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)

COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED DECISION OF COMMISSIONER PEEVEY REGARDING THE ENERGY EFFICIENCY INCENTIVE TRUE-UP FOR 2006-2008

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December 6, 2010

COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED ALTERNATE DECISION OF COMMISSIONER PEEVEY REGARDING THE ENERGY EFFICIENCY INCENTIVE TRUE-UP FOR 2006-2008

Pursuant to Rule 14.3 the Utility Reform Network ("TURN") submits these comments on the Proposed Decision of Commissioner Peevey ("Peevey PD") issued on November 16, 2010.

The Proposed Decision of President Peevey provides yet a third way to calculate utility profits for energy efficiency activities in 2006-2008. ALJ Pulsifer used the basic structure of the incentive mechanism adopted in D.07-09-043 (as modified by D.08-01-042) and the results of the Final Evaluation Report to true-up the relevant input parameters, as had been envisioned when the exhaustive EM&V methodology was authorized by the Commission.

Commissioner Bohn's Alternate PD affirmed in theory that that the Final Evaluation Report was properly conducted, but decided to use the utility's *ex ante* numbers in the face of alleged uncertainties and disputes. In essence, in the face of an alleged "dispute," Commissioner Bohn decided to trust the utility's numbers over those provided by the Energy Division based on detailed and extensive work by some of the pre-eminent consulting firms in this field.

President Peevey takes a wholly different approach. His Alternate acknowledges that the Commission has already technically "suspended" the RRIM mechanism. President Peevey explicitly adopts use of the *ex ante* parameters, but to reflect the lower utility risk the Peevey Alternate uses a 7% sharing rate.

TURN continues to support adoption of the Pulsifer PD as the most equitable outcome in this proceeding. However, *if* the Commission chooses the Peevey PD, it

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should adopt the results of Scenario S3-T6, which properly accounts for the costs of energy efficiency activities.

1. The Rationale of the Peevey PD is Based on Incomplete History and a Faulty Premise

The Alternate Proposed Decision of President Peevey concludes that updating various parameters is fundamentally unfair to the utilities because it is simply not reasonable to expect that the utilities could modify their program portfolios in responses to "preliminary" assessments and changes in information which were "subject to additional review by parties and the Energy Division."

The primary issue, of course, concerns the net-to-gross ratio for the residential lighting program. This is an issue that the Commission explicitly addressed in D.05-09-043. The Pulsifer PD reviewed the history and concluded:

> We disagree that program administrators were unable to adapt programs during the 2006-2008 cycle as a result of the timing of the release of the Energy Division findings in October 2007. The preliminary results of the EM&V studies of the 2004-2005 programs were well-known to the IOUs throughout the 2006-2008 period, as there were numerous stakeholder meetings and discussions before the evaluation report was finalized in October of 2007. One of the reasons that the results of these studies were delayed was the continued opposition of the IOUs to the preliminary results.[1]

The Peevey Alternate reviews the same history but reaches a different conclusion:

> While the fact the Commission took this position [in D.05-09-043] is clearly indicative of concerns regarding the uncertainty around the NTG ratios, and the possibility that the NTG ratios used in developing the portfolios were too high, in our view because these concerns are expressed only in qualitative terms and based on preliminary results, this information provided an insufficient basis for the utilities to act. Given the preliminary nature of the information available to the utilities over the 2006-2008 period regarding changes to key parameters, the

[1] ALJ Pulsifer PD, Sec. 5.5.1, *mimeo.* p. 52.

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> expectation that they should have dramatically modified their portfolios is unreasonable.[2]

One might presume that this is a policy disagreement that cannot be settled by fact. However, the Peevey Alternate glosses over the history of the NTG issue. The record in this proceeding shows that concern about the accuracy of the 0.80 *ex ante* NTG number predates by far the 2005 CPUC decision. The need for more accurate NTG numbers was memorialized in D.00-07-017, and the fact that the *current NTGR of 0.80* was a default value based on historical averages of *dissimilar programs* was explained in the September 2001 CALMAC Workshop Report.[3] To reward the utilities for not modifying programs based on the notion that any changes to the NTGR were "preliminary" simply rewards ten years' of intransigence in the face of overwhelming evidence that the default *ex ante* number of 0.80 was too high for an upstream incentive program.

Indeed, almost six years ago President Peevey put the utilities on notice that they must improve their ability to adopt energy efficiency programs to the changing market place:

> In order to meet their goals, the utilities absolutely <u>must</u> become more nimble and innovative when it comes to delivering energy savings to their customers. If this happens, then we will be on the right path. If this does not happen, I will be the first on this Commission to propose that we find a different administrative option by the end of this next three-year program cycle.[4]

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[2] Peevey PD, *mimeo.* p. 41.

[3] See, TURN Reply Comments in this docket, June 11, 2010, p. 6-12 for a more complete history of the NTGR issue. No party has disputed the fact that the 0.80 default number was adopted in 2001 based on 1994-99 resutls and was supposed to be updated as soon as more relevant information was available.

[4] Peevey Concurrence to D.05-01-055, January 27, 2005.

In his Proposed Decision, President Peevey now accepts that the utilities cannot be expected to modify their programs unless they have "final" results of evaluation studies. We can only hope that President Peevey will remain true to his promise and call expeditiously for a new administrative structure.

However, even the entire underlying premise – that it is unreasonable to expect that the utilities should have dramatically modified their portfolios – is actually contradicted by the utilities' own portfolio performance in 2006-2008. The utilities *did in fact dramatically modify their portfolios in 2006-2008!* The problem is, they modified them in exactly the wrong direction in order to maximize profits rather than incremental energy savings. While the 2006-08 program applications had forecast spending on upstream lighting of approximately $240 million, all three electric utilities significantly increased spending in this category, so that the actual spent was almost $380 million. The utilities increased spending on indoor lighting by over 50%. About 58% of all 2006-08 savings derived from interior lighting, despite the fact that interior screw lighting had "one of the lowest realization rates."[5]

Moreover, there is also one example of a utility positively changing its program design in response to interim data. SCE pointed out that "its energy savings estimates were adjusted and updated over the course of the 2006-2008 program cycle … based on a thorough review and evaluation of newly released information sources."[6] Whether due to these updates or not, SCE's upstream lighting program was also unique in targeting

[5] Draft Final Evaluation Report, April 15, 2010, p. 93-95.
[6] SCE Comments on Bohn Alternate, October 18, 2010, p. 10.

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smaller stores, with the result that SCE's *ex post* NTG was 0.64, as compared to PG&E's 0.49.[7]

The utilities increased their focus on CFLs despite continuing recommendations from some parties to focus on other market sectors. Indeed, while even the Commission has encouraged the utilities to shift their program focus, the utilities continue to forecast a similar level of savings from CFLs from their 2010-2012 programs. Rewarding them for past intransigence will certainly not help to advance the Commission's ostensible goal to pursue the strategic planning initiatives.

2. All Costs Should be Properly Included, as in Scenario S3-T6

The Peevey PD selects Scenario S3-T1 as the appropriate scenario for calculating the PEB, and applies the 7% sharing rate to the resulting PEB of $2,9480,260,634 (total for all utilities), resulting in total earnings of $206,378,244. In Section 6 the APD discusses how most of the other factors at issue in the various 'template permutations' affect the calculation of the sharing rate (i.e. performance relative to the MPS) rather than the calculation of the PEB. Since the APD fixes the sharing rate at 7%, these issues become moot.

However, there is one scenario that directly impacts the PEB. Scenario S3-T6 adjusts the net benefits by the $143.7 million of incentives already paid. *If* the Commission chooses to adopt the Peevey APD (which TURN certainly does not recommend), then at a minimum it should use Scenario S3-T6 to calculate the PEB. The result is to lower the true-up claim for all utilities from $62,683,689 to $52,625,071, as illustrated in Appendix A.

[7] KEMA, "Final Evaluation Report: Upstream Lighting Program," Table 25, p. 54.

Including the already paid incentives with program costs is consistent with Commission policy and is necessary to reflect the cost-effectiveness of the programs, as is required by statute.[8] The Commission agreed that shareholder incentives represent a true economic cost for purposes of calculating program cost effectiveness, but decided that those incentives amounts should not be included *on a forecast basis* in the PEB calculation.[9] However, in making that determination the Commission relied on the assumption that actual incentive costs would be unknown until after the fact, since there was a claw-back provision in the original true-up mechanism. For this reason, the Commission concluded that "until the final earnings claim is authorized for a particular program cycle, we will also need to estimate the total cost of shareholder incentives in evaluating portfolio cost-effectiveness for that cycle." However, because the claw-back provision has been eliminated, the first two interim payments[10] to the utilities are now a known sunk economic cost. These interim payments should thus be included in the cost component to calculate a reduced net benefits amount.

Including this cost is essential to comply with statutory requirements of cost-effectiveness for utility energy efficiency activities. Accurate costs are one-half of the cost-effectiveness equation. The Commission declined to update the incremental measure costs as part of the final true-up. Yet *increased costs* are precisely the reason why net benefits from the 2010-2012 portfolio are much lower. There is high probability that the benefit/cost calculations for the 2006-2008 programs are unreliably high, but the

[8] For example, §§ 381(c), 454.5(b)(9)(C), 454.55.
[9] D.07-09-043, Sec. 10.1.
[10] The first two interim payments totaled approximately $144 million.

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Commission at least had an excuse for not updating the IMCs. There is absolutely no excuse for not including the known incentive costs in the calculations.

December 6, 2010

Respectfully submitted,

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APPENDIX A: Calculation of Incentives Using Scenario S3-T6

	Third Earning Claim (PY2006-2008 True-Up)				
	PG&E	**SCE**	**SDGE**	**SoCalGas**	**Total**
MPS Average Metric Performance	121%	98%	93%	112%	110%
PEB at MPS Threshold	$1,486,366,077	$985,273,728	$230,997,869	$245,622,959	$2,948,260,634
Total Earnings at 7%	$104,045,625	$68,969,161	$16,169,851	$17,193,607	$206,378,244
True-Up Claim on PEB	$29,115,011	$18,616,813	$5,069,279	$9,882,586	$62,683,689
1st Interim Claim Earnings	$41,500,000	$24,700,000	$10,800,000	$5,200,000	$82,200,000
2nd Interim Claim Earnings	$33,430,614	$25,652,348	$300,572	$2,111,021	$61,494,555
Total Interim Claim Earnings Received	$74,930,614	$50,352,348	$11,100,572	$7,311,021	$143,694,555
Net PEB (PEB less earnings received)	$1,411,435,463	$934,921,380	$219,897,297	$238,311,938	$2,804,566,079
Earnings on Net PEB at 7%	$98,800,482	$65,444,497	$15,392,811	$16,681,836	$196,319,626
True-Up Claim on net PEB	**$23,869,868**	**$15,092,149**	**$4,292,239**	**$9,370,815**	**$52,625,071**
Difference in Claims	$(5,245,143)	$(3,524,664)	$(777,040)	$(511,771)	$(10,058,618)

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