BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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)**

REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) TO ASSIGNED COMMISSIONER RULING AND SCOPING MEMO, PHASE II

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I. INTRODUCTION

In accordance with the September 22, 2010 *Assigned Commissioner Ruling and Scoping Memo, Phase II* (Phase II ACR), Pacific Gas and Electric Company (PG&E) submits the following reply comments in response to the California Public Utilities Commission's (CPUC) questions regarding the existence of appropriate safeguards to prevent misuse of energy efficiency funds in a way that adversely affects Community Choice Aggregation (CCA) programs.[1/] Opening comments were filed by PG&E, Southern California Edison (SCE), San Diego Gas & Electric Company and Southern California Gas Company (jointly, Sempra), City and County of San Francisco (CCSF), Marin Energy Authority (MEA), and Women's Energy Matters (WEM).

II. EXECUTIVE SUMMARY

Before addressing the specific issues raised in the ACR, PG&E wishes to echo some

1/ See Phase II ACR at p. 8.

critical points made in Sempra's opening comments: specifically, that "the Commission should conclude that the same kinds of oversight and safeguards that apply to the IOUs as EE program administrators would also apply to the CCAs."[2/] As Sempra correctly points out, the "Commission initially defined such an administrator as: 'any party that receives funding for and implements EE programs pursuant to Section 381.1.'"[3/] Applying the Commission's oversight and safeguards to CCAs as well as IOUs, regardless of whether the CCAs contract with the Commission directly or with the IOUs, is a critical issue of ratepayer protection.

As for the issues raised in the ACR, certain themes and clear differences emerged in the opening comments filed on October 8, 2010. These themes and differences are summarized below and addressed in greater detail in these reply comments.

First, the investor-owned utilities (IOUs) all agree that the Commission's existing decisions, rulings, and policies, as well as applicable sections of the Public Utilities Code, provide adequate safeguards against possible utility misuse of energy efficiency funds to discourage or interfere with a local government's efforts to consider or to become a CCA.[4/] In contrast, both CCSF and WEM argue that current safeguards are not only inadequate, but that "significant structural change in the manner in which energy efficiency is administered in California" needs to be made, including "independent administration of energy efficiency funds."[5/] As CCSF admits, the Commission has previously been asked to consider the

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2/ Sempra Opening Comments, p. 2.

3/ Sempra Opening Comments, p. 3, citing D.03-07-034.

4/ *See* PG&E Opening Comments, pp. 2-4 (*citing* D.09-09-047, Resolution E-4250, PU Code Section 381.1(c), and PU Code Section 453(a)); SCE Opening Comments, pp. 2-4 (*citing* D.04-01-032, Resolution E-4250, PU Code Sections 381, 381,1, 399.8, and 701); Sempra Opening Comments, pp. 5-6 (*citing* the Commission's Energy Efficiency Policy Rules and various Energy Efficiency decisions and rulings).

5/ CCSF Opening Comments, p. 1; *see also* WEM Opening Comments, pp. 2, 7.

possibility of independent administration of energy efficiency funds, and the Commission "has repeatedly refused to reconsider" the current model of EE administration.[6/] The Commission should similarly reject CCSF's and WEM's overreaching request, which falls outside the scope of the ACR's review.

Second, none of the opening comments identified any specific abuses or structural flaws that could lead to abuses in the IOUs' use of energy efficiency funds. In fact, despite the ACR's express request that parties "focus on structural aspects of program rules, rather than offering anecdotal instances of alleged abuses," CCSF and WEM offer nothing more than dire pronouncements about what they contend are inherent problems with IOU administration of EE funds, along with unsubstantiated allegations of utility misconduct.[7/] While MEA offers some specific examples of ways that utilities *could* use energy efficiency funds to discourage or interfere with CCA formation, the Commission's existing safeguards already protect against such potential abuses, as explained in detail below.

Finally, all parties agree that the Commission "has the authority to enforce its own decisions and resolutions and to resolve any specific claims of misuse of energy efficiency

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6/ CCSF Opening Comments, p. 1.

7/ CCSF Opening Comments, p. 3 ("Unfortunately, it is impossible to posit all the ways in which an IOU can discourage or interfere with a local government's efforts to consider or to become a CCA. The context alone provides enormous opportunities for abuse."); WEM Opening Comments, p. 1 ("As an appendix to this comment, WEM provides a list of the ways that WEM has witnessed a utility misusing EE funds to discourage or interfere with CCA formation. The list is generic; there is a wealth of anecdotes underlying it.").

funds,"[8/] including through the imposition of penalties. In addition to the Commission's general enforcement authority, the IOUs' EE expenditures are specifically subject to supervision by the Commission, regular EE audits, as well as monthly, quarterly, and annual reporting requirements.[9/] While CCSF and WEM both dismiss such Commission oversight as ineffective,[10/] PG&E is duly respectful of the Commission's ability to enforce the safeguards set forth in Decision 09-09-047, Resolution E-4250, and applicable sections of the Public Utilities Code. The Commission has made clear that it takes these safeguards seriously, and so does PG&E.

III. RESPONSE TO SPECIFIC COMMENTS ON PARTIES RESPONSES TO QUESTIONS PRESENTED IN THE ACR

Question 1: How might utilities use energy efficiency funds in a way that would discourage or interfere with a local

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8/ PG&E Opening Comments, p. 5; *see also* SCE Opening Comments, p. 4 ("The Commission should appropriately investigate allegations of an IOU's misuse of EE funds to determine whether the IOU engaged in unlawful or prohibited behavior. To the extent the Commission determines that an IOU engaged in unlawful or prohibited behavior, the Commission should issue a decision imposing appropriate corrective measures."); Sempra Opening Comments, p. 5 ("The Commission has in the past exercised its authority in dispensing discipline and sanctions against its regulated entities for various violations of PUC codes, rules and decisions. This serves as a deterrent for noncompliance…."); CCSF Opening Comments, p. 12 ("Thus, the Commission should state clearly that it will not tolerate IOU misuse of energy efficiency funds, and, if misuse is proven, should impose substantial penalties."); WEM Opening Comments, p. 7 ("There should be full investigations, including hearings, on specific instances of misuse and heavy penalties for misuse of funds.").

9/ PG&E Opening Comments, p. 5; *see also* SCE Opening Comments, pp. 3-4 ("the Commission has broad jurisdiction to enforce this provision, particularly as to the IOUs' use of EE funds, which the CPUC actively oversees pursuant to California law. *See, e.g.,* Sections 381, 381.1 and 399.8…specifying the Commission's oversight responsibilities for EE funds"); Sempra Opening Comments, p. 5 ("The Policy Rules, decisions and rulings provide specific direction on the appropriate uses of energy efficiency funds. In addition, the Commission conducts regular financial audits, which includes verification of appropriate expenditures. To date, the Commission has conducted three financial audits for the 2006-2008 program cycle.").

10/ *See, e.g.,* WEM Opening Comments, p. 6 ("How nice, to be able to appoint your regulators! Need we say more?"); *see also id.,* p. 7 ("As long as IOUs administer EE funds, there is really no way to fully protect against misuse of funds to fight CCAs."); CCSF Opening Comments, p. 8 ("The City can think of no other solution [other than independent administration of EE funds] that would effectively prevent an improper IOU competitive advantage vis-à-vis CCAs.").

government's efforts to consider or to become a CCA? Responses to this question should focus on structural aspects of program rules, rather than offering anecdotal instances of alleged abuses.

In opening comments, CCSF claims: "it is impossible to posit all the ways in which an IOU can discourage or interfere with local government's efforts to consider or to become a CCA. The context alone provides enormous opportunities for abuse."[11/] Similarly, WEM alleges: "The structural issues boil down to this: *the IOUs control EE funds. They have myriad opportunities to use them for their corporate objectives.* Even when IOUs are using the funds to conduct genuine EE-related activities, the activities can be conducted in a way that undermines or interferes with CCAs."[12/]

The stated purpose of the ACR is to examine existing safeguards to protect against potential misuses of EE funds, not to re-examine the very foundation of California's EE system based on unsubstantiated claims of the potential for misuse. While parties such as WEM may have a long-standing disagreement with the Commission's EE decisions,[13/] those decisions are not in question as part of this relatively limited ACR review. The ACR sought constructive feedback on ways that existing safeguards might be inadequate. In response, CCSF and WEM offered a "no-holds-barred" critique of the overall EE structure, along with unsubstantiated claims of utility abuse.[14/] Accordingly, the Commission should give CCSF's and WEM's comments no weight.

11/ CCSF Opening Comments,p. 3.

12/ WEM Opening Comments, p. 1 (italics in original).

13/ *See, e.g.,* WEM Opening Comments, p. 6, fn. 3 ("WEM is one of only about four public interest parties that have participated actively in all EE proceedings for the past ten years….WEM has never been asked to join a PRG.").

14/ WEM's opening comments are particularly egregious in their language ("pedophile in charge of the playground"; "bribery or fraud"; "unscrupulous, self-serving individuals") (*id.,* p. 3) and unsupported claims ("In GRC hearings, PG&E witnesses claimed…") (*id.,* p. 5). In the interest of brevity as well as professionalism, PG&E will not respond to these unwarranted attacks, but the Commission should not mistake PG&E's silence on these issues for lack of opposition.

MEA, in contrast, offers three structural issues that it claims could discourage or interfere with a local government's efforts to consider or to become a CCA: (1) fund shifting of energy efficiency funds; (2) use of energy efficiency funds for other IOU purposes; and (3) lack of guidelines on how CCAs and IOUs should cooperate to deliver energy efficiency programs.[15/]

With respect to the first two issues, existing program guidance and safeguards are already in place and adequate to protect against potential abuses. Specifically, Decision 09-09-047 and Resolution E-4250 expressly prohibit the IOUs from using "energy efficiency funds in any way which would discourage or interfere with" CCAs, and further prohibit the offer of "any goods, services, or programs…on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA." (Emphases added.) Moreover, as PG&E explained in its opening comments:

> PG&E expenditures recorded in the energy efficiency balancing account are subject to CPUC audit. PG&E understands that CPUC auditors work closely with the Energy Division to define the scope of the EE audits and can choose to focus on specific areas, as desired. In addition, monthly, quarterly, and annual reports are provided to the CPUC and posted on the CPUC's Energy Efficiency Groupware Application (EEGA) for public review. Monthly reports contain program level data, while the quarterly and annual reports provide detail by measure and include a breakout of expenditures by EE cost categories (admin, marketing, implementation, incentive). Other relevant information is available to Energy Division through Data Requests.[16/]

Together, these existing safeguards directly address MEA's first two concerns.

MEA's third issue – regarding the need for IOUs and CCAs to cooperate in providing

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15/ MEA Opening Comments, pp. 1-3.

16/ PG&E Opening Comments, p. 5.

EE services to customers – supports the model discussed by PG&E in the CCA workshop; namely, ensuring that CCA-offered EE programs are coordinated through the IOU EE Portfolio rather than through a parallel path application path. This model will be further addressed through the CCA workshop comments that are forthcoming in this proceeding.

Question 2: **Please identify each specific safeguard in existing Commission Decisions that protects against possible utility misuse of energy efficiency funds to discourage or interfere with a local government's efforts to consider or to become a CCA.**

In their respective opening comments, the IOUs identified numerous safeguards in place to protect against possible utility misuse of EE funds, including:

- Decision 09-09-047, which prohibits IOUs from using EE funds in any way that would discourage or interfere with CCA.
- Decision 04-01-032, which provides that CCAs shall not be treated any differently than other parties with respect to access to EE-funded third-party programs.
- Resolution E-4250, which prohibits IOUs from providing any goods, services or programs to local governments or customers on the condition that such local governments not participate in CCA.
- PU Code Section 381.1(c), which mandates the Commission to require the administrator of cost-effective EE and conservation programs to direct a "proportional share" of its approved EE program activities to the CCA's territory, if the CCA is not the administrator of EE and conservation programs for its customers.
- PU Code Section 453(a), which prohibits IOUs from granting any preference

or advantage to any corporation or person.

- PU Code Sections 381, 381.1, 399.8, which specify the Commission's oversight responsibilities for EE funds.
- The Commission's Energy Efficiency Policy Rules, which provide specific direction on the appropriate uses of EE funds.
- Energy Division's access to IOU records to oversee compliance with Commission decisions.
- The CPUC's general audit authority over IOUs' books and records.
- Regular audits of the IOUs' Energy Efficiency programs.
- Monthly, Quarterly, and Annual Reports of the IOUs' EE programs, as posted on EEGA for public review.

In addition, CCSF, WEM, and MEA identified the following additional safeguards:

- Decision 03-07-034, which "touches on several safeguard issues" and gives CCAs "access to certain limited data related to energy efficiency programs."[17/]
- Decision 10-05-050, which "provides more generally that IOUs may not compete with CCAs by using information that is misleading or untrue; that if utilities engage in improper communications, they will be subject to a complaint before the CPUC, where they will be subject to penalties; and that administrative law judges and presiding officers have the authority to hear and grant a temporary restraining order or preliminary injunction pending

17/ MEA Opening Comments, p. 4.

confirmation or rejection of such order by the full Commission."[18/]

- The Energy Efficiency Policy Manual, which provides guidance on the EE program implementation.
- Peer Review Groups, which "(1) oversee the development of criteria and selection of government partnership programs, (2) review the IOUs' submittals to the Commission and assess the IOUs' overall portfolio plans, their plans for bidding out pieces of the portfolio per the minimum bidding requirement and (3) review the bid evaluation utilized by the IOUs and their application of that criteria in selecting third-party programs…"[19/]
- The CPUC complaint process, which allows customers to allege violations of any Commission decisions or rules, including misuse of EE funds.

Together, these Commission decisions, resolutions, and practices, along with statutory provisions, provide ample safeguards against potential misuse of EE funds.

Question 3: Why, or why not, are the existing safeguards adequate? Please be specific in responding to this question.

The existing safeguards are adequate for the reasons stated in PG&E's comments, above. As described in response to Question 1, above, CCSF's and WEM's opening comments focus on the fundamental structure of EE administration, and therefore provide little helpful insight into why they believe the existing safeguards are inadequate.

Similarly, the response to Question 1 above addresses MEA's concerns about inadequate information and transparency. Specifically, through the reports that the IOUs are required to maintain and make public regarding their EE expenditures, as well as the

18/ CCSF Opening Comments, p. 6. Please note that rehearing of D.10-05-050 is still pending.

19/ WEM Opening Comments, p. 5, quoting Policy Manual, v. 4, pp. 18-19.

coordination of CCA and IOU EE programs through the IOU EE Portfolio, PG&E believes existing safeguards are sufficient to resolve the issues raised by MEA.

Question 4: **What specific additional safeguards, if any, are needed to protect against misuse of energy efficiency funds to discourage or interfere with a local government's efforts to consider or to become a CCA?**

Please see response to Question 6 below.

Question 5: **How should the Commission, or its staff, enforce any applicable safeguards?**

As described in response to Question 2 above, there are numerous safeguards in place to protect against misuse of EE funds. Each of those safeguards has a different enforcement mechanism. For example, PU Code Sections 381, 381.1, and 399.8 (setting forth the Commission's oversight responsibilities for EE funds) place responsibility on the Commission to oversee and regulate the IOUs' EE programs. The Commission's Energy Division and Utility Audit, Finance and Compliance Branch also have authority to access the IOUs' records to oversee compliance with Commission decisions and to audit their Energy Efficiency program expenditures. The CPUC's Consumer Affairs Branch has authority to assist customers with the complaint process, which allows customers to allege violations of any Commission decisions or rules, including misuse of EE funds.

Question 6: **Parties' reply comments shall explain how any safeguard proposed in opening comments is either unnecessary or duplicative of those that already exist.**

In opening comments, CCSF and MEA propose additional safeguards that are either unnecessary or duplicative of those that already exist.

For example, PG&E disagrees with CCSF's proposal that the Commission "should favor implementation by CCAs of energy efficiency programs within their service

territory…"[20/] While PG&E agrees that it is appropriate to ensure no discriminatory treatment of CCA customers in the scope of energy efficiency programs, it strongly disagrees that CCAs should have a rebuttable presumption for provision of EE programs. In fact, the Public Utilities Code Section 381.1(a) states:

> [T]he commission shall weigh the benefits of the party's propose program to ensure that the program meets the following objectives:
>
> (1) It is consistent with the goals of the existing programs established pursuant to Section 381.
>
> (2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.
>
> (3) Accommodates the need for broader statewide or regional programs.

CCSF, WEM and others previously requested that the Commission grant a preference to CCAs for EE program funding, and the Commission expressly denied that request.[21/] Neither CCSF nor WEM has provided any rationale for the Commission to re-visit this determination and grant CCAs a preference in EE funding or implementation. The existing safeguards, as described in response to Question 2 above, are adequate to ensure a level playing field between IOUs and CCAs.

PG&E also disagrees with CCSF's request that the Commission "clarify the types of activities that constitute misuse of energy efficiency funds and add to its policy rules a

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20/ CCSF Opening Comments, p. 9.

21/ *See* D.03-07-034, *mimeo*, pp. 9-10 ("CCSF, Santa Monica, and WEM propose the Commission articulate a preference to CCAs for energy efficiency program funding. CCSF goes so far as to suggest CCAs should have a right of first refusal for local program funding….[W]e are not prepared to treat CCAs any differently from other parties at this time."); *see also* D.04-01-032 (denying rehearing of D.03-07-034).

prohibition on such misuse."[22/] PG&E believes that the Commission has clearly set forth the applicable law regarding misuse of EE funds in D.09-09-047 and Resolution E-4250 and that the inclusion of hypothetical "prohibited" scenarios and situations is not necessary.

PG&E further disagrees with CCSF's request that the Commission should extend the language of Decision 10-05-050 to the misuse of EE funds.[23/] That decision is currently pending rehearing,[24/] and it would be both inappropriate and premature to extend the decision's procedures to other circumstances without adequate due process.

Notwithstanding the foregoing, PG&E agrees with CCSF's recommendation that the Commission should continue to exert strong leadership in the development of priorities and three-year portfolios,[25/] as it does now. Such strong leadership is one of the many reasons that no further safeguards are needed. PG&E also agrees with CCSF that the Commission should demonstrate that it considers misuse of EE funds to be a serious matter, as it has already done by issuing Decision 09-09-047 and Resolution E-4250. The Commission has already made clear that it takes this issue very seriously, as does PG&E.

Most of MEA's recommendations reflect its concerns about information and transparency, which have already been discussed in response to Questions 1 and 3 above. PG&E disagrees with MEA's proposal to impose additional reporting requirements. For the 2010-2012 EE program cycle, IOUs are required to publicly report authorized funding and monthly expenditures by program including by each Local Government Partnerships (LGP). IOUs are also required to report all fund-shifts between programs on a quarterly basis. This

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22/ CCSF Opening Comments, pp. 10-11.

23/ CCSF Opening Comments, p. 11.

24/ Separate requests for rehearing of D.10-05-050 were filed on June 24, 2010, by PG&E and CCSF.

25/ CCSF Opening Comments, p. 8.

information, along with the proportional share information that IOUs are also required to provide upon request, is sufficient to assure compliance with the statute that requires IOUs to direct funds to the CCA territory when the CCA is not administering EE programs.[26/]

IV. CONCLUSION

As all of the IOUs stated in their opening comments, the Commission currently has adequate safeguards in place to address concerns regarding the potential for misuse of EE funds. The Commission recently addressed this issue in its approval of the IOUs' 2010-2012 EE portfolio applications (D.09-09-047), where despite finding no evidence to establish any misuse of energy efficiency funds, the Commission ordered the IOUs not to use EE funds in a manner that would discourage or interfere with a local government's efforts to consider becoming a CCA. The Commission and Energy Division Staff also addressed the issue in adopting Resolution E-4250, which ordered the IOUs not to offer any goods, services or programs for the purpose of inducing a local government not to participate in a CCA.

As indicated in PG&E's opening comments, PG&E has abided and will continue to abide by these principles and has incorporated these Commission directives into its practices and communicated them to the relevant personnel who participate in EE or CCA activities. PG&E believes no further safeguards or Commission action is needed.

For the reasons described in PG&E's opening comments and reiterated in these reply comments, PG&E respectfully submits that existing safeguards are sufficient to address concerns regarding the potential for misuse of EE funds and that the Commission has the authority and necessary tools to enforce them.

26/ To the extent that authorized funding to an LGP is less than the statutory threshold, an IOU could show compliance with the statue through a data request to provide information on additional EE program funds directed to the particular jurisdiction, through EE program rebates paid directly to customers and other information available.

Respectfully submitted,

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October 15, 2010

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

On October 15, 2010, I served a true copy of:

REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY TO ASSIGNED COMMISSIONER RULING AND SCOPING MEMO, PHASE II – R. 09-11-014

[**XX**] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R. 09-11-014 with an e-mail address.

[**XX**] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for R. 09-11-014 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15th day of October, 2010, at San Francisco, California.

/s/
PAMELA J. DAWSON-SMITH

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