

**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)

**REPLY COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC)
ON EVALUATION REPORTING TOOL (ERT) SCENARIOS**

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1. Introduction

The Natural Resources Defense Council (NRDC) respectfully submits these reply comments on the party comments submitted May 18, 2010 on the Evaluation Reporting Tool (ERT) scenarios. These reply comments were requested by Assigned Commissioner Bohn's Ruling Dated April 8, 2010 (ACR) and again in Administrative Law Judge (ALJ) Pulsifer's Ruling of June 8, 2008 (ALJR). The NRDC is a non-profit membership organization with a long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy needs. NRDC has more than 250,000 California members and activists with interest in receiving affordable energy services and reducing the environmental impact of California's energy consumption.

In these reply comments we:

- Urge the commission to accept responsibility for approving reliable estimates of energy efficiency savings programs and establish a process to take up the serious concerns that have been raised with the estimates imbedded in the Verification Report;
- Identify various mischaracterizations of NRDC's position in TURN's comments;
- Urge the Commission to amend the Scenario report to reflect party requests prior to any settlement conference.

2. The Commission has final responsibility and must be accountable for the results of the Verification Report and should not approve a report without confidence in the estimates on which it is based.

Staff review alone does not represent sufficient Commission oversight or accountability. The full Commission has responsibility for implementing California law to invest in all cost effective energy efficiency. As such, the Commission is responsible for the approval of the significant investments in energy efficiency administered by the utilities, and it rests on the Commission to assure that it has a reasonable estimate of what those investments achieve.

There are significant unresolved questions remaining about the validity of the estimates used in the draft Verification Report and Scenario Report. For example, SDG&E/SCG raises a number of very concerning problems in its comments. (SDG&E/SCG, p. 9) We urge the Commission to identify a pathway by which the remaining high-level disputes with the evaluation results used in the verification report will be resolved. We expected that the scenarios created by Energy Division would help provide a basis for resolution of those disputes. Unfortunately, the scenario report did not include any of the recommendations offered by parties to the proceeding.

NRDC urges the Commission to establish a process for resolving disputes on key impact estimate parameters within a reasonable timeline to complete an incentive decision by the end of the year.

3. NRDC Disagrees With TURN's Characterization of NRDC Comments

TURN claims that NRDC opposes use of real and verified impact estimates for determining shareholder earnings. (TURN, p.10) In fact, NRDC has consistently advocated, along with TURN, for use of accurate verified ex post impact estimates to determine earnings for most metrics. Only with regard to attribution, which we do not believe can be accurately re-assessed after the fact to any degree of accuracy and estimated useful life (EUL) which cannot be assessed within the timeframe of incentives calculations, have we disagreed on principle with TURN on the merit of ex post evaluation for incentives assessment.

We disagree, however, that an impact estimate is accurate and verified simply because it has been included in an evaluation study or in a DEER update. Substantial unanswered questions have been raised about many of the impact estimates, many of which are not even based on a completed evaluation study. The presumption that any

impact estimate recommended by Energy Division is necessarily accurate and reliable is completely unwarranted. Similarly unwarranted is the contention that any review of those estimates in a Commission proceeding is tantamount to a rejection of ex post measurement.

TURN's contention that NRDC believes that ex ante EUL numbers should be used if there are no completed evaluation study results is accurate. (TURN, p.24) However, we disagree that this recommendation is an attempt to re-argue the 2008 DEER update, since we don't believe that the Commission's directive to update DEER necessarily required changing parameter values when no new information is available.

TURN also claims that NRDC "will press for using either utility-reported net savings ... or for using evaluated gross savings." (TURN, p.17) This is inaccurate, and has no basis in our comments, requests or position.

TURN further mischaracterizes NRDC's position by suggesting that we recommend "across-the-board retention of old ex ante values." (TURN, p. 25) To the contrary, we proposed a scenario under which the ex ante parameter values are retained only when the uncertainty in the ex post estimate is so large that the confidence interval includes the ex ante value. To the extent that the ex post estimates are relatively certain, this scenario should result in relatively little change to the proposed impact estimates.

Finally, TURN questions the intent of NRDC's recommendation that the Commission take a close look at the final upstream lighting evaluation report. (TURN, p. 26) TURN's contends that Energy Division completion of the ULP evaluation report can and should substitute for review by the full Commission. (TURN, p.25) TURN appears to believe that a review of this report in a Commission proceeding is not only unnecessary, but is equivalent to a rejection of ex post measurement whenever the results are unfavorable to the utilities.

We disagree in the strongest possible terms. To clarify, NRDC believes that we should accurately measure energy efficiency program impacts so that we can modify programs appropriately and, yes, eliminate programs that are ineffective. However, we do not believe that an Energy Division report can substitute for the judgment of the

Commission.¹ Nor do we believe that Commission review of Energy Division findings is a rejection of ex post measurement.

Instead, given the substantial concerns that have been raised regarding this report, we recommend that the Commission review the results of the ULP evaluation report and decide whether it represents a robust and accurate estimate of the impacts of the ULP program. We think that review of a relatively small number of impact estimate parameters in a Commission proceeding is both appropriate and feasible.

4. The June 8 ACR Requests Parties Enter Settlement Discussions Without Any Additional Information on the Savings Estimates Imbedded in the ERT Scenarios run by Energy Division

The June 8th ACR set a settlement conference for June 24th and notes that previous all-party settlements have failed because of party disagreement over use of various ex-ante and ex-post values. The ACR characterizes the possible settlement by stating that,

Even if parties continue to disagree as to whether the metrics should apply on an ex ante versus ex post basis, limited stipulations may still be explored as to numerical values to represent ex post results, assuming the Commission were to true-up RRIM earnings using ex post measures. Therefore, it may be useful to devote some time to possible stipulation as to the underlying numerical ex post values at issue, even if parties continue to disagree as to whether ex post updating should be used for the RRIM true-up.²

This instruction unfortunately fails to recognize that all party scenario requests and numerous party comments on the scenarios released on May 4th have thus far failed to produce any additional information regarding the savings estimates aggregated in the draft Verification Report.³

The Commission has still not identified a process to evaluate major disputes over the savings estimates used to develop the verification report. Instead, the ACR makes clear

¹ In some cases, TURN offers plausible explanations for issues raised by the utilities with the evaluation reports. However, hypothetical explanations are insufficient. These are the very sorts of questions that the Commission should examine to determine if the new estimates are indeed reasonable. See, e.g. TURN, p. 22.

² R-09-01019, “Administrative Law Judge’s Ruling Regarding Settlement Conference,” June 8, 2010, p. 2.

³ The verification report and scenario report are available at:
<http://www.cpuc.ca.gov/PUC/energy/Energy+Efficiency/EM+and+V/2006-2008+Energy+Efficiency+Evaluation+Report.htm>.

that the Commission plans to go ahead with finalization of the Verification Report without any Commission level oversight of the numerous highly contentious savings estimates it employs. In a footnote, the ACR states:

Certain parties have taken issue with various methodologies utilized in the Energy Division “Verification and Performance Basis Report.” in measurement and evaluation of 2006-2008 energy efficiency performance. By contrast, other parties support the use of results reported by the Energy Division as a basis for RRIM earnings. Independent of any settlement parties may negotiate on inputs to use for the RRIM earnings true-up, the Energy Division Report will be finalized utilizing the process outlined in Decision 07-09-043.⁴

The energy savings estimates embedded in these scenarios have been the subject of considerable disagreement and could have a significant impact, not only on the estimates of savings from 2006-08, but also the current portfolio savings, cost effectiveness and program design. While a decision regarding utility incentives is important, a meaningful review of these savings estimates is fundamental to the Commission's accountability in managing the utility energy efficiency programs. Indeed, the potential reward or penalty for the utilities is dwarfed by the scale of investment and customer savings in energy efficiency approved by the Commission between 2006 and 2012.

5. Conclusion

NRDC appreciates the opportunity to provide these reply comments. We encourage the Commission to immediately set forth a process to evaluate and resolve a limited number of significant major disputes remaining.

We look forward to working with Commission staff and other stakeholders to address the important issues raised in this proceeding over the coming months.

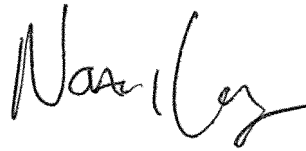
⁴ June 8, 2010 ACR, p. 2

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **“REPLY COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC) ON EVALUATION REPORTING TOOL (ERT) SCENARIOS”** to all known parties of record in proceeding R.09-01-019 by delivering a copy via email or by mailing a copy properly addressed with first class postage prepaid.

Executed on June 11, 2010 at San Francisco, California.



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