

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U 338-E) for Approval of its
2009- 2011 Energy Efficiency Program
Plans And Associated Public Goods Charge
(PGC) And Procurement Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And Related Matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
AND THE UTILITY REFORM NETWORK
ON PROPOSED DECISION AND
ALTERNATE PROPOSED DECISION ADDRESSING
PETITION FOR MODIFICATION OF DECISION 09-09-047**

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Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) submit these reply comments to the Proposed Decision (PD) and Alternate Proposed Decision (APD) addressing the petition for modification of D.09-09-047. These reply comments focus entirely on the issues regarding *ex ante* values for non-DEER measures and for customized projects. TURN and DRA urge the Commission to adopt the PD’s treatment of the non-DEER measures, and maintain the treatment of both the PD and APD for the customized projects.

I. THE PROPOSED DECISION APPROPRIATELY BALANCES THE COMMITMENT TO USE “BEST AVAILABLE INFORMATION” AND THE DESIRE FOR FINALITY AND CLARITY, AND IS THEREFORE SUPERIOR TO THE ALTERNATE DECISION WITH ITS RETREAT FROM THAT COMMITMENT.

In D.09-09-047, the Commission recognized a tension between its commitment to using the best available information for purposes of updating *ex ante* values and its desire to freeze those values to provide clarity and finality going forward. Unfortunately, events unfolded in a manner that achieved neither goal, even though it has been more than a year since the Commission issued the decision, and the Commission now must choose between two very different approaches to resolve the tension. TURN and DRA submit that the most appropriate resolution would provide very clear direction to the Utilities¹ and Energy Division to finish the updating process that bogged down earlier this year (when the Utilities submitted workpapers) and then freeze the results of that process. While this approach will require a small additional increment of time as compared to adopting an immediate freeze, it will avoid the abandonment of the “best available information” approach embraced in D.09-09-047.

In their opening comments, the Utilities describe the choice for non-DEER measures as being between finality and clarity, embodied by the APD, and an inescapable morass, represented by the PD. But not only is the Utilities’ version transparently self-serving, it ignores their role in creating the morass of the past year. Had the Utilities given Energy Division their full cooperation to achieve timely implementation of the non-DEER *ex ante* values, they would have long ago achieved the finality and certainty that they now claim to so crave. As the PD states, “This process does not lead to finality unless the Utilities and Energy Division ultimately

¹ DRA and TURN’s reply comments refer collectively to Pacific Gas and Electric (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) “Utilities.”

agree.”² But the current dispute has little to do with the Utilities’ purported desire to achieve finality and certainty, and instead results from their desire to freeze their preferred *ex ante* values, an outcome they apparently decided they would not achieve by working with Energy Division. And so the Utilities point fingers at Energy Division because staff had the temerity to do its job and to insist that the Utilities comply with prior Commission decisions by replacing outdated information with something closer to the “best available information” standard the Commission embraced in D.09-09-047.³

The specific arguments the Utilities make against the PD approach lack merit. At this point, the timing difference is one probably best measured in weeks. If the Commission chooses to adopt an immediate freeze at the expense of its commitment to best available information, that freeze would begin when the decision issues in December 2010. On the other hand, the PD would require the Utilities to incorporate certain revisions consistent with moving toward “best available” information, a process likely to extend no later than the end of February 2011 (assuming no undue utility delays, of course). So when Sempra/SCE extol the virtues of the APD because it gives a “clear and immediate end point to the freezing process,”⁴ the Commission must recognize making “immediate” mean December 2010 rather than February 2011 comes at the expense of abandoning “best available information.”

It makes no sense for PG&E to complain about the “continual shifting” of frozen values as if this were an attribute of the PD but not the APD.⁵ There is no “shifting” of any sort after the freeze is adopted in the PD. Nor does it make sense to claim that incorporating revisions recommended by Energy Division before implementing that freeze would violate the “guiding principle” of achieving finality and certainty.⁶ To the extent “finality and certainty” is achieved by freezing the *ex ante* values, the question remains about the quality of the information captured by

² PD, p. 16.

³ PG&E notes that only 2 of its 34 sets of non-DEER workpapers have achieved approval, as if this were somehow an indication that Energy Division is not doing its job. PG&E Comments, p. 7. PG&E’s explanation includes some obvious gaps: How many of the 32 non-compliant sets were deemed deficient as submitted by the utility? And what efforts did PG&E make to modify those sets in order to achieve compliance? How timely were PG&E’s efforts? And in how many cases did the utility create or contribute to a stalemate by simply refusing to budge despite Energy Division’s call for modifications?

⁴ Sempra/SCE Comments, pp. 4-5.

⁵ PG&E Comments, p. 5.

⁶ PG&E Comments, p. 6.

that freeze. A freeze that reflects the Energy Division revisions would be just as final and certain as one that ignored those revisions, but would have the advantage of achieving greater consistency with the “best available information” language that TURN and DRA submit should be an equal “guiding principle” from D.09-09-047 on this subject. And the notion that the APD is better supported by the “record” because it references the utility-submitted workpapers as the “one final and complete set of *ex ante* values”⁷ is an unacceptable result that values expediency at the sake of accuracy. For starters, the Utilities can only make this claim because they stymied the Energy Division effort to create a final and complete set of *ex ante* values through the staff’s workbook process that preceded the utility workpapers .

The Commission has a “garbage in, garbage out” problem with these workpapers; no matter how complete they are, important elements of them are grossly inaccurate at present. As DRA and TURN explained in their opening comments, some of the data in the utility workpapers is literally from the last century.⁸ Rather than treat “completeness” as if it were the be-all, end-all for purposes of *ex ante* value estimates, the Commission needs to focus on achieving values that are not only “complete” but also “accurate” and “up-to-date” (or at least of this decade).

II. RATHER THAN MAKE CHANGES IN RESPONSE TO UNSUPPORTED FEARS OF FUTURE IMPLEMENTATION CHALLENGES, THE COMMISSION SHOULD ADOPT THE ENERGY DIVISION PROPOSAL WITH THE EXPLICIT EXPECTATION THAT THE UTILITIES, IMPLEMENTERS AND STAFF WILL WORK IN GOOD FAITH TO SUCCESSFULLY IMPLEMENT THAT PROPOSAL.

The Commission needs to separate the rhetoric from the reality regarding the approach for *ex ante* values for customized projects. Facing identical outcomes in the PD and APD despite their earlier unsupported allegations regarding the Energy Division proposal, the Utilities now claim that adoption of Energy Division’s proposal would cause them to abandon all such customized projects due to lack of cost-effectiveness.⁹ No such claims were raised when the

⁷ PG&E Comments, p. 5.

⁸ Having a “complete” set of encyclopedias is not much consolation if you need to research Facebook and the “F” volume is from 1999.

⁹ PG&E Comments, p. 3 (“If adopted, the Energy Division’s process may cause some IOUs to suspend their customized program offerings altogether.”); Sempra/SCE Comments, p. 6 (“[T]he Energy Division Proposal also includes ... numerous requirements that collectively make the process around customized projects exceedingly burdensome, to the point that it is no longer cost-effective or beneficial to offer customized programs.”)

same Utilities commented on the same proposal when it was issued in October. The Utilities do not point to anything that might support or explain the new and dire predictions. Indeed, the only change seems to be that both the PD and APD would adopt the Energy Division's proposal, and the Utilities are committed to preventing that outcome.

The reality is that for the 2010-12 portfolios some tens of millions of ratepayer dollars will flow to fund customized projects, and the Commission will rely on those projects to deliver a very substantial portion of the overall savings necessary to meet California's energy efficiency goals (20-35% of the Joint Utilities energy portfolio savings¹⁰). The amounts to be spent and the savings to be achieved represent dramatic expansions as compared to past customized project efforts. Under these circumstances the Commission should opt for the approach that better ensures that the customized project funds are spent and the expected levels of savings are accurately forecast. The Energy Division proposal best fits those criteria, largely because it builds upon and expands past efforts.

The Commission may wish to directly address the pessimism reflected in the comments submitted by the Utilities as well as EnerNOC/Global. The Energy Division proposal has not yet been implemented or even attempted. The PD and APD each express confidence that the proposal can be implemented in a manner that does not unduly burden customers, cause unnecessary delay or add additional duties that might impede Energy Division from successfully performing its work.¹¹ Yet the Utilities and EnerNOC/Global are prepared to declare the entire effort a failure for no reason other than they predict it will fail.¹² PG&E goes so far as to declare the adoption of the Energy Division proposal as not being supported by the record, because the Utilities and EnerNOC described theoretical problems that might happen and both the PD and APD disagree with that prediction.¹³ There is a particular danger that the statements of opposition before the proposal is even implemented will become a self-fulfilling prophecy, as non-cooperative Utilities and program administrators can hamstring successful implementation

¹⁰ Sempra/SCE Comments, p. 2.

¹¹ PD, p. 20; APD, p. 19.

¹² PG&E Comments, p. 9 ("some aspects of the Energy Division's process are not only burdensome, they are impossible to comply with at this time."); Sempra/SCE Comments, p. 6 (the Energy Division Proposal includes "numerous requirements that collectively make the process around customized projects exceedingly burdensome."); EnerNOC/Global, p. 7 ("the Energy Division's approach will result in a tremendous burden for all entities, including Energy Division.")

¹³ PG&E Comments, p. 8.

of the proposal. To minimize the risk that this could happen, the Commission should make clear in its decision that it expects all parties to behave in a manner most consistent with doing everything practicable to successfully implement the proposal. The PD and APD already direct Energy Division to assess the new process as it is implemented, and indicate the Commission's sensitivity to creating any undue burden on customers, Utilities or staff.¹⁴ Adding a brief reminder that customers, Utilities and staff are equally expected to work in good faith to successfully implement the new process might help avoid future problems.

Finally, the Commission should summarily reject the "proposed modifications" to the Energy Division proposal that were attached to the Sempra/SCE comments and supported by all of the Utilities. Most obviously, the attachment is a lengthy single-spaced document that substantially re-writes the Energy Division proposal. Adopting such a wholesale modification when first seen in Rule 14.3 comments would be procedurally defective. Even more importantly, the Commission should reject the Utilities' characterization of this new proposal as a "beneficial compromise between Energy Division Proposal and the IOUs Proposal."¹⁵ Perhaps the Utilities believe they are compromising with themselves; perhaps it is an inadvertent admission of a compromise of integrity. But this is certainly no "compromise" with the Energy Division proposal. Rather, it is a gutting of that proposal, with the virtually complete elimination of important elements of Energy Division's approach, and a dramatic scaling back of others. And the only "compromise" achieved by adopting the Utilities' proposal here would be of the Commission's commitment to adopting meaningful *ex ante* values for these programs. Any revision to the Energy Division proposal must ensure, at a minimum that the default values for realization rates for custom projects are the ones reflected in the Energy Division's 2006-2008 Energy Efficiency Evaluation Report, which is part of the record in Rulemaking (R.) 09-01-019.

¹⁴ PD, p. 20.

¹⁵ Sempra/SCE Comments, p. 3

Respectfully submitted,

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December 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK ON PROPOSED DECISION AND ALTERNATE PROPOSED DECISION ADDRESSING PETITION FOR MODIFICATION OF DECISION 09-09-047** ” to the official service list in **A.08-07-021, et al** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on December 13, 2010 at San Francisco, California.

/s/ NANCY SALYER

NANCY SALYER