

**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.

A. 08-07-021
(Filed July 21, 2008)

And related Matters.

A. 08-07-022
A. 08-07-023
A. 08-07-031
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**OPENING COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL
(NRDC) ON THE PROPOSED “DECISION DETERMINING EVALUATION,
MEASUREMENT AND VERIFICATION PROCESSES FOR 2010 THROUGH 2012
ENERGY EFFICIENCY PORTFOLIOS”**

March 29, 2010

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Table of Contents

I. Introduction	1
II. Discussion	2
1. NRDC supports requiring increased transparency and coordination of EM&V plans and contracts.	2
A. NRDC Recommends IOUS be allowed to seek approval for other impact evaluation studies.	2
B. NRDC supports giving ED discretion of whether a project should go through public vetting, but recommends all the scope of work, draft study plan and methodology be made public for all studies.	2
C. NRDC recommends that ED approval process be limited to projects funded by customer funds.	3
2. NRDC strongly supports the adoption of a dispute resolution mechanism, but recommends the Commission further define the process of resolution	3
3. NRDC supports inclusion of behavioral programs, but seeks clarification	4
4. NRDC supports inclusion of 100% of net savings from codes and standards advocacy after 2008.	5
III. Conclusion	5

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I. Introduction

Pursuant to Rules 1.9, 1.10, and 14.3 of the California Public Utilities Commission’s (CPUC or Commission) Rules of Practice and Procedure, the Natural Resources Defense Council (NRDC) respectfully submits these reply comments on Administrative Law Judge (ALJ) David Gamson’s proposed “Decision Determining Evaluation, Measurement and Verification Processes for 2010 through 2012 Energy Efficiency Portfolios,” dated March 9, 2010 (PD). Opening comments from parties are due March 29, 2010. NRDC is a non-profit membership organization with over 250,000 members and activists in California and a longstanding interest in minimizing the societal costs of reliable energy services.

In these comments we support the various mechanisms to improve transparency and cooperation of evaluation, measurement and verification (EM&V) of energy efficiency savings. The PD maintains the priority of accurately estimating the impacts of these important programs and also puts in place mechanisms to resolve inevitable disputes. We recommend some changes to the PD for clarification, reduction of non-priority workload on Energy Division (ED), and increased transparency.

II. Discussion

1. NRDC supports requiring increased transparency and coordination of EM&V plans and contracts.

The PD requires increased transparency and coordination between Energy Division and the investor-owned utilities (IOUs) in a number of key areas, including requiring the IOUs to make public and request approval of their impact and process study plans. (pg. 14-29) These reforms will improve stakeholder understanding of the studies underway and provide early opportunity for ED/IOU discussion on the course of intended studies. We support this process and are hopeful that Energy Division will, as recommended in the PD, use its discretion to limit the number of studies it reviews for potential disapproval. ED discretion is crucial to minimize wasted time and money in review and process. The Commission should maintain vigilance to ensure that this discretion is well used.

The decision minimizes the potential for delay by clearly delineating the schedule for denial and appeal of ED decisions. NRDC generally supports these reforms. However, we recommend that the PD make a few key changes to clarify the process and minimize unnecessary review and litigation.

A. NRDC recommends that IOUs be allowed to seek approval for other impact evaluation studies.

The PD requires IOUs to seek approval for process and impact evaluations and sets limits on the reasons why an IOU can request approval for an impact study. (pg. 15-17) While we support these restrictions as guidelines, we recommend that IOUs be allowed to request approval for studies for other purposes as well, including additional evaluation of an ED managed study or model that IOUs view as inadequate, with the understanding that ED may reject projects it deems unnecessary. We recommend that ED's decisions on these proposals be subject to the dispute resolution mechanism determined in this decision.

B. NRDC supports giving ED discretion of whether a project should go through public vetting, but recommends that the scope of work, draft study plan, and methodology be made public for all proposed studies.

We recognize the need for ED to limit the amount of time spent on public vetting of its EM&V plans and methodologies. (pg. 28) However, we recommend that all EM&V project plans and methodologies be made publicly available for informal stakeholder review as soon as they are available.

In the case of process evaluations undertaken by ED, we recommend ED also be required to make public a brief justification of the study including why the study provides additional value relative to other IOU studies.¹ This PD maintains the basic workload split between IOUs and ED, under which IOUs conduct process evaluation and ED conducts impact evaluation. In order to ensure that ED has the time and resources to adequately perform its highest priority task of counting program savings, it should only conduct process evaluation where there is a clearly identified justification.

C. NRDC recommends that ED approval process be limited to projects funded by customer funds.

The PD extends the new rules and processes defined therein to EM&V studies funded by utilities' shareholder funds. We see no reason to encumber Energy Division with the review of additional studies and no reason why the IOUs should not fund further research where they deem fit, so long as the funds are not provided by customers. Additional information will ultimately be helpful to promoting further energy efficiency savings and any studies funded by other funds will ultimately only impact the ED EM&V process so far as they credibly provide additional insight.

2. NRDC strongly supports the adoption of a dispute resolution mechanism, but recommends that the Commission further define the process of resolution.

NRDC has long supported the inclusion of a formal dispute resolution mechanism. We have noted that additional transparency and cooperation early in the process of evaluation will help reduce disagreements regarding study results, but continually caution that disputes over results will persist, given the importance of energy efficiency savings to all stakeholders.² As such, we strongly support the creation of a dispute resolution mechanism. (pg. 29-34)

However, we recommend four changes to improve the dispute resolution mechanism. In the Appendix to these comments we make these recommended changes to the Ordering Paragraphs. First, the mechanism should include opportunity for the decision-maker (the Commission or ALJ) to gain input from outside experts. Since the dispute resolution mechanism will often involve disagreements with ED, the ALJ or Commissioners should have the opportunity to consult impartial

¹ The PD requires that proposed process and impact evaluations by IOUs will be made public and reviewed by ED.

² In R. 09-01-019, we recommended a dispute resolution mechanism that includes expert advice and final resolution with a Commission vote. See NRDC, *Proposal for Revisions to the Energy Efficiency Risk/Reward Incentive Mechanism for 2009 and Beyond*, May 22, 2009, pp.11-13. As recently as December of 2009, we reiterated our support for such a process in this proceeding: See NRDC, *Reply Comments on the "Administrative Law Judge's Ruling Regarding Evaluation, Measurement, and Verification Issues,"* December 18, 2009, p. 3.

experts regarding the dispute. Second, the mechanism should have a clear timeline for resolution. The mechanism appropriately limits delay from parties and ED in bringing and responding to appeals, but if the Commission sets no deadline for response, the dispute could cause delay and uncertainty. Such a result would negatively impact both the EM&V process and energy efficiency programs. Third, only the IOUs or DRA should be able to raise a dispute, though other parties should be able to provide comments prior to any Commission action on the dispute. Allowing any party to raise a dispute could add unnecessary delay and workload. Fourth, the party raising a dispute should be able to appeal any dispute settled by Ruling to the full Commission for final resolution.

3. NRDC supports inclusion of behavioral programs, but seeks clarification.

NRDC supports the decision to move quickly to allow for potentially cost effective behavioral programs. (pg. 36-41) While these programs are not necessarily “energy efficiency” programs, as they likely promote customer conservation efforts, we see these efforts as having potentially very useful connections to robust portfolios that include a range of educational efforts as well as energy efficiency resource options.

However, the PD should make clear whether experimental design is by itself sufficient means of evaluating the success of these programs. The PD states as much, “We hereby allow that experimental design form the basis of energy savings attributed to behavior based programs.” (pg. 41) but also leaves ED in charge of determining what evaluation to conduct, and what priority to assign developing that evaluation technique, “We defer to the prioritization process described in the EM&V Plan adopted in this decision to make decisions regarding which behavior based programs will be evaluated and specifically how those programs will be evaluated.” (pg. 40) If experimental design is indeed sufficient, ED need not spend significant additional resource in developing new EM&V plans for the pilot programs approved in the PD.

The PD should also make clear that behavioral programs will initially be assumed to have no persistence beyond the deployment period of the program. The PD determines that all savings from behavioral programs will be assigned after measurement of the program is complete, which implies that savings will only be assumed for the evaluated period.

4. NRDC supports inclusion of 100% of net savings from codes and standards advocacy after 2008.

The range of successful reforms to utility regulation that the PUC has undertaken in California are intended to change the utility business model from pursuit of energy generation and sales to pursuit of lowest cost provision of energy services. Utilities can provide unique technical and political support for the adoption of highly effective energy efficiency codes and standards and this decision will guarantee that they have full incentive to do so. We agree that IOUs should only receive savings credit for energy savings in their service territories and that these savings should be adjusted for the naturally occurring market adoption, so far as it can be reasonably calculated.

The inclusion of these savings will need to be noted in the development of energy efficiency savings goals and in the Energy Commission demand forecast process to set appropriately robust targets and avoid double counting.

III. Conclusion

NRDC appreciates the opportunity to offer these comments on the PD and commends the Commission and Energy Division for their efforts to improve Evaluation, Measurement and Verification efforts. We urge the Commission to make the aforementioned modifications and to approve the modified Proposed Decision.

Dated: March 29, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Noah Long". The signature is fluid and cursive, with the first name "Noah" and the last name "Long" clearly distinguishable.

Noah Long,
Energy Program Attorney

Appendix:
Suggested Modifications to Findings of Fact, Conclusions of Law and Order

Findings of Fact:

#1 (p.46)

First, it is necessary to determine whether and how well current individual programs are working, both in terms of saving energy and in comparison to projections. Second, EM&V is critical in considering how to improve programs and for development of new measures. Third, EM&V is used on a broad level to measure whether the investor-owned utilities (IOUs) are meeting, on a portfolio basis, the overall energy savings goals established by the Commission. Fourth, EM&V results are used to determine whether IOUs should receive rewards or pay penalties as part of the Risk Reward Incentive Mechanism (RRIM) adopted by the Commission. Fifth, robust EM&V is critical to ensure that the IOUs can depend on energy efficiency as a resource.

#9 (p. 48)

~~IOUs continue to~~ All parties have an vested interest in the outcome of EM&V studies, as these studies are used to determine the level of energy efficiency shareholder incentives and are central in reducing greenhouse gas emissions and reducing supply investments.

Conclusions of Law:

#2 (p.50)

The Joint IOU/ED EM&V Plan is reasonable and should be adopted as modified in this decision.

Order:

#1 (p.52)

Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company shall adhere to the “2010 – 2012 Joint Energy Division and IOU Evaluation Measurement and Verification Plan” in Attachment A as modified in this decision.

#7 (p. 55)

~~A party to Rulemaking (R.) 09-11-014~~ An IOU or DRA may file a “Motion for Evaluation, Measurement and Verification Dispute Resolution” (EM&V Motion) with the assigned Administrative Law Judge for resolution of an EM&V matter. The EM&V Motion must include a statement from Energy Division giving its side of the dispute. Any party may file comments on the dispute, within 20 days of its filing. The Administrative Law Judge may undertake any appropriate process to gather further information including consultation of a third party expert. The Administrative Law Judge ~~may~~ shall issue a Ruling to resolve the dispute no sooner than 5 days after party comments and within 45 days of the dispute filing.

#8 (p. 55)

In a Motion for Evaluation, Measurement and Verification Dispute Resolution filed pursuant to Ordering Paragraph 7 of this order, the filing party or the Energy Division may ask that the matter be resolved by the assigned Commission or the full Commission. In that case, the Administrative Law Judge (ALJ) will consult with the assigned Commissioner to determine the appropriate course of action. In this situation, the assigned Commissioner or ALJ may issue a Ruling to resolve the dispute. If the assigned Commissioner determines the matter should be brought before the full Commission, or the Ruling is appealed within 2 weeks, the ALJ or assigned Commissioner shall issue a Proposed Decision and allow for comment under Rule 14 of the Commission's Rules of Practice and Procedure. The Commission may undertake any appropriate process to gather further information including consultation of a third party. The ALJ or assigned Commissioner may combine multiple disputes within a single proposed decision for Commission vote. Any dispute raised to the Commission shall be voted on within three months.

#9 (p.55)

A Motion for Evaluation, Measurement and Verification (EM&V) Dispute Resolution filed pursuant to Ordering Paragraph 7 of this order may be used for the following purposes only:

- Disputes over results of EM&V studies or reports;
- Dispute over selection of an EM&V contractor;
- Disputes about project-specific final EM&V work plans;
- Disputes regarding final EM&V technical reports; and
- Disputes concerning public vetting of EM&V projects.

#11 (p. 56-57)

Energy Division shall determine which Evaluation, Measurement and Verification projects should be publicly vetted, and shall follow the process laid out in the Energy Division Straw Proposal, pages 8-11, issued by Ruling in this proceeding on July 7, 2009. All planned studies, with summaries of methodology, must be made public for informal stakeholder review.

#12 (p.57)

All Evaluation, Measurement and Verification (EM&V) - related projects undertaken by Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company, ~~regardless of funding source, funded through this Order shall adhere to the same policies and procedures adopted in this Order as EM&V funded projects, except that such EM&V policies and procedures do not apply to projects not previously considered to be in the EM&V category.~~

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the “Opening Comments of the Natural Resources Defense Council (NRDC) on the proposed ‘Decision Determining Evaluation, Measurement and Verification Processes for 2010 Through 2012 Energy Efficiency Portfolios’” in the matter of A. 08-07-021 et al. to all known parties of record in this proceeding by delivering a copy via email or by mailing a copy properly addressed with first class postage prepaid.

Executed on September 21, 2009 at San Francisco, California.



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