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

| Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism. | **R. 09-01-019** |
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# WOMEN'S ENERGY MATTERS
# REPLY RE 2006-08 INCENTIVE CLAIMS

July 23, 2009


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Women's Energy Matters (WEM) appreciates this opportunity to provide this reply pursuant to the ALJ's Ruling. Due to time pressure in this and other proceedings, we were unable to file opening comments, so we offer elements of both opening and reply here.

**Introduction**

The independent review conducted by CPUC's own Energy Division showed that utilities deserve no more profits for energy efficiency (EE) programs in the 2006-08 cycle,[1] and confirmed that they should not have received the two interim claims they were already awarded in 2008 and 2009.

However, in the past few months, parties have been invited to propose and review "scenarios" that proposed various changes to the rules that were supposed to guide the process of determining the awards. This may indicate that the Commission is searching for a way to justify once again allowing utilities to collect profits for EE.

Utilities have insisted on making ED run another scenario with the IOUs' familiar changes. The results will not be available until next week, but their predictable, well-worn arguments are the feature of PG&E's comment.

**Once Again Utilities and NRDC Attack Independent Evaluations**

PG&E's 7-9-10 Comment argues for changes to original assumptions when it suits them - and insists on keeping original assumptions when those provide more profits. There is no substance, just empty rhetoric and threats, in PG&E's attack on updated NTG values: the "rationale...has turned out to be faulty;" the "basis and methodology...are questionable;" and "when applied to incentive calculations, they become a lightening rod for disagreements..." PG&E Comment, p. 6.

[1] The cycle was extended a year because utility intransigeance in the Applications proceeding delayed program planning for the 2010-12 cycle.

Regarding updated EULs, again PG&E repeats the rhetoric: the "rationale...is faulty." They attack the EUL values in the DEER 2008 values, claiming "it takes many years to conduct effective and coordinated persistence studies."[2] Ibid, p. 6

In the old days when the IOUs ran EM&V they made sure that any study they didn't like would not happen or it would take "many years." The 2005 DEER was deficient *because* utilities had moved so slowly on it and *failed to conduct studies that were needed to comprehensively update NTGs, EULs, interactive effects, and CFL installation rates* (all the things IOUs complain about here) among other things. (DEER 2005 was the first update since the mid-1990s).

The one change PG&E proposed that might be defensible is the treatment of Codes & Standards, if in fact ED's report missed that change in the Commission's direction.

However, for NRDC and the IOUs to claim "there is no consensus" in the validity of ED's Final Evaluation report — as if that confirms its utter lack of validity — is preposterous. Of course the utilities challenge its validity, as they have challenged all the independent reports. It's just greed and sour grapes.

**Scenario Review**

WEM has declined the opportunity to closely review the scenarios, or comment on this process, however we would like to offer our position at this time. We understand that the utilities continue to object to certain parameters (as described above) and they seek to eliminate these parameters and/or reject the values resulting from EM&V studies and use ex ante values or utility reported values instead.

WEM believes that the Commission should stand behind Energy Division's exhaustive review of these programs, rather than bend the numbers to appease the utilities and Wall Street. As discussed below, however, we understand that the Commission is anxious to convince utility investors that energy efficiency is something worth pursuing, and may feel that a year without EE profits might endanger that support. We address that deeper question below.

**The Case for Shareholders Incentives**

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[2] In fact, most CFLs burn out in 6000 hours, which is just 1-1/4 years, so a highly controlled laboratory study on these measures could be done in short order. Why didn't the utilities do such a study 12, 10, 8 years ago when they were in charge of EM&V? Because they didn't want to know the answer.

**"Return on Investment" Appears More Like a Pavlovian Incentive**

The Scoping Memo noted that the purpose of the RRIM was to "provide both a meaningful level of shareholder earnings and a return on ratepayers' investment in energy efficiency."[3] Scoping Memo, p. 2.

Generally, the purpose of a "return on investment" is to encourage *investors* to take the risk of *investing their funds*. In this case there is *no investment by utility shareholders*.

This "return" is more like a "reward" in the realm of behavior modification — *to encourage shareholders to view EE (and other initiatives linked to the environment) as less antagonistic to their traditional interest* (which is to get the highest possible return on investments in energy supplies, and transmission and distribution).

The proponents of shareholders incentives ("S.I.") hoped that shareholders — including utility executives who hold stock in their companies — would begin to think of EE as a business opportunity rather than a source of losses. Therefore they used language that investors understand ("return on investment") to sort of *get them in the mood to think of EE in a positive way* — and then EE profits were supposed to reinforce that.

Curiously, S.I. proponents bypassed competition as a way to drive change, despite its long-established record of doing just that.[4] Generally, businesses only make *major* changes when they are forced by competition to evolve or go under.[5]

Instead of providing openings for new players to take EE and run with it, S.I. proponents pretended that there were no alternatives to utility control. They focused exclusively on modifying the behavior of utilities, although it was abundantly clear that utilities had every reason to ignore and undermine EE, and resisted efforts to modify their behavior.

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[3] WEM feels that the idea of non-investors collecting a return on an investment made by someone else (who didn't have a choice in the matter) is to say the least, peculiar.

[4] At the urging of NRDC and the utilities, D0501055 killed California's four-year experiment with independent EE programs and gave control of all EE back to utilities.

[5] Avoiding EE competition was even more curious since the concept of shareholders incentives for EE was put forward just as the deregulation juggernaut was gathering steam, touting "competition" throughout the energy industry — except in EE. The original S.I. concept was proposed in the late 1980s by an organization with Wall St. roots calling itself the "Natural Resources Defense Council." NRDC was also a major cheerleader for deregulation.

In fact, ED's independent evaluation of the 2006-08 (plus 09) EE cycle has shown that utilities underperformed, according to criteria that IOUs helped to develop and pledged to meet. Their lackluster performance was already visible during the experiment with independent programs in 2002-2005: according to the one comparative study that was made, all but one independent program was on track to save more energy per dollar than utilities. This was true even though independents had to include many items in their cost-effectiveness calculations that utilities were allowed to keep off their books. (We discuss utilities' off-the-books items further below.)

**The Success of Shareholders' Incentives**

*After much consideration, WEM concludes that shareholders incentives are working pretty much as its Wall Street-friendly proponents intended.* Utilities did develop programs that saved energy, and expanded the programs when the Commission ordered them to do so. Shareholders took note that EE was a profit center, and did not mobilize to kill the programs. IOUs promoted their involvement in energy efficiency, which raised awareness of EE's importance, and also gave utilities a "green" image that the companies found valuable.

*Certain aspects of the shareholders incentives model may have helped further the goal of making EE attractive to Wall Street, although they could also be seen as shortcomings in terms of the environment and climate.*

First, the Commission lacked a meaningful yardstick for comparison for utility EE programs, because it rejected competition at the urging of NRDC and the utilities. As explained above, S.I. proponents believed that shareholders incentives were incompatible with competition and a substitute for it.[6] The lack of a yardstick made it easier for the utilities to manipulate the Commission to lower many of the standards that IOUs found difficult or inconvenient. (I.e, there was nobody to say, hey look, we can do this, not a problem — which would undermine utilities' complaints that something was impossible.) *Thus, the absence of competition led to continued profits for Wall Street even when EE programs fell short of expectations.*[7]

[6] CPUC also avoided discussing comparative data from the 2002-05 experiment in EE competition.
[7] Competing providers in 2002-05 were primarily local governments, non-profits, or small businesses. They did not demand extra profits like the utilities, and were not traded on Wall Street.

Secondly, utilities were allowed to avoid targeting EE to defer or displace specific generation or transmission and distribution (t&d) facilities. EM&V — which was long controlled by utilities — backed this up by concealing the locations on the grid where energy was saved. Unspecific, "system-wide" EE posed little threat to siting new t&d and generation, since the need for those facilities is to a great extent dependent on the need for power at particular locations. *Therefore most of them could still be justified, along with the profits they bring to utility shareholders.*

Thirdly, EE was viewed as "baseload" rather than as peaking resources (NRDC insisted on that). This blind spot combined with limitations in EM&V cost-effectiveness methodology made it possible, even mandatory, for utilities to downplay EE measures that reduce the peak, like better HVAC, insulation, etc. — even though the summer peak was a primary driver for supply-side investments in California.

*These aspects of California's shareholders incentives model enabled utilities to avoid having EE cut too deeply into supply-side profits.*[8] *Wall Street would continue to receive profits from utilities' investments in generation and t&d that were* not *in fact deferred and displaced by EE, although they could have been.*

From the point of view of placating Wall Street, quantifying how much generation and transmission was deferred and displaced by EE would put an unpleasant emphasis on losses, which could detract from the effort to convince Wall Street investors that they would gain rather than lose from EE. This was an especially ticklish matter to the extent that investors might understand how truly threatening EE could be, because EE resources are potentially more cost-effective than generation or t&d — and profits on EE, high as they may be, do not match the profits on the supply-side.

*Thus, instead of encouragement for maximizing energy efficiency, the emphasis on making EE attractive to Wall St. dictated that the Commission steer away from capturing the full benefits of EE, in order to shield utilities and Wall Street from a possible drop in generation and t&d profits.*

[8] In this and other proceedings (including other EE proceedings, all Long-Term Procurement proceedings since 2006, and the Jefferson-Martin transmission case (A0209043), WEM has repeatedly pointed out the lack of integration of EE with procurement of generation or t&d. This has been met with silence. We found this confusing and troubling, since we feel it is urgent to step up emissions reductions,

Despite nearly twenty years of shareholders incentives, an IOU business model has yet to develop that fully integrates EE with the supply side and transmission/ distribution. IOUs are even farther away from creating a business model that relies on *investment* in energy efficiency rather than surcharges on ratepayers and government subsidies.

*WEM asks the Commission to consider the implications for the climate, if shareholders incentives in fact lead IOUs* **away** *from developing business models that fully integrate EE, rather than towards them.*

**California is big enough to support more than one EE model**

If the Commission wants to pursue shareholders incentives a little longer, hoping that a better system will begin to emerge, it could do that in one part of the state without holding the entire state's climate policy hostage to a 20-year-old idea that has produced disappointing results. The Commission has already recognized that the shareholders incentives mechanism needs to be substantially changed in order to get past the controversies it has engendered since it was re-established in 2007.

There are compelling reasons why the Commission should consider different models for PG&E's territory, in particular, and why it should begin to move towards such solutions in the forthcoming decision.

*One reason is that PG&E's 2006-08 EE performance stands out as particularly poor. It is the only utility whose results were so low that it faces a penalty.*

**PG&E misuse of EE Funds**

In addition, WEM, the City and County of San Francisco, the County of Marin, and ratepayers from many local Bay Area jurisdictions have all complained to the Commission that *during the program cycle being reviewed here* (2006-08 and 09) PG&E representatives were making offers of special "partnerships" involving extra EE and solar Public Goods Charge funds to cities and counties as an "alternative" to Community Choice Aggregation (CCA), which many local governments have been considering.[9]

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[9] Individuals also reported to the Commission that they were contacted with offers of low-income EE products at the same time they were encouraged to "opt-out" of Community Choice. Others were told that the fact they had received an EE rebate from PG&E meant that they were obligated to stay with the utility — and PG&E's rebate forms contained clauses giving that impression.

D0909047 prohibited EE offers to "undermine or discourage CCA," and Resolution E-4250 strengthened that prohibition, specifically mentioning offers PG&E made to Novato as an example of what was not permitted.

Nevertheless, in response to WEM's cross-examination in the General Rate Case in the past month, PG&E witnesses said they knew of no instructions circulated internally to PG&E employees to cease and desist with such offers pursuant to the Commission's decision and resolution — and they asserted that they saw nothing wrong with what had been done.

*This belligerent attitude makes it abundantly clear that PG&E intends to continue to misuse EE funds to advance its political objectives.*

**Large PG&E EE Sales Force Kept Off-the-Books**

In the GRC, WEM also discovered that PG&E has several large contingents of employees whose job primarily or partially consists of selling energy efficiency programs and services — but these employees are not paid from EE funds; *therefore these expenditures are not counted in program cost-effectiveness calculations.*

Two Hundred Seventy (270) employees work as "Sales and Service" reps in the Customer Care organization, handling business accounts. From the description in PG&E's testimony, their jobs consist largely of pitching energy efficiency. Thirty-five (35) more call primarily on local governments with similar messages — they report to Local Government Relations, a subset of Public Affairs.

Another thirty or so employees organize fairs and festivals, where PG&E's energy efficiency programs are the primary message in most of the handouts, and EE messages are pitched by hundreds of PG&E employees acting as volunteers at these events.

A dozen or more PG&E employees work for the "Dept. of Service Analysis" which is headed by a man who has appeared before nearly every local government where either municipalization or Community Choice was discussed, for the better part of the past decade. Assignments in this group include "Customer Retention" as well as solar and energy efficiency sales. Closely related operations under "Economic Development" utilize employees from the departments described above to help companies decide to expand operations in California — according to the testimony, energy efficiency is critical to these decisions.

With all of these employees promoting energy efficiency, we found it a bit surprising that the programs are not doing better than they are. One problem could be that some of these employees appear to be long on talk and short on action. Whether or not this is company policy is unclear.

WEM videotaped one outfit that visited Novato to lobby for their "partnership" alternative to CCA. This three-man team consisted of PG&E's senior attorney in the EE Applications case, a young man in Government Affairs, and another in Service Analysis. They met approximately monthly with Novato staff and city officials for the better part of a year, but as far as we know, the partnership was never consummated.

We don't believe any analysis of EE portfolios reflected the existence of this large sales force whose funding has never been figured into EE cost-effectiveness calculations. We urgently request that the Commission order these calculations to be redone. This is a very serious matter for several reasons. One, the portfolio may have been non-cost-effective had these employees been properly counted.

**Rulemaking Plans to Consider Energy Efficiency Under Community Choice**

CCA formation is continuing and is expected to expand in PG&E territory, due to the successful launch of the Marin Energy Authority this May, and the strong defeat throughout Northern California of Proposition 16, which PG&E supported with $46 million collected from ratepayers, who are very unhappy about this spending.[10]

The Commission has already indicated that it will engage in a process in the new Rulemaking (R0911014), to address the provisions of the Community Choice law which provide for CCAs and others to "apply to administer" energy efficiency. Marin Energy Authority has notified the Commission that they plan to apply for their funds.

**Conclusion**

WEM asks the Commission to follow through with the final true up process as planned, and let the chips fall where they may. If this is unacceptable, we urge the Commission to resolve matters with southern California utilities but set PG&E's claim aside for now, pending resolution of serious charges regarding misuse of funds and keeping separate books for their EE sales force.

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[10] While there were some jurisdictions in Southern California that looked into forming CCAs several years ago, they don't seem to be actively pursuing it at this time.

Dated: July 23, 2009

Respectfully Submitted,

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CERTIFICATION OF SERVICE
**R0901019**

I, Barbara George, certify that on this day July 23, 2009 I caused copies of the attached WOMEN'S ENERGY MATTERS REPLY RE 2006-08 INCENTIVE CLAIMS 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 Thomas Pulsifer, and Presiding Commissioner John Bohn.

Dated: July 23, 2009 at Fairfax, California.

/s/ Barbara George

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