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

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| Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues. | Rulemaking 09-11-014 (Filed November 20, 2009) |

# WOMEN'S ENERGY MATTERS
## COMMENTS ON PARTIES' PHC PROPOSALS

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**WOMEN'S ENERGY MATTERS**
**COMMENTS ON PARTIES' PHC PROPOSALS**

WEM appreciates this opportunity to comment on parties' prehearing proposals on Evaluation, Measurement & Verification (EM&V) and energy efficiency under Community Choice Aggregators (CCAs), pursuant to the ALJ's 3-3-10 Ruling.

**WEM Recommendations re EM&V Scoping**

Form follows function. *Energy efficiency programs and administration need to be reconfigured to support reducing greenhouse gas emissions to the maximum possible extent, reducing costs to consumers, supporting a rapid conversion to renewable energy, and supporting the leadership of local governments, Community Choice Aggregator, independent companies and non-profits that are the driving forces in all these efforts.*

The role of EM&V should be to ensure: (1) that expanded use of energy efficiency resources will maintain grid reliability, (2) that EE is better targeted to reduce peak loads which drive the expansion of supply side resources and the high cost of power in California, (3) that EE dollars are more fairly distributed among local jurisdictions and customer classes, (4) that EE dollars are more effectively spent and cannot ever be used for utilities' private political objectives. Finally, in an era where carbon emissions reductions have monetary value, (5) EM&V must determine what savings shall be attributed to which of multiple entities that were involved as administrators, implementers, and funders (including customers).[1]

In reviewing cost-effectiveness calculations, the Commission should develop a cost savings factor for the reduced need for tx/dx due to EE, solar, and other distributed generation programs. (see footnote 6, p 8, below). It should also explore how to reduce EM&V costs by using the innovations available with "smart grid" technologies, including self-monitoring.

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[1] PG&E calls for the Commission to "resolve outstanding attribution policies (specifically, policies related to net-of-free-rider assumptions, spillover, and non-resource programs)." PG&E, p. 5. The company continues to ignore the elephant in attribution, i.e. programs and funding that no longer belong exclusively to utilities.

**Discussion of parties' PHC proposals for EM&V**

SCE helpfully quoted the D0909047's point that EM&V should focus on the needs of the CEC, munis and CARB, in addition to the CPUC. (p. 2) SCE also endorsed having more "collaborative and regionally-coordinated approaches" such as occurs in the Northeast and Northwest. (pp. 2-3).

However, SCE states that "a collaborative approach is impossible" if EM&V is actually used to evaluate programs! (pp. 3-4) Just in case we didn't get the point, they repeated it: "EM&V study results should not be applied retroactively to determine program administrator earnings." (SCE p. 3)

The position is laughable, since EM&V was mainly developed in order to determine utilities' earnings on EE, but on second thought the fact that SCE even feels entitled to make such a statement is chilling. SCE really believes it's ok for the utilities to tell us what they saved and claim profits on that. It's incredible that they got away with doing that as long as they did.

In the 1990s the utilities put on a great show of having in-depth measurement of energy savings. The complexity of EM&V served them well. Since hardly anybody understood what they were doing, they were able to proclaim to the world that they were getting robust energy savings — experts had confirmed it!

Few people ever imagined how much utilities could fudge the numbers and game the system. When the Commission began to exert more oversight in 2002, and eventually took EM&V in-house, the game was up. With earnest public servants in charge of finding out what really happened, the fakery was exposed.

The first shoe to drop was the CFL numbers in 2003 Express Efficiency programs — cooked by 300%. When CFL values were corrected, ¼ of utilities' claimed savings in the program simply vanished. Utilities managed to delay that report all through the fall and winter, while the Administrative decision was debated. Rumors were flying, but two of the three Commissioners who voted that January to give all the money and program choice back to the utilities didn't want to look at the details. They felt that if there were any problems, they would be solved by establishing independent EM&V.

Instead, we've had gridlock in energy efficiency, three, four, five years later, as one by one, the utilities' exaggerations have been unmasked, to their vociferous

objections. Instead of paying attention to saving energy, utility EE executives run around the fifth floor denouncing Energy Division staff and demanding profits regardless of the facts.

SCE stated that the great value of EM&V is to recommend changes in future programs. WEM agrees that it would be great if the valuable advice in EM&V reports informed future programs but sadly, EM&V is not completed in time to be very helpful. SCE's pious words are disingenuous.

Final EM&V reports are published a year or more after the previous cycle ends, i.e. almost nearly *two years after* the planning process begins for the next cycle — a year and a half *after* the Commission's approves those portfolios:[2]

| Program Cycle 2 | | Program Cycle 3 | | Program Cycle 4 | |
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| EM&V For Cycle 1 | Planning for Cycle 3 | EM&V for Cycle 2 | Planning for Cycle 4 | EM&V for Cycle 3 | Planning for Cycle 5 |

Well then, perhaps utilities use the EM&V for planning the cycle after that? Probably not, because by then the utilities are busy making new mistakes and the insights are a bit stale.

*By now, the Commission should realize there's a solution to the EM&V wars. Forget about shareholders incentives. If utilities whine that they won't have a reason to save energy without the incentives, call their bluff. Forget about utility programs.*

The Commission's brief experiment with independent EE programs demonstrated that there are plenty of hard-working, knowledgeable EE experts in private businesses, non-profits and government who can run EE programs better than utilities, for a lower cost — and no incentives. Forty-nine out of 50 independent programs saved more energy per dollar than utilities, in the very first year they were allowed to do so, according to an independent analysis (2002-03).[3] Why were they killed? The answer is instructive:

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[2] The first and second Verification Reports (VRs) are published during the current cycle, but these are primarily accounting reports. Detailed analysis of the programs, discussing why things did or didn't work, is reserved for the final EM&V reports. There is a serious shortage of real-time field reporting, resulting in an academic Much like a of an overly academic

[3] The Myth of Cost-Effectiveness can be found on WEM's website at http://www.womensenergymatters.org/currentcampaigns/EE/compare/8-8-03MythofIOUCost-Eff.pdf Up until mid-2006 the Commission's website posted only CPUC documents, however all documents filed by parties and CPUC in R0108028 were once posted on PG&E's website in a searchable database at http://apps.pge.com/regulation/search.aspx along with other cases. Unfortunately, PG&E's archive of R0108028 — paid for by ratepayer dollars — has disappeared. The historic struggle over independent programs and the debate on administrative structure and independent EM&V — none of it is easily

> This phase of the proceeding is not the forum for evaluating the performance of either IOU or non-IOU implemented programs during 2003… D0501055, FOF 60.

*Superior performance was not considered a criteria for selecting administrators. Inferior performance of the IOUs compared to independent EE providers was simply ignored.*

FOF 60 went on to specifically reference an independent analysis of utilities' annual reports submitted May 6, 2004, complaining that the analysis was "selective" and "does not comprehensively consider all of the performance attributes we established for that program year." It failed to mention that cost-effectiveness was the point of the analysis, or that it concluded that only a small number of 2003 IOU programs were cost-effective and a large number of IOU programs exaggerated their cost-effectiveness — issues that continue to plague us today, seven years later.

EM&V reports in the era of utility control soft-pedaled such explosive conclusions. Even the bombshell report on 2003 Express Efficiency which exposed 300% exaggerations of CFL savings resulting in a program-wide shortfall of 25%, started off by repeating IOU self-congratulations for the "success" of the program — without mentioning the inconvenient facts until several pages later.

A series of EM&V reports on 2004-05 that were delayed until 2007 were even more explosive, but their conclusions were similarly buried. The Commission never held hearings, workshops or even a round of comments to discuss the astounding failures of these programs:

> 2004-05 Statewide Multifamily evaluation, March 16, 2007: http://www.calmac.org/publications/1118-04_MultiFamily_Rebate_evaluaton_-_Volume_I.pdf - achieved only 32% of kWh savings projections, 31% of peak demand savings, and 15% of natural gas (therm) savings. (see p. 6-26)

> 2004-05 Statewide Residential Retrofit Single-Family evaluation, October 2, 2007 http://www.calmac.org/publications/CPUC-ID_1115-04_2004-2005_SFEER_Eval_REPORT.pdf - achieved only 48% of kWh savings

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accessible to inform the debate in this proceeding. WEM urges the Commission to require PG&E to repost the R0108028 case and/or provide a working copy to the Commission to post on its own website, if the data still exists. In the future, we urge the Commission to require utilities to pay for such sections of their websites with shareholder dollars, as they are merely duplicating a public service that the Commission now provides.

projections, 31% of "peak demand" savings, and 37% of natural gas savings (see p. 1-19)

2004-05 (Statewide) CA Energy Star New Homes, July 18, 2007 http://www.calmac.org/publications/Final_Version_of_04-05_CAESNH_report.pdf - Low rise multifamily new homes in coastal regions achieved only 3% of kWh projections; inland regions achieved 19%; coastal regions achieved only 27% of natural gas savings, Inland 28% (see p. 89). High rise new construction was even worse - they got minus143% , i.e. *negative electricity savings (see p. 98-104).*

Not only were these EM&V reports never openly discussed, the Commission discarded these entire program years when it came time to calculate cumulative goals for shareholders incentives in the 2006-08 cycle.

**EM&V Conclusions**

WEM agrees with SCE that EM&V as currently practiced is tied intimately to shareholders incentives and that this is no longer useful — but we believe this is because shareholders incentives should be discarded. SCE argues that utilities should simply *name their profits and force customers to pay*.

SCE seeks to evade the harsh realities revealed by EM&V cost-effectiveness calculations by raising a non-sequitur — that EM&V makes collaboration impossible. WEM agrees that collaboration is impossible, but we believe the problems lie in the IOUs' irresolvable conflicts of interest with energy savings and the fact that only one kind of kid is deemed eligible to have ice cream. These problems may lead to corruption.

WEM agrees with SCE that EM&V should be reconfigured, and that process reports have value. What is most needed is real-time and field monitoring of programs as they are happening, rather than studies that appear long after the fact. As long as utilities are administrators, both process and impact reports should be independent of them.

With shareholders incentives off the table, the Commission could overhaul EM&V to do what is really needed and has never been done: measure and verify how much energy is being saved, as close to real time as possible — and as close as possible

to the location of savings — so that this data can help us to get the level of greenhouse gas reductions that the climate scientists say we need, to save our habitat and ourselves.[4]

**Scoping for Energy Efficiency and Community Choice**

WEM is pleased to some extent that SCE endorsed the policy and process that existed in 2003 (p. 4). At that time the Commission was still in charge of soliciting proposals for EE programs, reviewing them, and selecting the winners. Governments, businesses and non-profits were all eligible to apply; utilities' role as nominal administrators was very limited. While the process didn't fully comply with AB117, it was closer than what exists today, which is completely at odds with the statute.

The process that existed in 2003 was thrown out by D0501055. It obliquely acknowledged that the new system probably wouldn't work for Community Choice Aggregators (CCAs):

> …Nothing in today's decision prevents the Commission from modifying the process for allocating PGC funds to Community Choice Aggregators in the future, or revisiting 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. D0501055, Conclusion of Law 6.

[4] The great promise of opening up the grid was that anyone anywhere would be able to feed in power, selling it to anyone anywhere — next door or a thousand miles away. The concept was useful for financial transactions, and electrons are not identifiable by origin, so physical reality became secondary. But it did not disappear. In a transmission proceeding, the issue is still about whether the physical power line has enough capacity to carry electrons to a physical substation to deal with the power demands of a physical neighborhood — and whether the proposed line and the network of other lines connected to it are connected to enough physical power generation.

Somehow in the energy efficiency world, people decided that physical reality was irrelevant, that EE could really be "anywhere." That persistent fantasy demonstrates that EE has become disconnected from the reality of the grid, which is the measure of whether or not EE is a viable resource. Reality to the customer who benefits by an EE upgrade is important, but it is only part of the picture. Unless EE benefits are visible in some way to the grid, EE will exist in a separate bubble, and decisions about our energy needs will go on as if EE doesn't exist. It is simply not sustainable to spend a billion dollars a year on EE without tying it to geographical reality.

WEM's briefs in the Long-term Procurement Proceeding R0602013 as well as many comments in Energy Efficiency proceedings in 2007-08 and 09 recounted the hearing testimony of PG&E procurement planners, which revealed that they did not communicate with EE planners (or vice versa) and had no idea, among other things, how more efficient air conditioning could be utilized to reduce the need for supply side resources to address the peak.

The notion that CCA customers should be relieved of their responsibility for Public Goods Charges and procurement surcharges if the CCA takes over EE was bizarre, if not illegal, and should be modified.

It would make more sense to simply redirect these funds to the CCA. Both the PGC and "procurement" portions of EE funds come from the ratepayer — in no way are they the property of utilities.

**No legal barrier to CCA administration**

The Commission has long avoided the question of whether and how EE program funds can be allocated to anyone other than utility administrators, ever since the 1998 effort to establish independent administration appeared to run aground over this question.[5]

However, Commission precedent has established that the Commission can determine where EE money goes. If there was any doubt, the EM&V sections of D0501055 gave the Commission the authority to control PGC and procurement surcharges for EM&V, including soliciting and hiring of measurement contractors. Utility administration of EM&V is not considered mandatory because the Commission lacks authority to allocate the funds — quite the opposite.

WEM contends that the EE provisions in AB117 swept away any remaining barriers that may have existed in 1998, by establishing the authority for the Commission to select *outside entities* — i.e. "any party" — to administer programs.

At the time of the EE/CCA decision however, EE policies were in the midst of a massive reversal, due to a newly assigned Commissioner's clear preference for utility administration. The Commission chose to overlook the authority for non-utility administration provided in AB117 and issued a narrow decision based on existing policy instead.[6]

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[5] WEM's reading of the historical record indicated that the demise of the efforts to establish independent administration in the late 1990s had more to do with exhaustion due to utilities' persistent efforts to derail the process, rather than insurmountable legal barriers. Indeed, in a break during the PHC, one utility EE lawyer told WEM that the Commission has the authority to determine what happens with virtually every single dollar the utilities collect and spend; the question is whether or not they decide to use that authority.

[6] The Commission has so far declined to pursue the law's mandate to target EE by geographical locations to avoid or defer expensive transmission/distribution upgrades, although the introduction mentioned it:

> Section 381.1 directs the Commission to maintain energy efficiency programs targeted to specific locations where needed to avoid or defer transmission or distribution system upgrades irrespective of whether the loads in that location are served by the CCA or an electrical corporation. D0307034, pp. 2-3.

The decision stated that its scope was very limited:

> This order adopts certain procedures that would implement *portions* of Assembly Bill (AB) 117 affecting the allocation of energy efficiency program funds. D0307034, p. 1, emphasis added.

The decision emphasized that it did not address the question of administration:

> Some parties who submitted comments in this proceeding proposed resolution of broader issues that we do not address here. For example, ORA, Sempra, TURN and PG&E proposed the Commission address energy efficiency program administration. D0307034, p. 5

Despite this caveat, D0307034 chose to define "administer" as "implementer" when it came to CCAs, reserving "administrator" only for IOUs. WEM protested all the way through an Application for Rehearing and an appeal to outside court, which declined to hear the case. Unfortunately, no CCAs were yet sufficiently developed to come in and fight for their funds.

Commissioner Lynch issued a strongly worded dissent to D0410032, which denied WEM's rehearing. She began with an unusual admission of error on her part:

> The majority decision on the rehearing of the Commission's July 2003 decision interpreting AB 117 runs afoul of the clear intent of that legislation by continuing to conflate the implementation of energy efficiency programs with program administration and by avoiding the statutory directive to make third parties eligible to apply to administer energy efficiency programs. While I supported the initial decision on this matter (D.03-07-034), upon further review of the statute I realized the error of this interpretation and thus supported the Administrative Law Judge's (ALJ) August 2003 energy efficiency decision starting the 2004-05 program solicitation. The ALJ's decision, which correctly interpreted AB 117, would have opened over $270 million in annual energy efficiency funds for competitive solicitation. The ALJ's decision did not prevail and, ultimately, D.03-08-067 was passed, to which I also dissented. (Lynch Dissent to D0410032, p. 1.

Lynch provided extensive support for her conclusions, summarizing as follows:

> The Commission's interpretation of § 381.1(a), focusing on requirements for allocating funding for implementation of energy efficiency programs, is at odds

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In its General Rate Case this year, PG&E demanded very large rate increases to pay for tx/dx upgrades. These increases will fall disproportionately on CCA customers, and are particularly ironic since most CCAs favor greatly increased use of distributed generation as well as EE, both of which utilize less tx/dx.

The Commission should apply a cost savings factor for the reduced need for tx/dx due to EE, solar, and other distributed generation programs.

> with the language of the statute, past Commission decisions on energy efficiency, and the arguments in favor [of] the legislation…

Lynch pointed out that the question of EE administration was evolving, prior to AB117, but the new statute changed the landscape:

> The only part of the administrative structure approved by the Commission majority that appears even to partially reflect the goals of § 381.1 is the fact that the Commission has taken over from the utilities the administrative task of selecting the third party programs that actually receive funding. Section 381.1, however, goes farther than that, and requires a system in which third parties, such as Community Choice Aggregators, can be awarded substantial sums of energy efficiency funds to administer themselves, including choosing what energy efficiency programs to fund, within the constraints imposed by the statute, and under the oversight of the Commission. Lynch Dissent to D0410032, pp. 7-8.

In its PHC comments, PG&E, like SCE, pretended that D0307034 and D0401032 are adequate and that an application process for CCAs is available. In fact, there has been no such opportunity since D0501055. Surely the utilities cannot be imagining that the utility-run solicitations for third parties or local government partnerships would fulfill the requirements of AB117.

**Conclusion: Energy Efficiency and Community Choice lead to the Strategic Plan**

In one of several passages that reached out to a better day, D0307034 affirmed that AB117 provided the statutory basis for independent administration:

> Significantly, by directing the Commission to establish procedures for non-utilities to apply for energy efficiency program funding, AB 117 encodes the Commission's current policy to permit third parties to apply for energy efficiency program funding rather than allocating all energy efficiency program funding and responsibilities to the Commission's jurisdictional utilities. Ibid, p. 8, emphasis added.

The Commission's Strategic Plan recognized that collaboration involving a wide range of different entities was the future of energy efficiency in California. It also recognized that local governments were appropriate to be at the forefront of those efforts.

The Commission should look at this phase of the proceeding — determining how to properly apply AB117 in order for CCAs to administer energy efficiency programs— as a bridge to that bright future.

Dated: March 25, 2010

Respectfully Submitted,

/s/ Barbara George

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CERTIFICATION OF SERVICE
**R0911014**

I, Barbara George, certify that on this day March 25, 2010 I caused copies of the attached WOMEN'S ENERGY MATTERS COMMENTS ON PARTIES' PHC PROPOSALS to be served on all parties by emailing a copy to all parties identified on the electronic service list provided by the California Public Utilities Commission for this proceeding, and also by efiling to the CPUC Docket office, with a paper copy to Administrative Law Judge Darwin A. Farrar, and Presiding Commissioner Dian Grueneich.

Dated: March 25, 2010 at Fairfax, California.

/s/ Barbara George

DECLARANT

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