renewable Energy first before considering fossil fuel resources. It allows utilities to base their "integrated resource plans" on reports

regarding demand forecasts and resource availability by consultants who are hired and directed by utilities, with no process for the Commission to review or investigate the veracity or completeness of those reports before approving the plans. The procurement decision also approves “stranded assets” recovery, which gives utilities incentives to over-procure fossil resources.

But in the most important issue for this EE proceeding, there is a disconnect between the Commission’s approval of a “free-market” approach to power plant construction in the procurement decision vs. the PD re-imposing monopoly control of utilities over EE.

Calpine Corp., a San Jose-based generator, said the decision will lead to lower costs for electricity. "The decision today will result in companies openly competing to drive down costs for the ratepayers," said spokesman Kent Robertson... "This is comparison shopping; it puts everybody on a level playing field," he said. (PUC favors free-market approach, Dale Kasler, 12/17/04 Sacramento Bee)

In EE there will be no level playing field and no chance for competition to drive down costs for ratepayers. This is especially noteworthy in that power plant construction requires enormous infrastructure and financial resources — which very few companies possess — whereas many small businesses and non-profits can (and have) effectively run EE programs.

The PD fails to address the findings of blueConsulting’s Audit of IOUs

The Proposed Decision states:

As needed, financial audits of the IOU administrators and their program implementers (IOU or non-IOU) will be conducted by Commission staff, or by consultants under contract to the Commission. The Commission will determine and prescribe what action is to be taken by the IOUs in response to audit findings and recommendations. (PD, p. 114)

It is highly instructive that the PD never once mentions the Financial and Management Audit of Utility Public Goods Charge Energy Efficiency Programs from 1998 through 2002, by blueConsulting, submitted to the Commission July 9, 2004. This was the first outside audit of these programs in at least a decade.

There has been no public mention of this audit, although it was ordered in connection with this proceeding for the express purpose of examining IOU energy efficiency programs at a deeper level than had ever been done by the Commission.

Audit proves IOUs are not competent as administrators or implementers

Summarizing briefly, the Audit documents:

- frequent failure to conduct competitive bidding at all, choosing instead to award an inordinate number of “sole-source” contracts;
- when forced to conduct competitive bidding by CPUC order, IOUs failure to conduct such bidding according to generally accepted business practices;
- widespread negligence in contract oversight;
- failure to meet energy savings targets;
- failure to track and report “commitments;”
- excessive administrative costs and confusion over what constitutes those cost;
- refusal to provide auditors with adequate, timely information.

Obviously, this information is relevant to the Commission’s choice of administrator for EE programs. The failure to bring the Audit to the attention of parties in this proceeding and the Commission is extremely troubling.

The Auditor’s report begins by flagging utility roadblocks which delayed the audit:

Significant delays were experienced in the receipt of information, which constrained the audit...During the course of the audit, blueCONSULTING experienced significant delays in the receipt of requested data and documents from each of the utilities, and did not receive all of the requested information at SCG and SDG&E.(Financial and Management Audit of Utility Public Goods Charge Energy Efficiency Programs from 1998 through 2002, Report for Public Distribution, blueConsulting, July 9, 2004 p. 1-1, emphasis added)

The Commission sat on the draft report for over three months:

BlueConsulting began the audit in August 2003, and our field work concluded with the issuance of the first draft of this report on March 31, 2004. (Audit, p. I-1)

To WEM’s knowledge the Commission sent no notice to the service list in this proceeding when the final report was delivered July 9, 2004, although WEM had been asking for months to see the results. A colleague notified WEM a month later that the Audit had been quietly placed on the CPUC website.

These were very significant months in the proceeding. Utilities were pressing hard to regain their monopoly over EE administration, and the Audit would have raised serious questions over their conduct in that role. The Administrative Structure workshop was held March 17-18, 2004, and parties' proposals for the new structure were submitted April 8, 2004. Based on the 2/6/04 ACR, parties were expecting a Proposed Decision by June 8 in order to make the July 8 calendar.

In addition, the long series of workshops on Evaluation Measurement & Verification (EM&V), would have been enhanced by utilizing the Audit's findings as a basis for discussion on necessary improvements.

Chapter IV of the Audit, Accounting Oversight and Funds Management describes massive failures at three utilities in procedures for selection and oversight of contractors and vendors:

Areas for improvement in program management and administration were identified at all utilities. Perhaps the greatest weakness at most utilities was in the procurement and contractor selection process and vendor oversight, as summarized below:

SCG and SDG&E have no formalized policies and procedures that define and control the decision-making process regarding the use of in house staff versus contractors, or regarding competitive bidding. The process for providing on-site inspections at the Sempra utilities is weak and needs improvement. Documentation for many of the inspections does not exist and is not even required by SCG. Voucher processors at SDG&E and SCG are allowed to override system selected inspections leading to customers who were paid even though inspections did not occur.

SCE's procurement practices are inadequate and the utility does not utilize appropriate criteria when making initial outsourcing decisions. Significant vendors have sole-source contracts at SCE and competitive bidding is infrequent. Invoices are extensively reviewed and audited, however direct procedures are not in place to ensure that the work for which invoices have been submitted has actually been performed. No direct work is performed to ensure that work has actually been done as described in the documentation. (Audit, p. IV-1, emphasis added)

The Audit describes the Commission's failure to clarify categories of administrative costs for utilities to report:

Historically, the California utilities have received limited written guidance regarding the classification of administrative costs or allowed categories of costs, and past definitions have been too broad to allow meaningful comparisons of administrative cost levels. The Reporting Requirements Manual 2 (RRM2), first issued in 1999, outlined the required content for the Annual Report for post-1997 programs, but did not specifically define the labor, non-labor, or contract costs within the administrative cost category. As a result, the types of costs each utility reports in each Annual Report category vary considerably. The 2002 Quarterly Reporting Workbooks request cost information at a greater level of detail

than the annual reports. However, the level of requested detail implies an accuracy and specificity of the reported information that may not be representative of the underlying data.

As a result of differences in accounting and reporting systems, differences in what is included in the utilities' base rates, and the lack of specificity regarding allowed energy efficiency expenditures, there are significant differences in the types of costs each utility charges against PGC funds, and administrative costs levels vary by program.

The result of the Commission's failure to define cost categories is an inability to get a handle on what energy efficiency administration should really cost. This is a failure of the Commission, to be sure, but utilities have taken full advantage of the confusion.

The PD blows off the problem of excessive IOU administrative costs, referring it to EM&V, which has nothing to do with administration:

In their comments, several parties argue that IOU administration brings with it inflated administrative costs and other inefficiencies that justify placing a different entity or entities in the Program Choice and Portfolio Management Role. We believe that these arguments could equally apply to any administrative structure in which administrative costs and overall program and portfolio performance were not adequately and accurately monitored. They raise a broader issue, namely, how to ensure that the program results, both costs and benefits, being reported by the IOU administrators, IOU implementers and non-IOU implementers are credible, particularly for resource planning purposes. We concur with Rich Sedano of the Regulatory Assistance Project that the specifics of who performs the program choice or portfolio management function are not relevant to this question. Rather, what is relevant is the structure of the monitoring and verification program, or what we refer to as EM&V.

The PD fails to ensure "Credibility" of program results

In a non-sequitur, the above passage briefly touches on the raging controversy in the proceeding over the gross exaggerations of EE savings. Although non-IOUs as well as IOUs have exaggerated their claims, the bases for the exaggerations are in the "statewide" studies controlled by the utilities, and have not been discussed or corrected in the utility-run EM&V club, CALMAC, which is supposed to address measurement issues.

The PD fails to understand the California Standard Offer

The description of IOU administration versus the other proposals is not correct. The PD claims that someone keeping the Program Choice and Portfolio Management functions

within the Commission, where it resides now, would require new legislation to create outside trust or bank accounts. This is clearly wrong. Under the CCEE proposal, Program Choice and Portfolio Management are performed by a System Director, which we expressly state can be the CPUC staff.

The PD's description of the WEM proposal is not accurate. Our proposal rests Program Choice and Portfolio Management in the hands of the System Director. In the Standard Offer Program, the entities hired by the System Director perform other tasks (overseeing contractors), which the terminology of the PD no longer classifies as "administration." We note that the PD's definition of "administrator" entirely contradicts the definition of "administrator" adopted in the Commission's prior decisions regarding AB 117. This has caused the PD to mischaracterize the WEM proposal.

The PD never resolves the contradiction early pointed out by WEM and others: If the CPUC staff can contract "with independent consultants to evaluate program performance," using PGC funds, then why cannot the CPUC staff contract with program implementers to implement EE programs? The PD (pp. 74-75) falls back to stating that it is not "feasible or desirable to extend this approach to program administrators," based on newly discovered paperwork burdens that are easily overcome. That is entirely different from the PD's contention that such contracting with program administrators would require new legislation. Yet, at page 75, the PD again asserts that new legislation would be required, when there is no such legislation authorizing ED to enter into its existing EM&V contracts with non-IOUs. These funds never go the state treasury. Nor does the existing EM&V contracting process comply with the newly-noted requirements of the California Public Contract Code. The PD (pp. 76-78) then offers a series of arguments that apply to the PD itself but not to the CCEE proposal. It is the PD that removes existing functions from state employees. The PD does not explain why administration is any less "personal services" than performance of EM&V.

This also answers the PD's concerns about start-up time and finding a third-party administrator. The PD's discussion of the WEM proposal (pp. 82-84) is simply wrong, for reasons stated at the September 30 oral argument and subsequent memoranda.

The California Standard Offer proposal offers the only truly "statewide" programs

As we discuss in this decision, our experiences in California have left us unwilling to rely solely on competitive market solutions to meet customers' energy needs. Moreover, we conclude that under this approach statewide programs could cease to exist entirely, customers would be faced with multiple and sometimes overlapping programs, and overall, the program synergies and leveraging necessary to optimize savings from energy efficiency would not be achieved. (PD p. 6)

This passage errs in several key facts, and misinterprets others, showing a further lack of understanding of the California Standard Offer (CSO) proposal. First of all, the CSO is

the only administrative structure that allows for statewide programs. Currently and in the PD, the four utilities sponsor four separate “statewide” programs. The CPUC sees them as “uniform” because they have the same basic description and the same rebate levels. But for the customer, there are major differences that may make one utility’s program worthwhile, and another one less so.

The BlueConsulting Audit shows that each utility’s expenditures on different administrative tasks varies widely and cannot be compared. But that’s not just a question of financial accountability. Each utility has a different approach to advertising, different subcontractors, and different ways of addressing quality control, risk management, “commitments” and customer service procedures, all of which may greatly impact a customer’s experience of a program.

Under the Standard Offer a “statewide” program would be truly statewide, because a single entity could run the same program throughout the State.

IOU-run “partnerships” with cities and counties are failures

The PD approves utility-controlled “partnerships” with cities, in the face of decisive evidence that such partnerships are failures. In addition to the SF Pilot partnership, described above, the utilities failed to even sign contracts with their “partners” nine months into this program year, as discussed by WEM and others at the Oral Argument. Cities complained that IOU partners ignore their input and seek to impose “cookie-cutter” programs, the opposite of the PD’s claims that these partnerships provide the best of both worlds.

The PD errs by deferring question of EE administration under Community Choice

The purpose of “integrated resource planning” is to provide the greatest benefit to ratepayers and the environment from combinations of energy efficiency and supply-side fossil and renewable resources. The Community Choice law (AB117) provides for cities and counties who become Community Choice Aggregators (CCAs) to conduct “integrated resources planning” on behalf of their customers — a worthwhile exercise that contrasts sharply with the self-serving and dishonest IRP of utilities (who are required by law to act on maximize benefits for shareholders, not ratepayers).

The PD acknowledges that it may not properly serve CCAs’ interests in EE administration, but refuses to address those interests at this time:

AB 117 added sections to the Public Utilities Codes that permit cities and counties that have registered with the Commission as “Community Choice Aggregators,” to buy and sell electricity on behalf of utility customers in their jurisdictions. AB 117 contained provisions, codified at Section 381.1(a) that required the Commission to establish procedures by which anybody, including CCAs, can apply to become administrators of energy efficiency programs established pursuant to Section 381. We have interpreted our decisions that allow CCAs and other third parties to apply for PGC funds as consistent

with this requirement while at the same time recognizing that, as the procedures for allowing CCAs to begin serving customers evolve, we may need to revisit the issue.

The PD repeats the tired fiction that administration=implementation when it comes to CCAs, but nervously acknowledges that that might not hold up when dozens of cities and counties come looking for their EE money:

WEM construes the requirement that any party be allowed to apply to become an administrator of energy efficiency programs as meaning that such entities must be allowed to assume the responsibility for portfolio selection and management...We reiterate our interpretation of “administrator” for purposes of AB 117 as meaning “any entity implementing an energy efficiency program that is the subject of Section 382, which authorizes the expenditure of certain funds on energy efficiency programs.”

At the same time, we have recognized that “we may ultimately find that CCAs are appropriately independent agencies that should have considerable deference to use Section 381 funds” and have reserved broader issues about CCAs role and discretion for later determination. (PD, p. 76)

What a concept, that California cities and counties might be “independent” of IOUs!

PD violates statute by proposing to cancel PGC funds for CCAs

In the next sentence, the PD throws a giant curve. Rather than providing EE funds to CCA administrators, as the law requires, the PD envisions canceling their EE funds altogether!

We are currently establishing the procedures required by AB 117 before CCAs begin serving customers, including obligations of CCAs, recovery of IOU costs, and required reports to the legislature. Once those details are resolved, we may revisit the issue of allocating electric energy efficiency PGC funds to CCAs in the context of their role in delivering electricity to their customers. Stated another way, we may revisit the question of whether CCA customers should be relieved of their responsibility for energy efficiency PGC and procurement surcharges if the CCA elects to take over these functions. Nothing in this decision prevents us from modifying the process for allocating PGC funds to CCAs in the future.

PD violates State contracting provisions

During oral argument and in its subsequent reply brief, WEM argues that using the CPUC's definition of administrator to mean "implementer", Public Utilities Code § 381.1(a) would require that the Commission retain the program choice function. According to WEM, "the statute requires the Commission to 'weigh the benefits of the proposed program,' not delegate the weighing to other entities." We believe that today's decision, which holds the IOUs responsible for assembling a portfolio of programs pursuant to the Commission's overall policy guidelines and energy savings goals, and for submitting recommendations to the Commission for ultimate approval, is entirely consistent with the language of §381.1(a). Nothing in today's decision is intended to delegate that ultimate approval to the IOU administrators. We note that even when Energy Division staff has performed the program choice function by selecting program proposals using the Commission-adopted criteria, the Commission has approved or disapproved the recommendations of staff. (PD, p. 78)

This argument fails on two counts. First, "weighing the benefits" of proposed programs begins at the level of those reviewing the proposals, long before the step of "ultimate approval" (at which point many proposals have already been weighed and discarded). CPUC staff has properly been weighing proposals on behalf of the Commission. Secondly, delegating CPUC staff's duties (i.e. weighing proposals and "assembling a portfolio of programs") to utilities constitutes outsourcing of civil service jobs to the private sector.

Nor does the PD address the legal analysis presented by WEM, most recently in its comments of October 18 and 25, 2004, in response to the Assigned Commissioner's inquiries. WEM established there that the California Supreme Court has repeatedly concluded that government authority cannot be delegated to private parties with financial interests. In *State Board v. Thrift-D-Lux Cleaners*, 40 Cal.2d 436, 254 P.2d 29 (1953), the Court overturned a statute which allowed a 7-member State Board of Dry Cleaners to set prices. "[O]ne person may not be entrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property." *Thrift-D-Lux Cleaners*, 40 Cal.2d at 448, 254 P.2d at 36.

Various parties raised the specter that the same State Personnel Board public employee labor law issues that sunk the CBEE would somehow sink independent administration this time around. But the opposite is true. As noted at oral argument and in WEM comments, the CBEE sought to perform functions that previously had been performed by civil servants. That was its undoing. Here, the IOU plan, adopted by the PD, suffers the same defect. No one denies that Commission staff have been performing for several years the functions identified as Program Choice and Portfolio Management. Under the structure favored by the PD, these functions would be performed by the IOUs and not by civil servants. The PD claims that the Commission would be exercising oversight of the IOUs, but the Commission was also going to exercise oversight over the CBEE. All of the personnel cases and decisions cited by the IOUs and their supporters in this

proceeding apply fully to the plan favored in the PD; we need not reiterate the legal research here.

In contrast, the CCEE plan calls for the Commission and its staff to perform the Program Choice and Portfolio Management functions and thus does not outsource those functions to private parties. The PD seeks to outsource them to the worst possible parties—the IOUs with their unavoidable conflicts of interest. This is akin to outsourcing anti-smoking educational efforts to the tobacco companies, while at the same time allowing them to evaluate their own programs and maintain a stable of compliant social science researchers who naturally conclude that their programs are highly effective.

Conclusion

In awarding Administrative functions to utilities, the PD suppresses rather than addresses the voluminous record in this proceeding and violates EE statutes as well as common sense. The PD invites utilities to thumb their noses at ratepayers and the climate, continue to waste ratepayer money on ineffective programs and outrageous administrative costs, and stomp out independent programs that provide more energy savings per dollar, higher quality services and more local jobs. Rather than forcing utilities to revise their falsified energy savings claims, clean up their poor management practices, and compete with non-utility EE providers on a level playing field, the PD hands over the store, promises IOUs extra incentives to sweeten the deal, and runs cover against ratepayers' wrath by praising IOU EE programs all the way to the bank.

Dated: December 20, 2004 Respectfully Submitted,

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Endnotes

WEM and TURN have filed extensive comments in this proceeding regarding IOU conflicts of interest with EE.

The Myth of IOU Cost-Effectiveness, SESCO filing in this proceeding, August 1, 2003, ranked all programs according to their reported "cost-effectiveness" (i.e. CPUC-established ratio of cost to energy savings and other factors). Non-IOU programs were superior in all but one program in the residential sector, and even with utility programs in the commercial/industrial sector.

Two thousand international climate change scientists warn that we need 60-70% reductions in fossil fuel emissions as soon as possible in order to slow the rate of warming and stave off the likely extinction of our species. (Boiling Point, Ross Gelbspan, 2004, Basic Books)

EE is more like building a power plant than procuring the power from it. An EE installation, like a power plant, “provides” power for a certain period under certain conditions.

PG&E partnered with SFE previously in PGC-funded light-bulb giveaways, including at a campaign event for Andrew Lee at a non-profit center operated by Julie Lee, who is under multiple investigations for illegal campaign contributions, including money-laundering, for candidates including SF Mayor and CA Sec. of State. (Julie Lee also supported PG&E’s anti-public power campaign and received funds from the company for her non-profit.)

Sources: SF Chronicle August-September 2004, SF Bay Guardian November 2002, ISO “Large-core Working Group” meetings 2003, SF Pilot meetings 2003-4.

A decision made at the Dec. 16, 2004, meeting in another proceeding approved an increased Return on Equity of 11.6% for SCE and SDG&E. This gives additional reason for utilities to prefer their equity-producing investments over energy efficiency.

CALMAC had scheduled a meeting July 21, 2004, but it was cancelled. The meeting notice did not mention the Audit. The service list in the Consolidated Annual Earnings Assessment Proceeding (AEAP), A.00-05-002, to which WEM is also a party, was not notified either. The ALJ in the AEAP indicated that these two proceedings would work together to review past programs by the utilities, but that never happened.

The Assigned Commissioner’s Ruling of 7/3/03 promised “to bring a final decision on administrative structure before the full Commission no later than April, 2004.” (7/3/03 ACR, p. 14) Her 2/6/04 Ruling Establishing Schedule for High Priority Issues specified: “I anticipate that this item will be placed on the agenda for the July 8, 2004 Commission Conference.” (2/6/04 ACR, p. 2)

See, for example, TURN Opening Comments, p. 13.

The Commission has failed to act on detailed evidence presented by WEM and other parties to this proceeding that utilities are grossly exaggerating energy savings claims. In one well-known example, Compact Fluorescent Lights account for xxx? 60% of reported savings from Express Efficiency, and a large portion of the SF Peak Energy Program. These savings are overstated by as much as 800%. While utilities cite justification for their claims in statewide studies, in many cases the exaggerations go even beyond the exaggerations in the studies. Not only does this falsify the claims, but it could also result in over-collections of “shareholders’ incentives.”

Pub. Util. Code §§ 218.3, 331.1, 366.2, 381.1, and 394.25.

D.03-07-034, mimeo., p. 10; D.03-08-067; D.04-01-032.

D.03-07-034, mimeo., p. 7, fn. 2.

Ibid., p. 10.

See R.03-10-003, Order Instituting Rulemaking to Implement Portions of AB 117 Concerning CCA.

WEM Reply Comments, October 25, 2004, pp. 8-9.

Ibid. p. 9.