

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the  
Commission's Energy Efficiency Risk/Reward  
Incentive Mechanism.

Rulemaking 09-01-019  
(Filed January 29, 2009)

**THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS  
ON THE DECISION REGARDING THE RISK/REWARD INCENTIVE MECHANISM  
REFORMS**

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December 13, 2010

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**I. INTRODUCTION**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these comments on the Proposed Decision Regarding the Risk/Reward Incentive Mechanism Reforms, which was issued November 15, 2010 (PD). DRA responds to some of the comments filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas),<sup>1</sup> the Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).

**II. DISCUSSION**

- A. Given the substantial decrease in risk that the PD's proposed incentive mechanism would provide, the Commission should reject the request of NRDC and the Utilities to increase the cap on earnings and adopt a shared savings rate as high or higher than the current 12% maximum.**

The PD would eliminate any possibility of penalties, remove the minimum performance standard, use *ex ante* values to calculate energy savings for purposes of the incentive mechanism, and greatly simplify the procedure for the annual interim incentives earnings claim. DRA therefore disagrees with NRDC's characterization of the changes as producing a "relatively modest reduction in risk:"<sup>2</sup> there is no downside to the incentive mechanism as proposed in the PD.<sup>3</sup> In recognition of the significantly lower risks under the proposed new incentive

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<sup>1</sup> DRA's comments refer collectively to PG&E, SCE, SDG&E, and SoCalGas as "Utilities".

<sup>2</sup> NRDC supports adding a cost-effectiveness guarantee, which sounds beneficial in theory. However, given the failure to adhere to the cost-effectiveness guarantee or impose penalties during the 2006-2008 program cycle, DRA believes it is better to recognize that it is unlikely that such a guarantee would be enforced and to adjust the shared savings rate and earnings cap accordingly. NRDC Comments, p. 3. *See also* Southern California Edison Company's Comments on the Proposed Decision of Administrative Law Judge Pulsifer Regarding Risk/Reward Incentive Mechanism Reforms, December 6, 2010 (SCE Comments), p. 8.

<sup>3</sup> Comments of the Natural Resources Defense Council on the Proposed Decision Regarding Risk/Reward Incentive Mechanism Reforms, December 6, 2010 (NRDC Comments), p. 6.

mechanism, the PD would lower both the shared savings rate and the earnings cap commensurate with the decreased risk

NRDC claims that the PD errs by arbitrarily lowering “the \$450 million cap based on the ratio of expected net benefits for the 2010-2012 cycle compared to the expected net benefits when the 2006-2008 RRIM [was] adopted.”<sup>4</sup> According to NRDC the PD “appears to *intend* to adjust the 2006-2008 cap so that it will be at the lower end of the comparable earnings for supply-side resources for the 2010-2012 portfolio” based on “differences in expected energy efficiency savings applicable to the 2010-2012 portfolio relative to the 2006-2008 portfolio.”<sup>5</sup> In fact, the PD’s use of net benefits as the basis for the cap is consistent with DRA’s proposed incentive reforms, which recommend a cap based on benefits provided, not total program costs or gross energy savings.<sup>6</sup>

NRDC and the Utilities now advocate for a higher cap and higher shared savings rate in order to promote supply side comparability.<sup>7</sup> Yet as The Utility Reform Network (TURN) explained in its opening comments, an incentive mechanism that attempts to “mimic profits for supply-side activities” is neither necessary nor sufficient to reduce or eliminate the Utilities’ inherent bias toward supply side capital investments; an energy efficiency incentive mechanism “simply rewards the utility for a particular activity.”<sup>8</sup> NRDC points out that under the 2006-2008 incentive mechanism, the Utilities incentive payments would amount to “only” 1-2% of their corporate income.<sup>9</sup> It is not feasible to pay energy efficiency incentives at a level that makes

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<sup>4</sup> NRDC Comments, p. 7.

<sup>5</sup> NRDC Comments, p. 7, citing PD p. 45.

<sup>6</sup> The Division of Ratepayer Advocates’ Post Workshop Comments and Further Recommendations for the 2009-2011 Shareholder Incentive Mechanism, August 7, 2009, p. 8.

<sup>7</sup> NRDC Comments, p. 7; *see also* Comments of San Diego Gas & Electric Company and Southern California Gas Company on Administrative Law Judge Pulsifer’s Proposed Decision Regarding Risk/Reward Incentive Mechanism Reforms, December 6, 2010, (SoCalGas/SDG&E Comments), p. 6; Comments of Pacific Gas and Electric Company on the Proposed Decision Regarding Risk/Reward Incentive Mechanism Reforms, December 6, 2010, (PG&E Comments) pp. 9-11; Southern California Edison Comments on the Proposed Decision of Administrative Law Judge Pulsifer Regarding Risk/Reward Incentive Mechanism Reforms, December 6, 2010, (SCE Comments), pp. 6-7.

<sup>8</sup> Comments of The Utility Reform Network on Proposed Decision of ALJ Pulsifer Regarding RRIM Reforms, December 6, 2010, p. 1.

<sup>9</sup> Comments of The Natural Resources Defense Council (NRDC) on RRIM Earnings True-Up for the 2006-2008 Program Cycle, October 18, 2010, pp. 2-3.

pursuit of energy efficiency truly comparable to the profits they earn from investments in power plant, so supply side comparability is not a model that the Commission should follow in establishing the cap or the shared savings rate. Instead, if the Commission believes that an incentive mechanism is necessary for the Utilities' administration of energy efficiency programs, the sharing rate and cap should reflect the absence of risk related to administration of those programs.

**B. The PD's proposed holdback of 50% would protect ratepayers from the risk of costs higher than expected.**

The Utilities contend that a 50% hold back is not necessary because the use of *ex ante* values will protect ratepayers from the risk of overpaying interim incentives.<sup>10</sup> However, while some of the *ex ante* measures will be frozen, SCE admits that the "Proposed Decision could be read to allow for true-up of incremental measure costs (IMC) after the conclusion of the program cycle."<sup>11</sup> DRA agrees that the PD appears to require true-up of IMCs and that fact alone would justify higher hold backs to prevent ratepayers from the risk of overpayment given the current design of the incentive mechanism. Even if IMCs were not trued up, the 50% holdback would protect ratepayers from the risk of overpayment related to higher than expected program costs or lower than expected installation rates.

**C. The Commission should reject SCE's request to exclude installation rates from the final true up process, especially if it adopts the Utilities' inaccurate workpapers to forecast ex ante values for the 2010-2012 program cycle.**

SCE requests that the Commission "clarify that the verified customers measure installation parameter of the true-up is only applicable to programs that do not utilize an *ex ante* installation rate or in-service rate estimate."<sup>12</sup> SCE claims that the in-service rate to account for compact fluorescent lamps (CFLs) that have been removed early or otherwise not installed is "10% for residential CFLs and 8% for nonresidential CFLs [and] is included in Commission-frozen *ex ante* workpapers."<sup>13</sup> DRA disagrees that the Commission had frozen the *ex ante* values

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<sup>10</sup> PG&E Comments, pp. 11-12; SDG&E/SoCalGas Comments, p.8; SCE Comments, p.11.

<sup>11</sup> SCE Comments, p. 4.

<sup>12</sup> SCE Comments, p. 4.

<sup>13</sup> SCE Comments, p. 5.

at the time SCE submitted its comments on the PD: that decision is pending in Application 08-07-021 and will happen no earlier than December 16, 2010.<sup>14</sup> The problem with freezing the in-service rate as SCE requests is that it is based on data from the early 2000's rather than more recent evaluation, measurement and verification studies. Thus, even if it might otherwise be reasonable to use *ex ante* in service rates, it would not be reasonable to accept those rates unless the Commission allows the Energy Division to review and verify the *ex ante* values used for the 2010-2012 program energy efficiency program cycle.

### III. CONCLUSION

DRA respectfully requests that the Commission adopt the PD, but only if accurate *ex ante* values are used to estimate energy savings expected for the 2010-2012 program cycle.

Respectfully submitted,

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<sup>14</sup> The Proposed Decision of Administrative Law Judge Gamson Addressing the Petition for Modification of Decision (D.) 09-09-047 (PD) and the Alternate Proposed Decision of Commissioner Grueneich Addressing the Petition for Modification of D.09-09-047 (APD). Decision (D.) 09-09-047 in A.08-07-021 are on the Commission's December 16, 2010 agenda.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**THE DIVISION OF RATEPAYER ADVOCATES’ REPLY COMMENTS ON THE PROPOSED DECISION REGARDING THE RISK/REWARD INCENTIVE MECHANISM REFORMS**” to the official service list in **R.09-01-019** 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/      MARTHA PEREZ  
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Martha Perez