

**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)

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON
ADMINISTRATIVE LAW JUDGE PULSIFER'S PROPOSED DECISION AND
COMMISSIONER BOHN'S ALTERNATE PROPOSED DECISION**

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October 18, 2010

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**I.
INTRODUCTION**

Pursuant to the Commission's Rules of Practice and Procedure and the Rulings of the Presiding ALJ and Assigned Commissioner, Southern California Gas Company ("SoCalGas") and San Diego Gas and Electric Company ("SDG&E") (collectively, the "Sempra Utilities") respectfully offer their Comments on both the Proposed Decision ("PD") and the Alternate Decision ("AD") published in the above captioned proceeding.

**II.
COMMENTS**

The Sempra Utilities urge the Commission to reject the PD and adopt, with one modification, the AD for the reasons stated below. The Sempra Utilities' review of both the PD and AD reveals that commenting on both in the same filing is more efficient and useful for the Commission's consideration and deliberation as they are fundamentally the same with two critical differences which are the focus of the Sempra Utilities' comments.

The first concern is the PD's use of unresolved material measurement and evaluation controversies in a fair and reasonable manner. The AD addresses this issue correctly and should be approved.

The second describes the PD's failure to address the merits of SDG&E and SoCalGas' PFM of D.09-12-045 while dismissing it as "moot." The Sempra Utilities urge the Commission, in adopting the AD, to grant the Sempra Utilities' PFM on the merits correcting the uncontroverted, admitted error in earnings awards attributable to a past period.

III. UNRESOLVED EM&V CONTROVERSIES

Both the PD and AD recognize the “complexities” involved when attempting to accurately assess energy savings and incentive earnings for those energy savings delivered by the utilities. Both admit that despite the best efforts of the Commission and the parties to the proceedings, fundamental differences among the parties as to the application of the appropriate methodologies to be used to determine energy savings and earnings could not be resolved and that, significantly, such resolution is neither attempted in nor accomplished by either the PD or AD, stating that:

“We opened this rulemaking, recognizing the contentious character of the prior proceeding to determining incentive earnings. This controversy has continued unabated. (PD p.3; AD p.3)

“We continue to believe, however, that the Commission should pursue reforms to the existing mechanism to design incentives to help achieve the Commission’s energy efficiency goals through approaches designed to avoid the protracted controversy over technical methodologies that have characterized the RRIM process.” (PD p.4; AD p.4)

The PD deals with the application of these unresolved measurement controversies concerning utility EE savings and earnings by simply ignoring them and allowing the results of ED’s latest EM&V Report, admittedly premised on the referenced unresolved measurement conflicts, to stand without regard to their flawed character. The result is that the “controversies” are de facto resolved against the IOUs without resolution thereof on the record and the IOUs are denied any earnings derived from the considerable energy savings they achieved based on these controversial, uncertain, and questionable measurement methodologies. The PD states that:

Although certain parties propose alternative approaches to simplify the calculation, we must reject proposals that conflict with the fundamental principle that only real and independently verifiable program-related net benefits qualify for incentives, as stated in D.07-09-043. (PD p.4)

This approach is simple but falls short as a matter of due process, practicality and applied policy because it fails to resolve material evidence in controversy to reach a fairly determined decision. The PD hides behind the “independent” nature of ED’s evaluation but blatantly ignores the admittedly unresolved “considerable controversy” concerning the very methodologies applied

by ED to reach the conclusions set forth in its “independent evaluation.” The PD’s failure to deal with the extant, underlying methodological controversies it recognizes have long existed is a failure of reasoned decision making and must be rejected.

On the other hand, the AD deals with this material evidence controversy in a quite different manner stating on page 4:

“Parties have been unable to agree upon any such means to improve or streamline the existing process, and thus we are again faced with contentious, conflicting proposals for the final true-up of the 2006-2008 incentive payments. In consideration of the complexities, uncertainties, potential procedural changes and the sensitivity of the incentive calculations to each of these factors, we must conclude that changes to the incentive amounts identified in D.09-12-045 are not warranted and in fact would undermine our goal of encouraging utility support and advancement of our energy efficiency goals.”

The AD recognizes the long standing EM&V material methodological controversies are unresolved, but finds that precisely because they are unresolved that no rational policy basis consistent with due process exists which can be relied upon to change the IOU incentive amounts previously determined by the Commission. The AD correctly concludes that material and unresolved measurement controversies cannot be used to change a previous Commission determination. In this, the AD correctly applies basic due process and correctly awards the IOUs, at p.4:

“The final true-up payments of \$40.3 million for PG&E, \$27.1 million for SCE, \$6 million for SDG&E and \$3.9 million for SoCalGas are well within the range of values proposed by parties in this proceeding, less than the amounts requested by the utilities and more than the amounts proposed by TURN, DRA and others. In addition, with these payments taken into account, the 2006-2008 energy efficiency programs will overall be cost-effective and beneficial for customers, even if the lowest estimates of energy efficiency savings are assumed to be correct.

IV. SOCALGAS AND SDG&E’S PFM SHOULD BE GRANTED

On February 19, 2010 SDG&E and SoCalGas called the Commission’s attention to an EM&V calculation error made and admitted to by ED’s consultant, E3, by filing their Petition For Modification (“PFM”) of Decision (D.) 09-12- 045 (“Interim Earnings Decision”) seeking modification thereof because the earnings determinations reached therein were based upon incorrect

calculations in the Second Interim 2006-2008 Verification Report (“SVR”),¹ which the Commission adopted on October 15, 2009, in Energy Division Resolution E-4272. The error in the SVR was identified and described in detail as well as the subsequent errors in the calculation of SoCalGas and SDG&E’s 2009 energy efficiency earnings in D.09-12-045.

The error is a calculation error due to a formula error embedded in the E3 calculator prescribed by Energy Division for use in the calculation of net benefits, as admitted by ED’s consultant and, thus, is not a methodological controversy. As explained in the PFM, D.09-12-045 relied on the SVR’s application of an incorrect E3 calculator² which improperly truncated the number of years of natural gas savings included in E3’s calculation of natural gas energy efficiency benefits. A flaw in the applied E3 calculator omitted years of gas savings from the full net present value (“NPV”) calculation of benefits derived from gas energy savings achieved by SoCalGas and SDG&E’s 2006-2008 programs.

Correction of this calculation error in D.09-12-045 by granting the PFM results in a positive incremental earnings adjustment to D.09-12-045, after application of the 35% holdback, of \$426,142 for SDG&E and \$1,324,612 for SoCalGas (pre-holdback \$655,603 for SDG&E and \$2,037,864 for SoCalGas).

It is significant to note that no party disputed this error or the results of the correction thereof.

The PD provides at page 74 in Conclusion of Law 9 and Ordering Paragraph 3 that since ED’s “...finalized calculations incorporates (sic) correction of the E3 calculator (the PFM) is hereby rendered moot.”

This conclusion is in error for two reasons. First, there is no showing in the PD how ED effectively and accurately incorporated a correction that in fact does render the PFM’s request for correction of that acknowledged error moot. No evidence is adduced in the record to that effect; it is simply an unsupported statement in the PD. SDG&E and SoCalGas submit there is no such correction incorporated.

¹ “Accordingly, we rely upon data verified in that Report as the basis for the second installment of interim incentives.” D.09-12-045, p.5.

² “The E3 calculator is a model developed by Energy and Environmental Economics (or “E3”) for use by the utilities to map Commission-adopted avoided costs to energy efficiency programs for cost-effectiveness calculations.” *Administrative Law Judge’s Ruling Addressing Compliance Flings Pursuant to D.06-06-063*, p.2. R.06-04-010.

The 2006-2008 Energy Efficiency Evaluation Report, July 2010 at page 62 states that it has corrected for the calculation of net benefits for gas measures past 2024. The Report only states that such error is corrected for the true-up process, i.e., the third earnings claim. It does not claim to correct the error identified by SDG&E and SoCalGas in the PFM which was for the second earnings claim. ED did not recalculate SDG&E and SoCalGas' second earnings claim.

The PD errs in reaching the unsupported conclusion that the error identified in the PFM has been corrected. The Commission should approve the PFM in order for this error to be corrected for the second interim earnings claim and ED has done for the third earnings claim.

Second, D.08-01-042 Ordering Paragraph 2d provided that interim awards for EE earnings were not subject to claw back; that is, these earnings, once determined, are not subject to later repayment. The correct procedure to give full effect to the Commission's "no claw back" order for past period earnings which are not subject to claw back would be to grant SDG&E and SoCalGas' PFM on the merits, i.e. correcting the admitted error in earnings awards attributable to the past period and then address final true up earnings as a separate and distinct matter.

Granting the PFM could be accomplished in the AD or by separate decision. SoCalGas and SDG&E suggest as a matter of efficiency the AD grant the PFM for reasons stated therein and herein.

Respectfully submitted

By /s/ Steven D. Patrick
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October 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON ADMINISTRATIVE LAW JUDGE PULSIFER'S PROPOSED DECISION AND COMMISSIONER BOHN'S ALTERNATE PROPOSED DECISION** on all parties of record in **R.09-01-019** by electronic mail and by U.S. mail to those parties who have not provided an electronic address to the Commission. Copies were also sent via Federal Express to Commissioner Bohn and Administrative Law Judge Pulsifer.

Dated at Los Angeles, California, this 18th day of October, 2010.

/s/ Rose Mary Nava

Rose Mary Nava

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists: R.09-01-019 - Last changed: October 5, 2010

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