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Robert Finkelstein, Legal Director

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November 29, 2010

California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, CA 94102

Re: TURN Reply Comments on Draft Resolution E-4385 Approving for 2010-2012
Statewide Energy Efficiency Programs

SCE Advice Letter No. 2476-E; PG&E Advice Letter 3120-G/3675-E; SDG&E Advice
Letter 2172-E/1951-G; SoCalGas Advice Letter 4114

Dear Energy Division:

Pursuant to the cover letter that accompanied Draft Resolution E-4385 (“Draft Resolution”) and the extension set forth in the November 9, 2010 e-mail from Energy Division, The Utility Reform Network (TURN) submits these reply comments on the Draft Resolution. TURN received three sets of comments from other parties – the Joint Utilities, the Division of Ratepayer Advocates (DRA), and Natural Resources Defense Council (NRDC).

The opening comments further illustrate that the Draft Resolution is a flawed product of a flawed process. The Commission should require Energy Division to explain why it chose to proceed in a manner that excluded all interested parties other than the utilities, particularly in light of the Commission’s clear directive to obtain input from stakeholders far earlier in the process. As the opening comments of DRA and NRDC illustrate, that input could have dramatically improved the results of the process.

Both DRA and NRDC raise concerns regarding the failure of Energy Division and the Joint Utilities to develop adequate baselines against for purposes of Program Performance Metrics (PPMs) and market transformation indicators (MTIs). As DRA notes, the absence of such baseline and target numbers undermines the ability to measure success of the energy efficiency programs. DRA Comments, p. 2. NRDC asks how such baseline information will be collected in a timely fashion for this portfolio cycle (NRDC Comments, p. 3), a particularly legitimate question given that the utilities did not submit their advice letter until five months into the cycle, and Energy Division and the Joint Utilities did not unveil the result of their private discussions until ten months into the cycle. It is not clear to TURN how Energy Division and the Joint Utilities could have engaged in the effort they describe in the Draft Resolution and the Joint Utilities’ comments thereon without focusing greater attention on the baseline and target questions. However, it is clear that had DRA or NRDC been permitted to participate in those efforts earlier in the process, there is a greater likelihood that someone at the table would have flagged these important issues earlier rather than later.

The opening comments of DRA and NRDC also raise valid concerns regarding the need to develop more detailed metrics. The Commission must keep in mind that the ultimate sign of a successful incentive program is its elimination.¹ DRA points out that the information in the Draft Resolution and its appendices is too general to be of any real assistance in determining whether a particular program is successful in this way. DRA Comments, p. 2. As an example, DRA cites the treatment of compact fluorescent lamps (CFLs). The PPMs and MTIs that the utilities and ED have worked out among themselves do not provide the necessary level of information that would permit the Commission or others to determine whether the programs have achieved success, even though the Commission described this portfolio cycle as “an opportune time to initiate a phased reduction in basic CFL subsidies.” D.09-09-047, p. 139. NRDC took a more ambitious approach and proposed additions and modifications to six categories of the MTIs in Appendix B of the Draft Resolution. TURN agrees that the addition of the *percentage* of participants relative to total eligible customers would be an improvement over the Joint Utility and Energy Division approach of simple tracking of absolute number of participants. But given that this important shortcoming only became evident to non-utility stakeholders when the Draft Resolution issued, and the proposed fix is appearing in opening comments on that Draft Resolution, it is unreasonable to expect that reply comments provide a sufficient opportunity to assess whether NRDC’s proposed changes go far enough, or additional steps that are warranted.

The Joint Utilities comments illustrate other problems with the contents and underlying process of the Draft Resolution. The Joint Utilities first describe the Draft Resolution as including “a consensus understanding on the final set of statewide PPMs and MTIs” (Joint Utility Comments, p. 2), but then go on to propose numerous further modifications that would make the consensus document more to their liking. In some ways, this embodies the Joint Utilities approach to too many energy efficiency issues – even where they agree that a certain approach is sufficient, they cannot resist any opportunity to ask for more. Part of the problem with the process Energy Division pursued for developing PPMs and MTIs is that the absence of any non-utility party from the discussion seems to embolden the Joint Utilities to seek further unilateral changes to a document they themselves label “a consensus understanding on the final set” of standards. TURN submits that the Joint Utilities would be far less likely to engage in such two-faced behavior if the submission was the product of a multi-party effort, as other parties would be more likely to call them on it, and to do so in a manner that makes the behavior more public. But where the “consensus” is between Energy Division (a non-party) and the Joint Utilities, and reflects the result of a process that seems to have excluded any party other than the Joint Utilities, the Commission can reasonably expect to see continuing overreaching from the Joint Utilities.

The Joint Utilities’ comments further illuminate procedural defects of the Draft Resolution, as they cite several non-record statements as support for the proposed revisions to the “consensus” proposal. There is a reference to an e-mail that the Joint Utilities claim directed them to proceed

¹ D.07-10-032, p. 33 (“Measures and programs that have achieved their goals are phased out of the utility energy efficiency portfolios to make room for new measures.”)

in a certain manner, but no copy of the e-mail itself. (Joint Utilities' Comments, p. 2, fn. 3. Similarly, the joint Utilities devote a paragraph to describing the back-and-forth that occurred with Energy Division between the date the Advice Letter was served and the Draft Resolution issued. (p. 2). TURN is not in a position to comment on whether the Joint Utilities' claims have any basis in fact, as the discussions included only the Joint Utilities and Energy Division. More importantly, the Commission is in no position to assess the veracity of such claims absent any record support for the claims.

Finally, the Commission should ignore the "budget deficiency issue" the Joint Utilities identify in their comments. Joint Utility Comments, p. 3. The Commission established a \$125 million budget for EM&V efforts associated with this 2010-2012 portfolio. D.10-04-029, Conclusion of Law 6. The Joint Utilities make no effort to establish the costs or other budget impact of the incremental effort associated with the PPMs and MTIs as set forth in the Draft Resolution's appendices. And their only "recommendation for resolving this budget deficiency issue" is to have ED "prioritize and limit MTIs to what is important and necessary to track program progress." Joint Utility Comments, p. 3. In light of the absence of any showing that might establish that the incremental costs the utilities claim presents an "issue" will have a material impact on the \$125 million budget already available to fund such efforts, and the failure to present any meaningful solution to this "issue" other than platitudes about priorities, the Commission must reject the Joint Utilities position.

Again, TURN thanks you for your attention to these matters.

Yours truly,

/s/

Robert Finkelstein
Legal Director

cc: Cathy Fogel, Energy Division
All CPUC Commissioners
Karen Clopton, Chief ALJ
Frank Lindh, CPUC General Counsel
Julie Fitch, Director of Energy Division

CERTIFICATE OF SERVICE

I certify that TURN has served a true copy of TURN's Comments on Draft Resolution E-4385 on the attached service list via electronic mail.

Dated November 29, 2010 at San Francisco, California.

_____/s/_____
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