

**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)

**COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED
ALTERNATE DECISION REGARDING THE ENERGY EFFICIENCY
INCENTIVE TRUE-UP FOR 2006-2008**

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ALTERNATE DECISION REGARDING THE ENERGY EFFICIENCY
INCENTIVE TRUE-UP FOR 2006-2008**

Pursuant to Rule 14.3 the Utility Reform Network (“TURN”) submits these comments on the Proposed Alternate Decision of Commissioner Bohn (“APD”) issued on September 28, 2010. The Proposed Decision of ALJ Pulsifer (“PD”) was issued on the same day. TURN is not submitting opening comments on the PD, and we recommend that the Commission adopt the PD as written.

The Alternate Proposed Decision should be soundly rejected by this Commission, as it is an internally inconsistent document which cannot pass legal muster. The APD purports to validate the Energy Division’s final true-up report (“Final Evaluation Report”) in all respects, yet in the end authorizes utility incentives based entirely on the results of the Second Interim Evaluation Report, which could not true-up key variables based on the final evaluation studies conducted as part of the most extensive and comprehensive EM&V effort to date.

It is difficult to pinpoint factual error, since the APD simply decides to ignore the facts and reach an arbitrary outcome. Nevertheless, the legal, policy and factual errors of the APD are as follows:

- The APD constitutes an abuse of discretion by claiming that the Final Verification Report provides the most accurate and reasonable results, but then relying on the Second Interim Evaluation report for the calculation of incentives;

- The APD is not supported by any findings since there is no analytical basis for concluding that the results of the Second Interim Evaluation provide the correct true-up calculation of incentives; and
- The APD commits factual error by continuing to refer to the “RRIM” (risk/reward incentive mechanism), which should really be labeled more appropriately as the BUM or the SPIM.

The Authorized Incentive Level is Arbitrary and Capricious and Not Based on Record Evidence

Energy Division used the numbers from the Final Evaluation Report to generate a total of 48 possible incentive awards based on eight scenarios, with each scenario incorporating several different permutations.¹ The results showed a range of total incentive awards from less than \$1 million to almost \$400 million. Energy Division explained that using the methods which most closely approximate the original RRIM as adopted in D.07-09-043 results in incentives of about \$27 million, while using the 12% sharing rate authorized in D.09-12-045 results in incentives of about \$80 million.²

The APD is an amazing read. In many parts it dovetails the PD. It affirms that:

¹ See, Section 4 of the APD. See, also, Energy Division Scenario Analysis Report, attached to the Assigned Commissioner’s Ruling, May 4, 2010, in this docket.

² These numbers are total for all utilities for 2006-08, and are thus comparable to the \$221 million authorized by the APD.

- The Energy Division true-up process was reasonable and produced a fair and reliable outcome (*mimeo.* at p. 24-32);
- The most reasonable basis for the true-up is to use *ex post* updates of key parameters (Text p. 32, Findings of Fact Nos. 7-10; Conclusions of Law Nos. 2, 3.).
- The net-to-gross ratios estimated by the Energy Division are “the best available information at this time,” and there is no basis for using the unmodified 2005 DEER ratios.

Nevertheless, the APD refuses to adopt the results of the Final Evaluation Report as the basis for incentive calculation, concluding instead that the *ex post* assumptions in the final report “have inherent uncertainty and imprecision.” (*mimeo.* p. 52). The APD determines that a total incentive award of \$221 million – almost three times the maximum amount that could be calculated using *ex post* verification – is reasonable based on a consideration of “concerns regarding the report, underlying uncertainties, proposed and approved changes to the incentive calculation process and Commission policies.” (Conclusion of Law No. 1).

It is factually impossible to determine how any reasonable consideration of the “uncertainties” of the various parameters could lead to an outcome of \$221 million, when the Energy Division’s Scenario Analysis Report shows that even

adopting a 12% sharing rate results in maximum possible incentives of about \$80 million.

A close comparison of the APD and the PD indicates that the APD appears to differ with the PD in only *two* substantive areas:

- The APD recognizes that “some uncertainty exists” concerning the 90/10 split between residential and commercial CFL usage; and
- The APD adopts a \$30/ton value for avoided GHG emissions rather than the \$12/ton value used in the true-up.

In all other factual respects, the APD appears to reach the same conclusions as the PD. Indeed, the PD makes the same three modifications to the Evaluation Report (include some savings from 2004-2005, include 100% of pre-2006 C&S savings, adjust therm goals to reflect interactive effects) in order to find that all the utilities are reasonably in the deadband, so that no penalties apply.

The APD does not calculate an exact amount of incentives based on any analytical results of energy efficiency savings or a consideration of a reasonable range of uncertainty. Rather, the APD concludes that “[g]iven these concerns, it is reasonable to use the holdover amounts specified in D.09-12-045 for the final true-up rather than making significant changes based on uncertain information.” (Text p. 53; See, also Conclusions of Law Nos. 6 and 7).

The only number on the record accounting for any difference between the APD and the PD is the statement that “DRA calculates that the total GHG Adder

amounts to \$32,008,464 for the four IOUs.” (p. 49). The APD provides no data on the potential impacts of using a different residential/nonresidential CFL split.

Indeed, an evaluation of the ranges of incentives in the Scenario Report (summarized in Section 4 of the APD) indicates that the only outcomes showing incentives above \$200 million are those which either entirely ignore the NTG³ or those which use utility *ex ante* parameter values.⁴ It is difficult to envision any reasonable analytical way to bridge the difference between \$80 million and \$221 million without essentially ignoring the results of the true-up process which the APD applauds.

The APD thus reaches entirely inconsistent and opposing findings. It finds that the Energy Division final report is reasonable and that it would not be reasonable to rely solely on *ex ante* assumptions. But then it awards an incentive based exactly on numbers updated in the Second Interim Evaluation Report, but without any of the benefit of the true-up based on the Final Evaluation Reports submitted by the EM&V consultants in September and October of 2009.

No amount of hand-waving about “uncertainties” and balancing policy goals can obscure the fact that the APD reaches a totally arbitrary and capricious result that is grounded solely in one policy objective – “to spur utility management and investors to support and expand energy efficiency programs

³ The “gross savings” scenarios S4 and S5.

⁴ Scenarios S2 and S3. D.08-12-059 calculated a \$211 million incentive amount by making various adjustments, including the use of *ex ante* parameters to calculate goal achievement. TURN has filed an application for rehearing (which is pending) on this specific issue.

and savings by providing a reasonable level of profits related to their efforts.”
(*mimeo.* p. 3).

Factual Error Concerning Nomenclature

The APD continues to refer to the “RRIM” – the Risk/Reward Incentive Mechanism. The name is erroneous. On each and every occasion when confronted with measured outcomes that indicate utility incentives should be lower, nonexistent or negative, the Commission has consistently modified adopted rules and policies in order to protect shareholder earnings. The goal has always been to satisfy shareholders and Wall Street that energy efficiency spending will always represent a profit center so that we can continue the fiction of a utility that is “indifferent” as to supply or demand side investments. It is high time to rename the RRIM to a more appropriate and factually consistent name – the Bribing Utilities Mechanism (“BUM”) or the Shareholder Profit Incentive Mechanism (“SPIM”) are two possible choices.

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Respectfully submitted,

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TURN Comments on APD
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6