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Robert Finkelstein, Legal Director

November 22, 2010

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

Re: TURN 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:

In D.09-09-047, the Commission adopted energy portfolio budgets for the 2010-2012 period, and addressed a number of other issues related to the utility-administered energy efficiency programs. In Ordering Paragraph 11 of that decision the Commission directed the utilities to jointly file a “Program Performance Metrics” (PPM) advice letter, with eight elements that the advice letter was to include. After the 120-day period provided in D.09-09-047 was extended by another three months, the utilities filed the joint advice letter on May 28, 2010. The “chronology” section of Draft Resolution E-4385 (“Draft Resolution”) describes how Energy Division worked with the utilities beginning in January 2010 and continuing through the filing of the joint advice letter. Draft Resolution, p. 4. Yet when the joint advice letter was filed, deficiencies remained with regard to matters as fundamental as the failure to cover all twelve statewide programs, the inadequate scope of what was filed when compared with the purposes specified in D.09-09-047, and the absence of key data sources or long-term market transformation objectives. Draft Resolution, pp. 6-8. The Draft Resolution then describes the steps Energy Division undertook to collaborate with the utilities to achieve a document that would comply with D.09-09-047, to the point of submitting an Energy Division “counter-proposal” on September 15, 2010. Draft Resolution, p. 8. There followed a two-day meeting between Energy Division and the utilities, and ultimately an agreement between Energy Division and the utilities on a “final set of PPMs that fulfill the principles identified for PPMs in D.09-09-047.” Draft Resolution, p. 9.

TURN’s comments focus on two elements of the Draft Resolution: the disregard for the clear Commission directive calling for public input on these matters (including a workshop), compounded by the suggestion that comments on the draft resolution are an acceptable substitute for workshops on the issues associated with developing PPMs; and the need to ensure that any PPM developed through this process has no presumptive value for purposes of any “Risk Reward Incentive Mechanism” the Commission may consider in the future.

**1. The Abandonment Of The Workshop Process In Favor Of Comments On A Draft Resolution Not Only Fails To Comply With D.09-09-047, But Also Devalues The Input Of Anyone Other Than Energy Division and the Utilities.**

In D.09-09-047, the Commission recognized that while the utilities are in the best position to develop metrics for their energy efficiency programs, “input from stakeholders and further Commission review is necessary.” D.09-09-047, p. 91. For the market transformation metrics that are, in TURN’s estimation at least, the most important of these metrics, the Commission directed Energy Division “to ensure appropriate involvement and input of market actors during their development of recommendations for market transformation indicators.” *Id.*, at 96. As explained in the Draft Resolution, the decision “requires Energy Division to develop recommendations for market transformation indicators and related data collection and tracking processes, and to present these recommendations in a workshop followed by a public comment period.” Draft Resolution, p. 4. But in the Draft Resolution, Energy Division unilaterally modifies this element of the decision, declaring that a collaborative effort between its staff and the utilities “is the equivalent to what we expected to be developed in a workshop.” *Id.* at 10.

Such a contention reflects poorly on the Energy Division, both in terms of its view of its discretion to disregard the Commission’s clear instructions about how to implement the agency’s decisions, and its diminishment of the role that stakeholders can and should play early in the process of developing metrics such as the PPMs and market transformation metrics at issue here. Nothing in the decision suggested that Energy Division had the option of abandoning the public workshop in favor of ongoing closed discussions between staff and the utilities. And it is disheartening to see Energy Division take the position that input from anyone other than the utilities would not have changed the outcome of its process. In essence, Energy Division is saying that it believes that the input it might have received from TURN, DRA or other market participants through a workshop process would have been of no value, so that the product of the staff/utility collaboration should be accepted as if such a workshop and earlier comment opportunity had taken place.

There can be no serious dispute that the broad and public discussion enabled by a workshop provides for a dramatically different level of information sharing in terms of both quality and quantity than is likely to be achieved by circulating a draft document and inviting parties that were excluded from the development of that document to now comment on its contents. This is especially true where, as here, the critical product is virtually written in code. TURN defies anyone who did not participate in the Energy Division and utility collaboration to look at the material in Appendices A and B to the Draft Resolution and come away with any sense of what each PPM or market transformation indicator is intended to measure or, more generally, how this PPM or market transformation metric process will work going forward.

TURN does not ask the Commission to require Energy Division to conduct the workshop now, since there is a risk that the staff would only be “going through the motions” given its clear sentiment that it already knows everything it needs to know on the subject of PPMs and market transformation indicators. Instead, we urge the Commission to address the failure to conduct the workshop and makes clear that a collaboration between the staff and the utilities that excludes other

stakeholders and interested parties is NOT the equivalent of a workshop or other processes intended to permit meaningful participation by other parties. To that end, TURN suggests the following changes to Finding and Conclusion No. 4:

Despite the clear directives in D.09-09-047 calling for a process that includes input from stakeholders, including a workshop to better enable meaningful public process on the proposals, Energy Division and the utilities pursued a closed process that eliminated any such public input beyond comments on the initial advice letter. The end result of that process is that Energy Division and the Joint Utilities collaborated to develop the final set of Program Performance Metrics presented in Appendix A and the initial market transformation indicators presented in Appendix B. While we do not condone such disregard of our directives whether by the utilities or our own staff, under the unique circumstances present here we will consider the result of the collaboration between Energy Division and the Joint Utilities.

**2. Any PPM Developed Through This Process Must Have No Presumptive Value For Purposes Of Any “Risk Reward Incentive Mechanism” The Commission May Consider In The Future.**

The Draft Resolution appears to recognize the risk that the PPMs or market transformation indicators adopted as a result of the Energy Division/Joint Utilities collaboration might cause unintended consequences if applied wholesale in an as-yet undefined shareholder incentive mechanism for energy efficiency programs. While it includes language that seeks to limit such impact, TURN submits that the limitation needs to be clearer and more complete. The process that produced these PPMs and market transformation indicators failed to include a number of parties that will likely be very active participants in the development of any new RRIM structure in R.09-01-019. It would be patently unfair to permit ANY of the specific metrics adopted through this process to be presumed to carry any weight when considered in the context of developing a new RRIM, given that parties other than the Joint Utilities were not provided a meaningful opportunity to participate in the process that led to these metrics. To that end, TURN proposes the following modifications to Finding and Conclusion No. 4:

Commission adoption of these PPMs in this resolution does not prejudge the outcome of the Risk Reward Incentive Mechanism (RRIM) proceeding, Rulemaking (R.) 09-01-019. If R. 09-01-019 adopts a RRIM structure tied to PPMs or the market transformation indicators, there would be no presumption that any the Commission would consider at that time which specific metrics adopted here is valid, if any, may be appropriate for this purpose.

**3. The Draft Resolution Must Be Modified To Sufficiently Explain How The Proposed Metrics Meet The Criteria Laid Out In D.09-09-047.**

The Draft Resolution describes how the Energy Division's review of the Utilities' advice letter "found that the proposed PPMs did not meet the intent or specific requirements of D.09-09-047." Draft Resolution, p. 11 (emphasis in original). The discussion section of the Draft Resolution begins with a list of five categories of deficiencies present in the Joint Utility Advice Letter, including the inadequacy of the proposed scope of the PPMs as compared to what was called for in D.09-09-047, the absence of clear linkages between the PPMs and Strategic Plan objectives, and the failure to include "key data sources and market transformation indicators." Draft Resolution, pp. 6-8. The Draft Resolution now claims that the "process of refinement of Energy Division guidance and effective, iterative communication between Energy Division and the Joint Utilities was necessary to produce PPMs that meet the intent and specific requirements of D.09-09-047." Draft Resolution, p. 11.

TURN has no doubt that Energy Division has convinced itself that this last statement is true. However, the staff also convinced itself to eliminate the workshop called for in the Commission's decision, as well as any other broader process that might have permitted parties other than the staff and the utilities to participate in the "process of refinement" so that they might determine for themselves whether this statement is true. This omission is compounded by the failure to include in the draft resolution a sufficient description of how the proposed PPMs or market transformation indicators actually meet the "intent and specific requirements of D.09-09-047." As noted earlier, TURN suspects that the material included in Appendices A and B is largely indecipherable to anyone other than the Energy Division and utility staff that participated in its development. It is even more of a challenge to understand how this material meets the "intent and specific requirements of D.09-09-047" since the Draft Resolution largely contains only unsupported statements in this regard. In order to make the "Findings and Conclusions" 5-7 as proposed in the Draft Resolution, the document needs to more fully explain how the product of the private discussions that Energy Division carried on with the utilities in fact is in accordance with each of the specified elements of D.09-09-047.

Thank you for your attention to these matters. TURN would be glad to respond to any questions regarding these comments on Draft Resolution E-4385.

Yours truly,

/s/

Robert Finkelstein  
Legal Director

cc: Cathy Fogel, Energy Division  
All CPUC Commissioners  
Karen Clopton, Chief ALJ  
Frank Lindh, CPUC General Counsel  
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## **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 22, 2010 at San Francisco, California.

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/s/  
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