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)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON

PROPOSED DECISION OF ALJ PULSIFER REGARDING RRIM REFORMS

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REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED DECISION OF ALJ PULSIFER REGARDING RRIM REFORMS

Pursuant to Rule 14.3 the Utility Reform Network ("TURN") submits these comments on the Proposed Decision of ALJ Pulsifer ("PD") issued on November 15, 2010 concerning modifications to the Risk/Reward Incentive Mechanism (RRIM) for 2010-2012 energy efficiency activities. TURN previously filed comments on the PD on December 6, 2010.

1. Parties Ignore the Real Risk Reduction in Proposing Higher Caps and Sharing Rates

The utilities argue that the cap on earnings should be $350 million instead of $189 million, and that the sharing rate should be 12%. NRDC likewise argues for a higher cap and sharing rate. The utilities do not provide any detailed analysis of relative risk but simply claim that higher profits are necessary to needed to be consistent with the importance of energy efficiency in California. NRDC calculates that the PD would result in incentives of $38-52 million at 100% of goal accomplishment. The 2006-08 mechanism expected incentives of $323 million at 100% of goals and had a cap of $450 million. NRDC characterizes these reductions as "out of proportion to the relatively moderate reduction in risk associated with the 2010-12 mechanism." (NRDC, p. 5-6). NRDC's characterization of the risk reduction as "moderate" is contrary to the facts, contrary to utility characterizations, and ignores the potential impact of federal law changes coming into effect next month.

The fact is that the change from using *ex post* to using *ex ante* numbers, if applied to the 2006-2008 mechanism, by itself resulted in *an increase of almost $300 million in potential incentives*![1] The utilities have long recognized this fact, and as a result have bitterly opposed using *ex post* numbers. Moreover, eliminating the penalty provision would result in a swing of about $75 million just for PG&E in the 2006-2008 results. The

[1] For example, the difference in total incentives between S3-T1 ($310 million - RRIM with utility reported *ex ante* numbers) and S6-T1 ($26 million – RRIM based on evaluated *ex post* numbers).

utilities have consistently alluded to the "relative sensitivity" of RRIM results to the difference in using *ex ante* versus *ex post* numbers.[2]

TURN does not view the elimination of a potential swing of about $350-400 million as "moderate risk reduction." If anything, the changes in the DRA mechanism (5% reduction for each risk factor) are way too low. Evaluating programs based on the same *ex ante* numbers used to forecast savings removes almost all performance risk. The only remaining risk is the degree of program adoption and participation. But lower participation also reduces costs, so that this risk is negligible above a certain minimum participation level. While lower participation will reduce absolute energy savings, there is absolutely no risk that the utilities will not get some incentives for energy efficiency activities in 2010-2012, irrespective of effort or performance.

NRDC's risk analysis is also skewed due to the use of forecast numbers and *ex ante* values for both 2006-2008 and 2010-2012, without any consideration of potential actual outcomes. In our opening comments TURN emphasized that the validity of the proposed mechanism hinged strongly on the accuracy of the "frozen" *ex ante* numbers. The *ex ante* NTGR numbers in the proposed decisions in A.08-07-021 are similar to or higher than the results of the 2006-2008 evaluations. Our confidence in their accuracy is quickly diminishing. And these numbers do not in any way reflect the fact that starting next month – January 2011 - California is implementing the federal legislation requiring higher light bulb efficiency. The phase-out of 100-watt incandescents starts in January 2011, and other incandescents will be phased out for the California market starting in 2012. While complete stock turnover will undoubtedly take some time, it is astonishing that given these legal mandates the utilities are still forecasting a very large level of their 2010-2012 savings from promoting CFL sales through their rebate programs.

2. NRDC's Analysis Concerning the Proper Ratio for Adjusting Risk Misinterprets the PD and Is Inconsistent with a Shared Savings Model

NRDC alleges that the PD "recognizes" that the proper ratio to use to measure risk reduction is the ratio of "energy savings" rather than "net benefits." NRDC misinterprets the language in the PD. The PD adopts DRA's methodology and clearly

[2] See, for example, Joint Utility Comments on True-Up Process, April 20, 2010, p. 10; PG&E Comments on Pulsifer PD, October 18, 2010, p. 9.

explains that this methodology reduced potential earnings "to reflect the lower level of *net benefits* expected from a 2009-2011 portfolio compared to the 2006-2008 portfolio."[3] A brief skim of the relevant Section 5.7.3 of the PD shows that the term "net benefits" is used at least eight times, followed by the use of the term PEB (which is also net benefits). In one case the PD refers to "energy efficiency savings," which in context clearly means net benefits. To take this one instance and conclude that the PD meant to use "energy savings" rather than "net benefits" is erroneous at best. The PD is absolutely clear on adopting the DRA methodology of adjusting the earnings payout based on the ratio of net benefits.

It may be that NRDC has a problem with DRA's underlying method, since NRDC complains that it is unfair to reduce the potential incentives if the net earnings are lower because efficiency savings "now cost more to achieve." TURN appreciates the dilemma; however, it is rooted in the whole model of "shared savings." If we are to pay the utilities a split of the "shared savings" as the incentive paradigm, then it makes sense to look at the potential shared savings amounts to calculate a reduced earnings level.

Fundamentally, the issue always gets back to the potential absolute level of incentives. Even with a "shared savings" model, there is absolutely no basis for calculating "supply-side" incentive levels. Not only is the risk different, but there is no chance that utilities will "choose" EE spending over supply-side investments. EE will hopefully result in a reduced need for generation in the future, but that has nothing to do with the level of incentives. The utilities will continue to invest as much capital as possible in supply-side activities. EE incentives may be warranted for performance, but not for some fictitious goal of changing utility interest in capital spending.

3. PGE's Latest Attempt to Eliminate the TRC Is Procedurally Deficient and Provides an Inadequate Basis for Such a Dramatic Change

PG&E proposes a dramatic change by substituting the use of the Program Administrator Test for the current TRC/PAC split adopted in D.05-04-051. The utilities have consistently pushed this position in order to maximize the PEB (and thus earnings). Back in May of 2009 the utilities argued that it is difficult to measure incremental

[3] PD at 47 (emphasis added).

measure costs, and that changing utility accounting practices will motivate customers to spend more of their own money. TURN has already responded to those arguments.

Now, PG&E comes up with a new rationale relying on one ACEEE abstract that has never been introduced in the record of this proceeding. The Commission cannot rely on such a document, which has received no review or attention in this proceeding, to make such a significant policy shift.

Nevertheless, TURN will comment briefly on the abstract. It makes two arguments. The first argument in the ACEEE abstract is that there are numerous non-energy benefits to the participant that are not included in the calculation. The authors here are not talking about environmental benefits, but rather suggest we should subsidize more expensive products that include design features that promote product sales (eg. attractive design, other features for comfort, durability, etc.). While the authors may have valid points that relate to the marketing of efficiency products, TURN suggests that this analysis is entirely inadequate and ill-defined to be a basis for eliminating the use of the TRC. Should ratepayers subsidize a $5000 refrigerator to a high-end customer just because it has lots of features that sell in the high-end market, but its efficiency is no better than a $2000 refrigerator?

The second argument is that "customer costs" are not considered in supply-side investments, so that "no one cares what the cost of constructing the plant may have been" for purposes of approving a PPA. TURN is not aware of any suppliers that offer PPA's for supply resources that do not expect to fully cover all costs – plus a profit – from the payment streams under the PPA. Indeed, the entire example is makes little sense. The reason no one cares if a generator sells at a loss (or requires another revenue stream) is that the benefit of the sale (i.e. the power) inures to all ratepayers (the cost is allocated equally). A subsidy (rebate or otherwise) to a private party for an energy efficiency investment reduces power purchase costs (i.e. the avoided cost), but much of the benefit flows to the single individual who makes the efficiency investment. This individual is the one who as a result uses less electricity and has a lower bill. There is thus a rationale for ensuring that there is a *net savings* when the participant cost is included. If there is no net savings even to the participant, why should society pay them a subsidy?

4. TURN Agrees the Customer Projects Should be Included in the RRIM Mechanism

Several parties note that there will be adequate parameter certainty to include customer projects in the RRIM. TURN agrees and supports incorporating customer projects in the mechanism based on the data as corroborated by the Energy Division.

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Respectfully submitted,

____*/S/ Marcel Hawiger*____

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<u>CERTIFICATE OF SERVICE</u>

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On December 13, 2010, I served the attached:

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on all eligible parties on the attached list **R.09-01-019** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

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

/S/
Larry Wong

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