

BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Order Instituting Rulemaking)
on the Establishment of a Public)
Purpose Program Surcharge)
Pursuant to AB 1002)
_____)

Rulemaking R. 02-10-001

**JOINT COMMENTS OF THE CALIFORNIA ENERGY COMMISSION
and THE UNIVERSITY OF CALIFORNIA REGARDING
THE PROPOSED DECISION ON NATURAL GAS RESEARCH PROGRAMS**

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June 17, 2004

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I. INTRODUCTION AND SUMMARY OF THE CEC/UC JOINT COMMENTS

In accordance with the provisions of Title 20, California Code of Regulations, Article 19 (Sections 77 *et seq.*), the California Energy Commission (CEC or Energy Commission) and the University of California (UC) respectfully submit these Joint Comments regarding Commissioner Lynch's Proposed Decision on establishing a Public Interest Natural Gas Research (PINGR) Program. (*See* R. 02-10-001, Proposed Decision mailed on 5/28/2004).

Except as noted below, the Energy Commission and UC strongly support this Proposed Decision (PD) because: (1) it recognizes the importance to California's citizens and ratepayers of establishing a meaningful program in the area of public interest natural gas research; (2) it provides clear and flexible guidance regarding the type of research activities this program should conduct; (3) it provides substantial funding to carry out these research efforts over the next five years; and (4) it assigns a single, statewide, non-utility entity to administer this program in conjunction with ongoing California Public Utilities Commission (CPUC) oversight.

However, the CEC and UC urge changes in the PD in three important areas to enhance the ability of the PINGR Program to conform with state energy policies and the evidentiary record in this case. These areas are as follows:

- **Program Administration:** Pursuant to policy guidance recently received from Governor Schwarzenegger's Office, the CEC and UC jointly request that responsibility for administration of the PINGR Program be assigned to the Energy Commission, rather than UC.
- **Program Funding:** To achieve consistency with long-standing CPUC policies concerning "parity" between electricity and natural gas ratepayers, the CPUC should consider increasing average annual funding level for the PINGR Program from \$18 million per year to \$20 million per year.

- **Program Oversight:** The CPUC’s oversight of the PINGR Program should focus on meaningful program-level review, rather than unnecessary and impracticable project-level review, and should encourage collaboration between the Administrator and the Energy Division prior to submission of the proposed program for CPUC approval. In addition, \$1 million dollars should be authorized now so that program administration and planning activities can commence immediately.

Each of these areas of concern is discussed further below, and specific proposed changes to the PD are provided (as an Attachment) to fully address these issues. The CEC and UC request that the Commission approve a final decision, with the changes proposed herein, at its Public Meeting/Decision Conference scheduled for July 8, 2004.

II. PROGRAM ADMINISTRATION SHOULD BE ASSIGNED TO THE CEC

The issue of which entity should be responsible for administration of the PINGR Program is addressed on pp. 27-31 of the PD, where the CPUC’s long-standing policy that “public interest research should be administered by an independent, non-utility entity” is expressly restated and upheld. With the utilities eliminated as potential statewide administrators of this gas research program, the PD decides that UC, rather than the CEC, should become the Administrator. The Joint Parties recommend that the PD be changed to assign program administration to the CEC, not UC. CEC administration is consistent with the evidentiary record in this matter, conforms with state energy policy, responds to recent information from the Governor’s office, and can utilize the strengths of both the CEC and UC.

Specifically, when Governor Arnold Schwarzenegger was elected to office shortly after the evidentiary hearings on this matter were concluded, he indicated that state policy strongly favors integrating, coordinating and streamlining energy-related responsibilities wherever possible. Both the CEC and UC support this policy. Accordingly, after issuance of the PD, the CEC and UC requested guidance from the Governor’s Office on this matter. The Governor’s Office has informed both parties (and authorized us to inform the CPUC) that primary responsibility for administration of the PINGR Program should be assigned to the CEC to ensure complete

consistency with state energy policy and to fully coordinate the PINGR Program with the CEC's PIER Program.¹

The PD also states that “separation of the electric PIER and natural gas R&D program administrations will . . . help to ensure that the electric and natural gas public interest R&D projects, respectively, will stand on their own.” (PD at pp. 30-31). However, this statement overlooks the fact that many energy-related public interest research projects have direct “overlaps” between electricity and natural gas, and actually require close coordination and integration to optimize these overlapping synergies and avoid unnecessary duplication. (*See, e.g.*, Exhibit #13, Question and Answer #3). There is no evidence in the record to suggest that it is necessary for the PIER and PINGR programs to be administered by separate entities, as the PD orders. (*See* PD Ordering Paragraph #19 at p. 45).

Finally, while the PD states that UC has a unique “focus on publicly funded natural gas programs” (PD at p. 30), the evidence establishes that both the CEC and UC have substantial experience with gas-related research. This experience includes numerous PIER projects, such as building efficiency and gas turbine generator research, which have significant natural gas-related benefits. (*See, e.g.*, Exhibit #13, Question and Answer #3).

For these reasons, the CEC and UC jointly request that the PD be modified to designate the Energy Commission as the Administrator of the PINGR Program. In light of the valuable expertise which UC possesses concerning gas research administration, and California's ongoing budget crisis, the CEC will collaborate closely with UC on technical issues and will subcontract with UC for substantial assistance in the actual administration of the PINGR Program. (We have provided specific recommended edits to the PD to address this issue in the Attachment to these Comments).

¹ UC thanks the Assigned Commissioner and Administrative Law Judge for issuing a PD that proposes to assign program administration to the University. However, in light of recent guidance from the Governor's Office, UC requests that the final CPUC decision provide for Energy Commission administration responsibility. UC and the CEC concur that this structure is consistent with the recent guidance from the Governor's Office, maximizes the unique attributes of the CEC for program administration, and will be undertaken in a manner that also maximizes the strengths of UC in this area.

III. GAS AND ELECTRIC RESEARCH FUNDING SHOULD BE IN PARITY

The issue of determining the proper funding level for the PINGR Program is addressed on pp. 32-36 of the PD, and the legal discretion which the CPUC has in this regard is expressly and properly confirmed therein. The PD goes on to establish specific annual program budget “caps” for a five year funding period as follows: \$12 million (for 2005); \$15 million (for 2006); \$18 million (for 2007); \$21 million (for 2008); and \$24 million (for 2009). While the PD does not expressly say so, this five-year budget reflects a “ramp-up” culminating in the \$24 million per year which the CEC recommended for specific reasons identified in the PD. (*See* PD at pp. 33-34).

We strongly applaud the PD in recognizing the need for significant funding for natural gas research, and the wisdom of ramping-up the amount allocated for that purpose. However, while the annual budget caps in the PD provide substantial funding for gas-related research, the budget in the PD is not fully consistent with existing CPUC policy. Specifically, the CPUC has maintained a long-standing policy which requires that “gas and electric utilities should be treated consistently with respect to public purpose programs in order to ensure fair and equal access to programs by customers and to promote a level playing field between electricity and gas supplies in a competitive market.” (*See, e.g.,* D. 97-06-108, Findings #4 and #5; 73 CPUC 2nd 299, at p. 303). The budget for the PINGR Program in the PD is not consistent with this “parity” policy for the following reason.

The budget in the PD constitutes an average annual funding level for gas research of \$18 million each year over the five year period in question. However, the uncontested evidence in the record establishes that to achieve parity with the electricity-based PIER Program, funding for the PINGR Program would need to average \$20 million per year. (*See* Exh. #10 at pp. 4, 24-25, and 41-43).

If the CPUC wishes to resolve this discrepancy between the \$18 million average annual budget in the PD and the \$20 million dollar annual budget required by long-standing CPUC “parity” policy, it can easily do so while still retaining the “ramp-up” approach which the decision

appears to favor. Specifically, the “ramp-up” should be slightly modified as follows: \$12 million (for 2005); \$18 million (for 2006); \$24 million (for 2007); \$24 million (for 2008); and \$24 million (for 2009). This amendment to the budget would provide an average annual budget of \$20 million over the five years, with an additional \$2 million to allow for inflation adjustments which will certainly occur in the PIER Program during that period. (We have provided specific recommended edits to the PD to address this issue in the Attachment to these Comments).

IV. PROGRAM OVERSIGHT SHOULD BE MEANINGFUL AND ACHIEVABLE

The issue of program oversight by the CPUC is initially discussed on pp. 31-32 of the PD. There the PD states that “[t]he annual proposed R&D program should be provided by the administrator to the Energy Division by August 31” of the proceeding year, and “[t]he Commission acting through the Energy Division will review and approve the annual plans for the R&D projects to be funded” (emphasis added). Insofar as this requirement calls for the submission of annual program plans (for the upcoming year), it is practical, achievable and does not constitute “micromanagement” of the project-selection process. The CEC and UC support this language, and believe that it can be completed by the August 31 deadline required in the PD.

However, a few pages later (under the heading “R&D Funding Level”) the PD states the following:

“In order to allow the R&D program to develop, we will adopt a zero-based budget subject to approval by the Commission. *We shall request that the administrator provide a prioritized list of projects that meet our adopted project criteria [foot note] to the Commission by August 31 of each year, prior to the January 1 R&D program effective date. The projects will be reviewed and approved by the Commission.*” (PD at pp. 35-36, emphasis added).²

² This requirement is also captured in Finding of Fact #20 and Order #18 of the PD.

Such an “*a priori*” project-specific review requirement is neither necessary for meaningful CPUC oversight of the PINGR Program, nor achievable as a practical matter.

Submittal of a prioritized list of specific projects would initially require an overall Programmatic Research Plan, including a Programmatic Budget allocated between the various research subject areas identified for funding within that plan. As stated above, development of a Programmatic Research Plan and Budget is achievable in the approximately two months remaining between now and August 31, 2004. Such a Programmatic Plan and Budget will provide the Energy Division and the CPUC with substantial information regarding the overall purpose and direction of the PINGR Program, the specific subject areas warranting research (including specific types of projects within each subject area), and the approximate funding levels recommended by the Administrator for each of these subject areas.

Clearly, however, project-specific solicitations cannot and should not be undertaken until the CPUC has reviewed and approved this Programmatic Plan and Budget allocation. Thereafter, funding for specific projects will be determined and approved once bids on these solicitations have been received, evaluated and ranked by the Administrator. Such project-specific activities will require a great deal of time, effort and attention to detail, and this cannot be achieved in the timeframe set forth in the PD. Moreover, it would amount to “micromanagement” (which the CPUC disfavors) to require detailed CPUC review and approval of each of these implementation activities in addition to review and approval of the Programmatic Plan and Budget.

Therefore, since the PINGR Administrator cannot approve any specific project that does not comport with the CPUC’s approved Programmatic Plan and Budget, and since the Energy Division and the CPUC will review and approve that Programmatic Plan and Budget prior to each new funding year, it is both unnecessary and unachievable to require “project-specific” review as the PD now does. Instead, we request that the CPUC direct the CEC and UC to coordinate closely with the Energy Division in the development of a Programmatic Plan and Budget for 2005, to be submitted to the CPUC by August 31, 2004. In addition, it is essential for the CPUC to approve an initial administrative budget of \$1 million so that program

administration and planning can begin immediately. (We have provided specific recommended edits to the PD to address this issue in the Attachment to these Comments).

In short, the nature of public interest R&D is such that input from a wide range of experts is critical regarding program direction and project selection. Subject to achievable CPUC oversight, the CEC and UC expect to work collaboratively with the Energy Division, the utilities, and others, to develop and administer the PINGR Program in a manner that will provide outstanding value to the citizens and ratepayers of California.

V. CONCLUSIONS AND RECOMMENDATIONS

The California Energy Commission and the University of California have both participated actively throughout this entire CPUC proceeding concerning public interest natural gas research, and we strongly support most of the Proposed Decision in this matter. However, there are three important areas in the PD where changes are needed as discussed more fully above:

- **Program Administration:** Pursuant to policy guidance recently received from Governor Schwarzenegger's Office, the CEC and UC jointly request that responsibility for administration of the PINGR Program be assigned to the Energy Commission.
- **Program Funding:** If the CPUC wishes to achieve consistency with its long-standing policies concerning "parity" between electricity and natural gas ratepayers, the average annual funding level for the PINGR Program needs to be increased from \$18 million per year to \$20 million per year.
- **Program Oversight:** The CPUC's oversight of the PINGR Program should focus on meaningful program-level review, rather than unnecessary and impracticable project-level review, and should encourage collaboration between the Administrator and the Energy Division prior to submission of the proposed program for CPUC approval. In addition, \$1 million dollars needs to be authorized now so that program administration and planning activities can commence immediately.

The CEC and UC have provided specific proposed language to address each of these concerns in the Attachment to these Joint Comments. We urge the CPUC to adopt a final decision, in accordance with the changes proposed herein, at its Public Meeting scheduled for July 8, 2004.

Respectfully submitted,

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Attorney for the California Energy Commission

June 17, 2004

DIAN M. GRUENEICH
Attorney for the University of California

**ATTACHMENT TO JOINT CEC/UC COMMENTS REGARDING
SPECIFIC CHANGES TO PROPOSED DECISION ON NATURAL GAS R&D**

The Energy Commission and the University of California hereby jointly request the following changes (in “strikeout” and “underline” form) to the Text, Findings of Fact, Conclusions of Law and/or Orders contained in the Proposed Decision issued by CPUC Commissioner Lynch on May 28, 2004, concerning public interest natural gas research (R. 02-10-001).

I. REQUESTED “TEXT” CHANGES

A. On pages 30-31 -- Delete the “strikeout” material below, and replace it with the “underlined” material as follows:

~~Eliminating the utilities means that either UC or CEC could act as administrator. Both UC and CEC have a public interest focus, could implement the R&D program on a statewide basis, and have R&D program experience. The CEC currently manages the electric PIER program as provided by state law. The projects of UC by contrast, already focus on publicly funded natural gas programs. We find this current focus of UC to be a compelling reason to select UC as the administrator. UC has experience in overseeing public interest oriented energy R&D projects, is managing several projects now, and could use that experience to facilitate a seamless transition from utility management to the independent administrator role. Although UC joins the CEC in advocating against a zero based budget (as we discuss in greater detail below), it expresses somewhat more flexibility in the funding levels than the CEC.³ That flexibility will be especially important in the early years of this transition. We believe this separation of the electric PIER and natural gas R&D program administrations will also help to ensure that the electric and natural gas public interest R&D projects, respectively, will stand on their own. At the same time, CEC and UC have strong experience coordinating in the context of the PIER program, and we expect that the UC’s administration of the natural gas R&D programs will continue to benefit from this cooperative relationship.⁴ On balance, however, we conclude that the CEC should serve as the administrator of the public interest natural gas program because this will best ensure consistency with state energy policy and full coordination with the existing electric PIER Program, which the CEC administers. We note that both UC and the CEC have now asked that program administration be assigned to the CEC in order to further Governor Schwarzenegger’s policy of integrating, coordinating and streamlining state energy programs wherever possible. Finally, in light of the valuable administrative expertise which UC possesses concerning gas research, we expect that the CEC will collaborate closely with UC on technical~~

³ ~~In response to questions of the ALJ, CEC indicated that at low levels of funding CEC is not likely to be interested in acting as administrator. (TR 237-238.)~~

⁴ ~~The project list should explain how each project meets our adopted criteria, the estimated cost of each project, the administrator shall also include a list of projects that have been rejected.~~

issues and subcontract with UC for substantial assistance in the actual administration of the natural gas research program, as it currently does with regard to the electric PIER Program.

B. On page 31 – At the end of the first paragraph under “Commission R&D Program Oversight” add the following “underlined” material:

The annual proposed R&D program should be provided by the administrator to the Energy Division by August 31. Prior to this annual submission, we expect that the administrator will consult with the Energy Division to ensure that all necessary information is provided.

C. On page 35 and 36 -- Delete the “strikeout” material below, **and replace** it with the “underlined” material as follows:

Although we assert our authority to set a reasonable gas R&D budget, we will not adopt a specific level of R&D funding at this time. ~~We are beginning a new R&D program, under a new administrator, along with Commission oversight. In order to allow the R&D program to develop, we will adopt a zero-based budget subject to approval by the Commission. Instead, We shall request that the administrator, working with UC, provide a prioritized list of projects~~ a Programmatic Plan and Budget (regarding the overall purpose and direction of the program, the subject areas warranting research, the types of projects that will be funded within each subject area that meet consistent with our adopted project criteria,⁵ and the recommended annual budget for each subject area) to the Commission by August 31 of each year, prior to the January 1 R&D program effective date. ~~The projects~~ This Programmatic Plan and Budget will be reviewed and approved by the Commission, and we will hereby authorize \$1 million dollars to enable the administrator to commence administration activities consistent with this decision immediately. We also agree with PG&E that, at least initially, there should be a cap on first year R&D program costs. In consideration of the parties recommended funding levels, we will adopt a first year cap of \$12 million beginning January 1, 2005. To ensure that our long-standing policy of funding “parity” with the electricity-funded PIER Program is met, We will further provide that this initial cap can be increased by up to \$3 million annually (to \$18 million for 2006, and \$24 million in 2007, 2008 and 2009) pending identification and approval of additional R&D Programmatic Plans and Budgets each year. ~~projects, to a maximum cap of \$24 million after four years. After this initial five year funding period, four years, we will assess the reasonableness of the funding level, and the overall R&D program.~~

II. REQUESTED “FINDINGS OF FACT” CHANGES

A. On page 41 -- Delete the “strikeout” material below, **and replace** it with the “underlined” material as follows:

20. The R&D administrator, working with UC, shall provide a list of recommended R&D projects a Programmatic Plan and Budget (regarding the overall purpose and direction of the

⁵—~~The project first should explain how each project meets our adopted criteria, and the estimated cost of each project. The administrator shall also include a list of project that have been rejected.~~

program, the subject areas warranting research, the types of projects that will be funded within each subject area consistent with our adopted project criteria, and the recommended annual budget for each subject area) to the Commission by August 31, prior to the January 1 effective R&D program date.

B. On page 42 -- Delete the “strikeout” material below, **and replace** it with the “underlined” material as follows:

29. It is reasonable to allow the gas R&D funding level to increase in future years to \$18 million in 2006 and \$24 million in 2007, 2008, and 2009 in order to ensure funding parity with the electric PIER Program and maintain the value of R&D programs.

III. REQUESTED “CONCLUSIONS OF LAW” CHANGES

We request no changes in this portion of the Proposed Decision

IV. REQUESTED “ORDER” CHANGES

A. On page 45 -- Delete the “strikeout” material below, **and replace** it with the “underlined” material as follows:

19. ~~The University of California, California Institute for Energy Efficiency~~ California Energy Commission is appointed as administrator of the gas R&D program until further action by the Commission and we expect that the CEC will collaborate closely with UC and subcontract with UC for substantial assistance in the actual administration of the natural gas research program, as it currently does with regard to the electric PIER Program.

20. The funding level, including administration, for R&D in 2005 will be determined upon review and approval by the Commission, subject to a cap of \$12 million, to be funded by the gas PPP surcharge. Additional increases in annual gas R&D budgets after 2005 will be considered and approved as discussed in this opinion. The administrator is hereby authorized to promptly receive and expend one million dollars (\$1 million) so that program planning and administration can commence immediately.

CERTIFICATION OF SERVICE

I, **CAROLYN SPEARS**, certify that on **June 16, 2004**, I served copies of the “**JOINT COMMENTS OF THE CALIFORNIA ENERGY COMMISSION AND THE UNIVERSITY OF CALIFORNIA REGARDING THE PROPOSED DECISION ON NATURAL GAS RESEARCH PROGRAMS**” by overnight mail to the Docket Office of the California Public Utilities Commission (CPUC), Commissioner Loretta Lynch, All CPUC Commissioners and ALJ Bruce DeBerry in proceeding **R.02-10-001**. I also served copies of this same document by e-mail or first class mail with postage prepaid (where e-mail was not provided) to all parties identified on the service list provided by the CPUC in proceeding **R.02-10-001**.

Dated: **June 16, 2004**, at Sacramento, California.

DECLARANT
(Service Lists attached to original only)