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MEMORANDUM

TO: Local Government Sustainable Energy Coalition Members

FROM: Jody London

DATE: September 10, 2008

SUBJECT: Regulatory Status on Utility Energy Efficiency Programs

This memo provides an update on recent filings at the California Public Utilities Commission ("CPUC") related to utility energy efficiency programs. It summarizes recent comments and protests to the applications filed by the utilities for 2009-2011, as well as the utilities' responses to those comments. This memo also summarizes a request made Monday by Southern California Edison ("SCE") to use unspent funds from prior years to keep several of its 2006-2008 programs operating, unrelated to any requests for bridge funding. SCE is requesting expedited treatment of that request, as described below, and comments are due Friday.

Comments and Protests to 2009-2011 Appplications

As you recall, the LGSEC filed comments on August 30 on the utility applications for 2009-2011 energy efficiency programs. The LGSEC comments pointed out how utility partnership proposals could be strengthened by fully engaging local government resources, and described challenges members of the LGSEC have faced in the negotiation process thus far for the 2009-2011 programs. Many other parties filed comments as well, several of them supporting the utility portfolios and/or requested policy changes. There also are parties that, like LGSEC, were more critical of the utilities, particularly in their treatment of local government programs and the requested policy changes. The utilities responded to the comments and protests yesterday. A summary of the specific comments is provided in Attachment 1.

Utility Replies to Comments and Protests

Only PG&E and SCE filed responses September 8 to the comments and protests. As might be expected, the utilities defend and justify the requested policy changes, and argue that the proposed programs are innovative and comprehensive. The utilities also argue that they must retain administration of local government partnerships, as well as marketing, education, and outreach programs, and workforce education and training activities. While PG&E supports altering the function of the PRG to focus more on advising the CPUC's Energy Division on the Strategic Plan issues, as suggested by DRA and TURN, SCE prefers to retain the current PRG mission and structure.

The utility comments attempt to clarify many things. The amount of clarification may make it clear to the CPUC that there has not been sufficient communication between the utilities and their “partners.” LGSEC members may find PG&E’s description of its various local government programs helpful:

> “PG&E’s proposed Green Communities Program is directed at building capacity for energy management and GHG reduction, while the Energy Watch and Innovator Pilots Programs provide resources to local governments to engage directly in energy efficiency and energy management activities.”
>
> Specific to ABAG, PG&E states:
> “The ABAG partnership in 2006-2008 focused on government-owned buildings in the ABAG region. ABAG will continue in the 2009-2011 period as a green communities provider, where they will be able to focus on their strength in building the capacity of both smaller and more sophisticated entities in the region. The activity of encouraging government-owned building energy efficiency will be transitioned to the partnerships with the entities that actually own the buildings and have more direct control.”

On the question of innovation, PG&E claims that in the ongoing negotiations for 2009-2011, it is working with local governments to incorporate innovative ideas into the scopes of work. PG&E also states that local governments that wish to manage direct install programs will have the option to do so, but others will have the option of using the utility third-party vendors, which should streamline the process.

Southern California Edison is particularly critical of the LGSEC’s comments. SCE starts its reply by stating that it will only provide information on budget breakdowns if LGSEC, TURN, and DRA submit formal data requests. Presumably the Energy Division has done this, but maybe we should as well (we requested this information informally). SCE argues that it must retain administration of local government partnerships, and that its Energy Leader Model is the best way to meet the goals in the Energy Efficiency Strategic Plan. SCE argues also against a regional approach to energy efficiency partnerships:

SCE claims that it does share drafts of regulatory filings with local governments, but sometimes does not have time to share final versions in the rush to meet regulatory deadlines. SCE claims that partners had opportunity to review budgets and were notified of the utility administrative costs. (One could argue that there was no opportunity for local governments to respond.) SCE claims that any local government could respond to the call for abstracts, and that SCE has chosen the most cost-effective partnership proposals, but SCE is in no way trying to diminish existing partnerships.

> “Regionalized approaches that insert a layer between the utility and its customer have resulted in reduced engagement from partners. The ELP model promotes city and community engagement, a vision of sustainability supported by utility services, leading by example, motivating communities to take energy efficiency actions and leveraging city resources to communicate to consumers. Additionally, local governments have been encouraged to take advantage of utility energy centers that have already been established (e.g., CTAC and AgTAC). Additional centers and development of regionalized energy efficiency programs would not be

cost effective, and a regionalized approach disaggregates existing utility offerings and may lead to inequities among the various partnerships."

Later in the same filing, SCE states that it values regional organizations because they "offer synergies and leveraging opportunities to its member cities." SCE also states that the list of measures is only a starting point, and that the final measures will be determined in collaboration with local government partners.

SCE continues to argue for the requested overarching policy changes, including utility credit for codes and standards. SCE does not address the County of Los Angeles problem where SCE refused to help with develop a green building ordinance. SCE maintains that local government partners must bring resources to the table for the "integrated" elements of their energy efficiency partnerships, and that this was stated in the call for abstracts.

SCE also justifies its continued support for the Palm Desert partnership, citing two achievements of this program: first, SCE claims that Palm Desert's energy efficiency ordinance has produced over 100,000 kwh of sustained energy savings, and second, the partnership has funneled or produced 43 million kwh since its inception. Additionally, Palm Desert helped pass AB 811.

FYI, here is how SCE describes its Sustainable Communities Program: "The SCP is the home for far-reaching programs seeking to promote green building, and energy solutions outside the typical three-year planning horizon of the utility cycle. The SCP houses the zero-energy new residential and commercial components of the CLTEESP. The SCP also differs from the Partnership programs, insofar as it is a non-resource program. This also gives SCP the freedom to explore tracking non-traditional energy savings, such as those from water conservation, and greenhouse gas reductions."

SCE Request for Emergency Funds for Some 2006-2008 Programs

On September 8, SCE submitted a request to the CPUC to use $27 million of unspent, committed funds from prior energy efficiency cycles to continue several ongoing energy efficiency programs, specifically: comprehensive HVAC ($10 million), Express Efficiency ($9 million), industrial energy efficiency and standard performance contract programs ($5 million). SCE claims that activity in these programs has picked up dramatically over the summer and the budgets have quickly become exhausted. The application makes clear that this funding is supplemental to allow these programs to continue, and is <u>not</u> part of SCE's bridge funding request. SCE has requested expedited treatment of this request, and proposes that comments be filed this Friday, September 12.

This request will no doubt be greeted skeptically by TURN and DRA, who monitor the utility's regular reports on unspent funds and are generally critical of the utilities' management of funds.

This is not an issue on which I recommend the LGSEC intervene. The Board should let me know if you think differently.

Next Steps

The CPUC is presumably working with the utilities to obtain complete applications for 2009-2011. At some point, a further Prehearing Conference will be scheduled. At this point, no further filings have been scheduled. The LGSEC Board, or individual members, might consider whether we want to approach SCE in the meantime to try to resolve issues raised in our comments and SCE's reply. This may occur anyhow through your ongoing partnership meetings.

In terms of the request for supplemental funding on an expedited basis for those three programs described above, the CPUC has yet to issue any response. I will continue to monitor the application.

Please contact me with any questions or comments.

Attachment 1
Summary of August 30, 2008 Comments and Protests

Most of the parties that filed in support of the utility filings were supporting the utilities' requested policy changes on issues such as savings calculation methodologies, what is included in the shareholder incentive mechanism, etc. The California Building Performance Contractors Association, which delivers programs for all three utilities, stated it will have problems hitting stretch goals in the residential sector unless changes are made to the cost-effectiveness test. They suggested that implementers should be able to use workpapers that demonstrate cost-effectiveness of comprehensive programs with non-energy benefits. The Building Contractors like the whole-house approach in the utility applications, and suggested that a statewide approach is needed. Not all utilities have provided budgets for this component. The Building Contractors suggest these programs be regarded as non-resource for 09-11 and not be subject to shareholder incentive risk.

Clean Energy Solutions, a group from Cambridge, Massachusetts, suggests that local government partnerships should be enhanced by introducing a Clean Energy Solutions turn-key program that operates currently in Cambridge. The program uses an independent non-profit operating company to offer financing, energy efficiency measure, and membership and recognition program, and tools like green leases that help engage hard to reach populations. This group's comments include support letters from the cities of Walnut Creek, Fremont, Morgan Hill, Hermosa Beach, and Manhattan Beach.

The National Association of Energy Service Companies ("NAESCO") supports the utilities' requested policy changes. NAESCO supports the utility need for certainty and expected return, claiming if you want predictable energy efficiency programs, the utilities need predictable earnings.

The Natural Resources Defense Council ("NRDC") generally supports the utility applications. NRDC agrees that utilities should get credit for savings related to climate change actions, and that activities related to Strategic Plan should be exempt from the incentive calculation. NRDC suggests the Commission consider an incentive mechanism for non-resource programs. NRDC disagrees with the utilities when it supports retaining the use of ex post savings estimates (the utilities ask that savings be developed using ex ante estimates). NRDC asks for supplemental information on the local government programs, and says it does not support moving local government partnerships to the CPUC, as is suggested by the Division of Ratepayer Advocates ("DRA") and the Utility Reform Network ("TURN").

Quest, the contractor that manages the East Bay Energy Watch partnership, agrees with the utilities on the need to use ex ante estimates, stating that innovation is not encouraged with the ex post verification. Quest also supports using gross savings estimates.

DRA and TURN, filing jointly, have numerous concerns about the utility applications. They recommend the Energy Division oversee local government programs, stating the utilities have an inherent conflict of interest. DRA and TURN oppose nearly all the utility recommended overarching policy changes. They point to where the utilities are revisiting recently adopted

CPUC decisions on incentives, savings calculation, etc. DRA and TURN suggest the CPUC also should manage workforce, education, and training, and marketing and outreach programs. DRA and TURN recommend eliminating the Program Review Group ("PRG"), saying it is a huge use of resources for not much return. The suggest reconstituting the PRG as advisory to the Energy Division on Strategic Plan issues, and to include other non-financially interested entities, such as other state agencies. DRA and TURN argue the need for a better process for removing measures from incentives, for example when there are codes and standards in place, the State does not need to be paying out incentives. They suggest the CPUC needs to develop criteria that define market transformation. Finally, they criticize the applications for not having many truly integrated programs, rather lots of pilots that are limited in scope and participation. They also are concerned that the portfolios continue to rely too much on lighting.

The City and County of San Francisco also has concerns with the process, and final portfolio composition. San Francisco opposes many of the policy recommendations. San Francisco suggests the State needs a new organization to lead market transformation efforts and achieve greenhouse gas reduction goals. It criticizes PG&E's budget for local government partnerships as insufficient, and points out there are no innovative programs. San Francisco observes that PG&E's projected savings targets are almost twice as high as the Commission's goals, which makes one wonder if the goals are too low. It urges the CPUC to reject the utility request to use ex ante savings to determine shareholder incentive. Finally, San Francisco says the utility request for more input on EM&V is illustrative of the overall need for more stakeholder input on every aspect of the energy efficiency portfolio.

Schweitzer & Associates, a marketing entity that is working on the SCE Sustainable Communities program, is highly critical of the utility proposals in this area. Schweitzer says the Sustainable Communities programs are not adequately funded and not truly comprehensive. One needs a much longer horizon to realize savings, as the planning and development can take up to 20 years. The CPUC must ensure there is a designated position within the utility that can transcend organizational limitations/silos. The utility and CPUC reporting structure stifle innovation.

Women's Energy Matters ("WEM") argues for pulling administration from the utilities. WEM suggests setting the program cycle back to two years, rather than three. WEM is very focused on an ongoing delay in the CPUC audit of utility program, arguing the CPUC does not know if the programs are well-managed, etc.