

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Approval of its 2009-2011 Energy Efficiency Program Plans And Associated Public Goods Charge (PGC) And Procurement Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And related matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**COMMENTS OF THE UTILITY REFORM NETWORK
ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE GAMSON
ON EVALUATION, MEASUREMENT AND VERIFICATION PROCESSES
FOR 2010 THROUGH 2012 ENERGY EFFICIENCY PORTFOLIOS**

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**COMMENTS OF TURN ON PROPOSED DECISION
ON EM&V PROCESSES FOR
2010-2012 ENERGY EFFICIENCY PORTFOLIOS**

Pursuant to Rule 14.1, *et seq.* of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these comments on Proposed Decision of Administrative Law Judge David Gamson on Evaluation, Measurement and Verification (EM&V) processes for the 2010 to 2012 energy efficiency portfolios (Proposed Decision or PD).

TURN's Comments focus on two elements of the Proposed Decision: The portion of the EM&V budget allocated to the utilities, and the treatment of savings from pilot programs testing the potential for such programs in California. TURN has incorporated in the text of each section the modifications to the Proposed Decision's findings of fact and conclusions of law necessary to put our proposed changes into effect.

I. The Proposed Decision's Allocation of 27.5% of the EM&V Budget for 2010 Through 2012 to IOU EM&V Activities Is Too High and Reflects Factual Error.

The PD would have the Commission adopt a framework for EM&V that appropriately places responsibility with Energy Division for managing and performing the EM&V studies. The investor-owned IOUs have carried out some of the studies in the past, and the Proposed Decision anticipates them carrying out studies for the 2010-2012 portfolios. Thus an important question the Commission must address is how much of the overall EM&V budget should be allocated up front to the IOUs, and how much should remain within the Energy Division's discretion.

The IOUs and Energy Division agreed in the Joint Proposal that the appropriate IOU share of the EM&V budget is no less than 15%. Energy Division separately proposed that

any amount above this 15% floor should be at its discretion, as it implemented the prioritization plan included in the joint proposal. The IOUs instead called for the Commission to allocate a specific amount above the 15% floor, with PG&E calling for up to \$49.5 million as the appropriate figure for the IOUs.¹

The Proposed Decision would allocate the IOUs 27.5% of the total EM&V budget, the same proportion they received of the 2006-2008 budget. The explanation of this higher percentage is based on a characterization of the 15% figure as being necessary “to maintain staffing levels.”² Because it is reasonable to expect the utilities to perform in 2010-2012 some or all of the types of EM&V studies they have performed in the past, the Proposed Decision sees fit to give them nearly double this amount, with the resulting \$34.3 million (27.5% of \$125 million) serving only as the “initial allocation” to the IOUs.³

The Proposed Decision commits error in a number of ways with regard to its discussion of the 15% figure. Nothing in the Joint Proposal attached to the November 20, 2009 ALJ Ruling suggests that the 15% figure is tied to “maintain[ing] staffing levels.”⁴ TURN is not familiar with anything that would constitute record support for this claim. Absent such record support, Finding of Fact 13 and Conclusion of Law 8 are factually and legally deficient. And when the Proposed Decision calculates the \$18.75 million as representing \$1.5 million per utility per year, or 10-15 EM&V staffers per utility,⁵ it is engaged in pure conjecture. Not only is the equal allocation to each utility contrary to the proportional allocations for the remainder of the EM&V budget (as laid out in Finding of Fact

¹ Proposed Decision, pp. 9-10.

² Proposed Decision, Finding of Fact 13. Conclusion of Law 8.

³ Proposed Decision, p. 11.

⁴ ALJ Ruling November 20, 2009, Attachment 1, pp. 17-18 (included in PD as Attachment 1).

⁵ Proposed Decision, p. 10.

6), there is no record evidence that TURN is aware of supporting the notion that each EM&V staffer comes at a cost of upwards of \$150,000 per year.

It appears that the PD claims that \$18.75 million is necessary to maintain current staffing levels in order to create some appearance of justification for giving the utilities nearly double that amount as the floor for their share of the EM&V funds. But there is no record support for giving the utilities more at this time than the 15% floor that ED proposed with the caveat that staff would allocate more funds as necessary should the utilities play a greater-than-expected role in the EM&V activities. Again, TURN found nothing in the attachments to the November 20, 2009 ALJ Ruling that suggests the 15% figure was treated as anything other than the full allocation to the IOUs. The Proposed Decision must either cite the record support for its assertion that the 15% figure somehow represents maintaining current staffing and nothing more, or remove all such assertions from the Findings, Conclusions, and supporting text.

In addition, before the Commission gives the utilities anything above the 15% figure it should first assess how much the utilities are collecting in other rate components that support their energy efficiency work, including the EM&V efforts. Earlier in this proceeding a number of parties raised concerns about utility recovery in other rate components (particularly GRC rates) for the costs of administering their EE efforts. In D.09-09-057 the Commission agreed with concerns about a lack of transparency for utility administrative costs, and noted DRA's point that the utilities could not even say how much the EE-related costs are that are recovered in GRC rates. (pp. 55-56). The Commission should be similarly concerned about EM&V costs. Before giving the IOUs anything more than 15% based on some presumption

that they need more, the Commission must first assess how much more than 15% the IOUs are already getting from non-EE rate components.

Finally, if the Commission is going to give the IOUs sufficient funding to cover at least 10-15 staffers per year for utility for EM&V purposes, it should adopt appropriate restrictions on what utility staffers do using such EM&V funding. As the Proposed Decision recognizes, “IOUs continue to have a vested interest in the outcome of EM&V studies, as these studies are used to determine the level of energy efficiency shareholder incentives.”⁶ The collective experience of the past few years should leave the Commission with no doubt that the line between utility efforts in the name of EM&V and utility efforts in support of their shareholder incentives claims is blurry, at best.

Whether the Commission sets to floor for EM&V funding at 15%, as proposed by Energy Division and supported by TURN and DRA, or the near doubling that the Proposed Decision would set for the floor, the Commission must add appropriate restrictions to ensure these funds do not directly or indirectly bolster the IOUs efforts to increase their awards of shareholder incentives. To this end, the Commission should at a minimum require that the amounts funded as utility-administered EM&V must be spent on efforts that do not duplicate ED-managed or -administered efforts. Measures such as this will help minimize the risk that the ratepayer funding is going toward activities ratepayers should not be funding, such as the IOUs challenging other studies in order to shore up shareholder incentive claims.

In support of these changes, TURN proposes the following modifications to the Findings of Fact and Conclusions of Law:

⁶ Proposed Decision, Finding of Fact 9.

Findings of Fact

13. ~~The IOUs require 15% (or \$18.75 million) of the \$125 million EM&V budget for 2010 through 2012 to maintain staffing levels.~~

14. \$18.75 million or 15% of the \$125 million EM&V budget for 2010 through 2012 is a reasonable estimate for the funding needed for IOUs to perform EM&V studies in 2010 through 2012, including the amount needed to maintain staffing levels.

Conclusions of Law

~~8. \$18.75 million of the \$125 million EM&V budget for 2010 through 2012 should be allocated to the IOUs to maintain staffing levels.~~

9. It is reasonable to expect that IOUs should perform some or all of the types of EM&V studies that they have performed in the past.

10. ~~\$18.75~~ 18.75 million of the \$125 million EM&V budget for 2010 through 2012 should be allocated to the IOUs to perform EM&V studies (including staff costs).

II. Support For Behavior-Based Programs On A Pilot Basis Is Appropriate, But Permitting The Utilities To Count Associated Savings Is Not, As The Commission Has Previously Recognized.

The Proposed Decision's survey of the various positions on programs that achieve behavior-based savings illustrates that there is broad support for the development of such programs and the necessary protocol to assimilate such programs into California's energy efficiency portfolio. The key difference has to do with whether the utilities should be permitted to count savings from such programs toward their goals and, by extension, as a basis for earning shareholder incentives (so long as the incentives are tied to the utility's achieved savings as compared to the goals). The IOUs and OPOWER, the firm that has chiefly advocated such behavior-based programs and promises to be ready to implement such programs in California, all support permitting any savings attributed to these programs to be counted toward the goals for 2010-2012. Energy Division, TURN and DRA, on the other

hand, urged the Commission to pursue such programs on a pilot basis and, at least on an interim basis, not count such savings toward their established goals.

The Proposed Decision would have the Commission resolve this dispute in favor of the utilities and OPOWER, but the basis for that outcome lacks record support and runs contrary to a prior Commission decision addressing similar circumstances. According to the Proposed Decision,

We agree with the utilities that it is within our energy efficiency program's best interest to create a regulatory environment that encourages behavior change and conservation. Such a regulatory environment necessarily includes the estimation, measurement, and crediting of energy savings from programs that focus on behavior change and conservation.⁷

The notion that the Commission must credit the utilities with energy savings from untested programs in order to create the appropriate regulatory environment reflects no record support and is attributed to no prior Commission decision. It also runs directly counter to the Commission's handling of a similar issue when the Commission considered how to treat energy savings from pilot programs to encourage water conservation. In A.07-01-024, *et al.*, the Commission approved the pilot conservation programs but deferred the question of how to treat the resulting energy savings until it had the results of such behavior-targeting efforts:

Concurrently, the energy utilities will fund studies necessary to understand more accurately the relationship between water savings and the reduction of energy use, and the extent to which those reductions would vary for different water agencies.⁸

Like the water conservation measures included in the utility-proposed pilot programs, the targets for energy efficiency savings did not include the behavior-based programs at issue here:

⁷ Proposed Decision, pp. 39-40 [emphasis added].

⁸ D.07-12-050, p. 3.

The water conservation measures SCE, SDG&E and SoCalGas propose to install in their pilot programs were not among the measures considered in these studies. Thus, when it adopted the energy efficiency goals in D.04-09-060, the Commission did not consider the potential for embedded energy savings from customers who might install cold water conservation measures.⁹

The Commission went on to explain, “We will not count savings because there is no verified method for measuring them, and because we anticipate the savings resulting from the pilots to be insignificant.”¹⁰

At this juncture, TURN submits that the Commission does not know enough about the behavior-based programs to even make an educated guess as to whether the savings resulting from such will be significant or not, thus putting them behind the water conservation programs addressed in D.07-12-050. According to the Proposed Decision, “[w]hile potentially significant, the incremental benefit provided by comparative energy reports within our jurisdiction is uncertain.”¹¹ And like the water conservation programs in D.07-12-050, there is not yet a verified method for measuring results from the behavior-based programs. Thus the most favorable view of the behavior-based programs would, at most, find them to be at approximately the same stage of development in California as were the water conservation programs when the Commission determined that it would not count savings from such programs. The Proposed Decision errs in asserting that it necessarily must count savings. To the contrary, only by not counting savings from such pilot programs with the Commission be acting in a manner consistent with its earlier decision.

⁹ D.07-12-050, p. 49.

¹⁰ *Id.*, at 50. In doing so, the Commission reminded the utilities and other interested parties that such an outcome is consistent with its now long-standing practice with regard to energy efficiency savings: “In D.04-09-060 the Commission instructed the utilities to exclude “savings by customers not included in the calculation of savings potential” when “documenting program accomplishments ... in order to ensure consistency between the basis for establishing the goals and the assessment of whether those goals have been met.” (D.04-09-060, *mimeo.* at p. 32, *see also* Finding of Fact 9.” D.07-12-050, Finding of Fact 12.

¹¹ Proposed Decision, p. 41.

TURN wishes to remind the Commission that permitting the utilities to count savings from pilot efforts for behavior-based programs is not necessary to establish sufficient support for these behavior-based programs at this juncture. It is merely a matter of performing the necessary due diligence before permitting the utilities to count savings that were not included in the calculation of the savings potential for this portfolio period. The Commission should therefore modify the Proposed Decision to direct that the utilities go forward with the pilot programs, but make clear that at this time the savings from the pilot efforts will not count toward the utilities achieving their energy efficiency goals for 2010-2012.

Conclusions of Law

18. It is reasonable to create a regulatory environment that encourages behavior change and conservation, including the estimation, and measurement, ~~and crediting~~ of energy savings from programs that focus on behavior change and conservation.

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Respectfully submitted,

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