BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism.	Rulemaking 09-01-019 (Filed January 29, 2009)

THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS ON THE 2006-2008 ENERGY DIVISION SCENARIO REPORT AND SCENARIO RUNS

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits these comments pursuant to the Administrative Law Judge Ruling[1] requesting responses to the May 18 comments parties submitted on Energy Division's May 4, 2010 "2006-2008 Scenario Analysis Report" (Scenario Report). DRA's comments respond to issues raised by Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SCE) filing jointly, and San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas)[2] filing jointly.

The Utilities contend that they are entitled to incentive payments in addition to the $144 million they received for their first and second interim claims. The Utilities argue that since their self-reported and unverified data shows that they successfully met and in some cases exceeded the energy savings goals set by the Commission, they deserve an

[1] Administrative Law Judge's Ruling Postponing Settlement Conference and Providing for Reply Comments, May 21, 2010.

[2] DRA's comments refer collectively to PG&E, SCE, SDG&E, and SCG as "Utilities."

additional $181 million in incentives.[3] In contrast, DRA believes that the Commission need look no further than the verified up-to-date findings of the Energy Division's April 15, 2010 Draft 2006-2008 Energy Efficiency Evaluation Report (Draft Evaluation Report) and the Scenario Report to see that further payments are not justified.

The Commission should not authorize the payment of incentives for anything less than fully-verified energy savings that reflect the most up-to-date energy savings parameters. This would be consistent with D.07-09-043's promise that: "Ratepayers will only be required to share net benefits with shareholders to the extent that those net benefits actually materialize, based on Energy Division's EM&V results."[4]

II. DISCUSSION

A. The Utilities mistakenly claim that the Commission has adopted a 12% sharing rate for the 2010 true-up claim.

The Utilities allege that the Commission "directed that the 2010 true-up claim be calculated using a 12% shared savings rate for the 2010 true-up claim" and criticize the Scenario Report for its "inappropriate" failure to follow "clear and unequivocal Commission direction."[5] The Utilities base their criticism of the Scenario Report's use of sharing rates in addition to the 12% rate on the Commission's comment regarding the calculation of the shared savings rate in D.09-12-045:

> Since the Commission has not revisited and reset the goals to reflect updated information and assumptions, it is reasonable, for purposes of both this interim claim and the 2010 final true-up, to compare those goals with results that reflect the same underlying assumptions used in establishing those goals.[6]

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[3] PG&E requests an additional $66 million; SCE requests an additional $39.4 million; SDG&E requests an additional $ 4.2 million; and SoCalGas requests an additional $ 5.4 million. Comments of PG&E and SCE on the Assigned Commissioner's Ruling Providing Energy Division Report and Soliciting Comments on Scenario Runs filed May 18, 2010 (PG&E/SCE Comments), p.3; Comments of SDG&E and SoCalGas on the Assigned Commissioner's Ruling Providing Energy Division Report and Soliciting Comments on Scenario Runs, filed May 18, 2010 (SDG&E/SoCalGas Comments), p.5.

[4] D.07-09-043, pp.12-13.

[5] PG&E/SCE Comments p. 4; SDG&E/SoCalGas Comments p. 6.

[6] D.09-12-045, p. 67.

However, the Utilities fail to note that D.09-12-045's findings of fact, conclusions of law, and the ordering paragraphs are all silent about the sharing rate to be used in the final true-up. Yet in response to the argument that the Commission must follow its prior determination about the use of a Conservation Loss Adjustment Mechanism (CLAM), the Commission determined:

> The language DRA terms "conclusions" exists only in text and language in a decision's text [and] is generally considered dicta. It was presented to assist the parties in Phase 2 and does not constitute determinations of material issues. There are no findings of fact or conclusions of law or ordering paragraphs in D.07-08-030 regarding our stated policy preference for a CLAM or on the question of whether it would affect Cal-Am's ROE. Thus, the Commission did not make any determinations regarding a CLAM or its effect on Cal-Am's ROE.[7]

Similarly here, D.09-12-045's findings of fact, conclusions of law, and ordering paragraphs are silent on the sharing rate that should be used for purposes of calculating the final true-up claim, so the comment cited by the Utilities is not dispositive. The Commission's adoption of a 12% shared savings rate for the second interim claim based on a comparison of Commission goals with utility results assuming unmodified ex ante assumptions for the second installment of 2006-2008 interim incentives,[8] did not foreclose consideration of the 9% or even a 0% sharing rate for purposes of the final true-up.

DRA would not oppose use of the 12% sharing rate for purposes of awarding incentives for the 2006-2008 program cycle if the Energy Division's independent verification demonstrated that any of the Utilities had exceeded their energy savings goals, consistent with the requirements established in D.07-09-043. However, the Energy Division's Draft Evaluation Report, using independent ex post studies of energy savings,

[7] D.07-12-058, p. 12.

[8] D. 09-12-045, p.81.

revealed that none of the Utilities even approached the 100% savings target at which the 12% share rate would be warranted.[9]

The Commission attempted to justify use of the 12% share rate for the second incentive claim because energy savings parameters had been revised based on new information while the Commission's energy savings goals had not been similarly updated. This rationale does not support use of a 12% sharing rate to award incentives for savings that would otherwise not merit any additional incentives. The Commission also did not update the energy savings goals to include increased potential for energy savings. The Commission's policy should be to use the best available information about energy savings, recognizing that information evolves over time.

Moreover, since the Commission adopted the incentive mechanism in D.07-09-043, it has modified the incentive mechanism to decrease risk to shareholders and to increase risk to ratepayers.[10] Any adjustment to the shared savings rate of the incentive mechanism should therefore decrease rather than increase the shared savings rate.

B. The Commission should not grant the Utilities' request to selectively update only those parameters that benefit them.

The Utilities request that the Commission count 100% of the 2006-2008 Codes and Standards savings toward 2006-2008 goals and that the Commission direct the Energy Division to update the avoided cost greenhouse gas (GHG) adder to $30 per tonne[11] based on the 2008 Market Price Referent (MPR).[12] The Utilities admit that the

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[9] The Draft Evaluation Report, Table 23, p. 96 compared the Utilities' evaluated energy savings to their goals, and showed that that none of the Utilities achieved even 80% of their goals, which is the minimum level for any single metric that justifies incentives at 9%. The Utilities' savings for GWH, MW, and MMTh ranged from 37% to 67% of goals.

[10] For example, D.08-01-042 eliminated the requirement that Utilities return overpayments of interim incentives to ratepayers, and D.08-12-059 paid $82 million in incentives based only on the Utilities' self-reported savings, even though Energy Division's independently verified results showed they were entitled to about $3 million.

[11] D.10-04-029, Ordering Paragraph 5, p.56.

[12] PG&E/SCE Comments p.6; SDG&E/SoCalGas Comments p.7.

update to include 100% of the savings from 2006-2008 Codes and Standards activities was issued in the context of the 2010-2012 program cycle, and that the GHG adder was updated in the same decision issued earlier this year. Yet the Utilities request that the Commission incorporate those updates for purposes of the 2006-2008 incentive mechanism.

DRA supports the use of the best and most current information available, but this policy should apply to all parameters, not just those selective parameters for which updates benefit the Utilities. Counting 100% of 2006-2008 Codes and Standards savings toward the Utilities' goals and using the updated Avoided Cost GHG adder would benefit the Utilities by making it easier for them to achieve their goals and by increasing the value of the energy saved, thereby increasing their performance earnings basis. The Utilities therefore support these updates, while opposing the use of ex post values for the net-to-gross ratio, estimated useful life, and incremental measure costs. The Commission should reject the Utilities' attempt to incorporate only those updates that serve the interest of the Utilities' shareholders and skew the net benefit equation in their favor.

C. The PG&E and SCE are mistaken that Scenarios 6 through 9 do not comply with the April 8 Assigned Commissioner Ruling.

PG&E and SCE contend that Scenarios 6-9 in the Scenario Report are "inconsistent with the explicit direction in the April 8 ACR [Assigned Commissioner's Ruling on Process for True-Up of Incentive Earnings].[13] This misconstrues the April 8 ACR. In fact, the Scenario Report follows the April 8 ACR by providing Energy Division's calculations of shareholder incentive earnings based on a range of possible scenarios, including Energy Division's own evaluated results as one scenario.[14] The ACR includes a table titled ERT Embedded Scenarios[15] that lays out the nine scenarios to be

[13] PG&E/SCE comments, p. 7.

[14] April 8 ACR p. 7.

[15] April 8 ACR p. 8.

included in the Scenario Report. Scenarios 6-9 include the "evaluated net savings" as directed by the April 8 ACR.

However, DRA agrees that the Scenario Report is inconsistent with Commission policy in one respect: it does not incorporate the deadband that was reestablished in D.08-12-059.[16] Thus, Scenario 7 incorrectly shows that the Utilities are entitled to an additional $29 million in incentives, when in fact, they are entitled to no additional incentives because the verified results show that none of the Utilities have met the minimum performance standard required for additional incentives. The Scenario Report should be revised to reflect D.08-12-059's reinstatement of the deadband.

III. CONCLUSION

DRA respectfully requests that the Commission consider its opening and reply comments regarding the appropriate calculation of shareholder incentives for the 2006-2008 energy efficiency program cycle. Using the self-reported savings would result in phantom savings not supported by verified data and would burden ratepayers with unwarranted incentives paid to the Utilities. The Commission should award additional energy efficiency incentives only for independently verified energy savings that reflect the most current research and studies overseen by the Energy Division

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[16] D.08-12-059, Ordering Paragraph 4, at p. 28 (."For the 2006-2008 program cycle, the *ex post* true-up provisions are hereby amended such that if a utility's performance is found to fall within the deadband, defined as a utility achieving less than 80% of goal for any individual savings metric or less than 85% for the average savings threshold but greater than 65% of the commission's goal for each individual metric energy savings and demand reductions, the utility will not be entitled to any additional incentive rewards beyond what they already received in interim payments.".)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS ON THE 2006-2008 ENERGY DIVISION SCENARIO REPORT AND SCENARIO RUNS"** to the official service list in **R.09-01-019** by using the following service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Dated at San Francisco, California this **11th** day of **June, 2010.**

/s/ REBECCA ROJO

Rebecca Rojo

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