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 (Filed January 29, 2009)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON DISPUTED ISSUES FOR THE 2006-2008 RRIM TRUE-UP

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ON DISPUTED ISSUES FOR THE 2006-2008 RRIM TRUE-UP

Pursuant to the directions in the June 8, 2010 Ruling of Assigned Administrative Law Judge Pulsifer, the Utility Reform Network (TURN) submits these reply comments on contested issues concerning the true-up of utility claims for energy efficiency incentives for the 2006-2008 program years. TURN did not file opening comments on July 9th. We believe that we have fully addressed the relevant issues in our previous filings, especially the comments and reply comments on ERT scenarios submitted on May 18 and June 11, 2010.

TURN offers very limited reply comments as we do not believe any new issues were raised by the parties (the four utilities, NRDC and DRA) who filed opening comments.

Parties met for mandatory settlement discussion but did not settle the outstanding issue of whether the utilities have earned any additional incentive payments on top of the first two payments of $144 million for their 2006-2008 program performance. Parties did not agree to any stipulations concerning the facts underlying the measurement and evaluation of program performance in 2006-2008.

In their opening comments, the utilities and NRDC explain that they have agreed to three "principles" for the Commission to use in determining the final true-up. The term "principles" is somewhat of a misnomer in this case. These parties are essentially agreeing amongst themselves that the Commission should abandon the true-up methodology that was supposedly an integral part of the 2006-2008 incentive mechanism.

These parties have agreed to the "principle" that we should use the old *ex ante* numbers rather than the new *ex post* verified numbers for the most important input parameters to the incentive mechanism, contrary to the supposed purpose of the true-up mechanism.

In various previous filings, parties have disagreed as a matter of fact on the accuracy of certain *ex post* numbers. In essence, rather than filing a stipulation regarding facts, the utilities and NRDC are claiming that it is now a "principle" that we should use the old numbers.

Regardless of how one dresses it, the utilities and NRDC are just reiterating the same claims they have been making since the consultants who evaluated the various programs finalized the evaluation results back in November of 2009. The actual evaluations show that the utility programs were not as successful as forecast. The utilities already received $144 million in incentives. They have earned no further incentive payments. The Commission should applaud their efforts, congratulate them on earning $144 million, and move on. We do not need to dwell on the fact that they only deserved payments of $80 million maximum, not accounting for potential penalties for PG&E.

Rather than accept this simple fact, the utilities and NRDC keep trying to change the rules of the game in order to enrich utility shareholders to the tune of another $100 or so million. TURN has addressed most of these issues previously. We offer just a few additional remarks and provide a reference to our previously filed comments.

Principle 1 - eliminate the 2004-2005 cumulative goals

The utilities and NRDC cite the rationale provided in D.09-12-045, where the Commission decided to exclude 2004-2005 data from the second interim payment

because the data was "not directly reconcilable with 2006-2008 data." TURN suggests that Energy Division can determine whether the existing data is adequately reconcilable.

NRDC also argues that utility performance should not be measured using cumulative goals. Regardless of the validity of this position for the future, that is not the mechanism that was adopted. NRDC's position is inconsistent with its recommendation concerning 'interactive effects' where it decries "changing the modeling assumptions for these impacts in the middle of a program cycle."

Principle 2 – include savings from Codes and Standards

The utilities and NRDC point to the Policy Manual as requiring the inclusion of net benefits from Codes and Standards advocacy. The Policy Manual was changed via an Assigned Commissioner's Ruling in August 2008. TURN does not presently know the history or justification for this change, and we have not taken a position on the validity of the utility position. As a substantive matter, we absolutely agree with NRDC that "mandatory codes and standards are highly cost effective means of attaining energy savings," though we strongly question the assertion that "utilities can be instrumental in promoting aggressive, attainable standard levels." It seems extremely problematic to measure utility contribution to the impact of mandatory codes and standards.

We do note, moreover, that utility and NRDC complaints about changes that occurred during the program cycle seem strangely absent concerning this change, which occurred almost at the end of the program cycle.

Principle 3 – Use *ex ante* or DEER 2005 values for NTG, EUL, Interactive Effects and CFL Installation Rates

This principle reflects the relentless assault on evaluation studies of the 2006-2008 programs that utilized actual program data and best practices to determine that actual results were in reality lower than forecast or anticipated. TURN has extensively documented the fallacy and sheer hypocrisy of the *ex ante* NTG argument in our opening comments on scenarios (Section 4.1) and our reply comments on scenarios (Section 2). We will not reiterate all these arguments. Suffice it to say that the continued lament that "there was no adequate opportunity during the program cycle for utilities to update hteir programs in response to updated NTG information" is laughable in light of the fact that the 0.80 *ex ante* NTG ratio was adopted as a temporary default number in 2000. The utilities had five years before the programs even began to update these numbers and consistently resisted pressure and direction from intervenors, professional consultants, and finally the Commission itself. To reward them for ten years' of recalcitrance makes a mockery of the regulatory process.

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Respectfully submitted,

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