

**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)

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND  
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON  
ADMINISTRATIVE LAW JUDGE PULSIFER'S PROPOSED DECISION REGARDING  
RISK/REWARD INCENTIVE MECHANISM REFORMS**

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**I.  
INTRODUCTION**

Pursuant to the Commission’s Rules of Practice and Procedure and the Rulings of the Presiding ALJ and Assigned Commissioner, Southern California Gas Company (“SoCalGas”) and San Diego Gas and Electric Company (“SDG&E”) (collectively, the “Sempra Utilities”) respectfully offer their Comments on the Proposed Decision (“PD”) of Administrative Law Judge Thomas Pulsifer in the above captioned proceeding.

The Sempra Utilities agree with the PD’s continuation of Commission policy: “Providing incentives strengthens the commitment to California’s Energy Action Plan II, treating energy efficiency as the first resource to meet California’s energy demand.” Providing the utilities with incentives to pursue vigorously energy efficiency savings through Commission-approved, utility-administered energy efficiency program portfolios remains the single most effective means of delivering “the maximum socially-desirable level of energy efficiency programs and services, while protecting ratepayers’ interests through the appropriate cost containment mechanisms” (PD, p.3).

The Sempra Utilities further agree with several of the specific reforms contained in the PD, disagree with others, and urge the Commission to resolve all facets of the risk/reward mechanism (“RRIM”) at once, rather than address some elements of the RRIM now and leave other critical elements of the RRIM to unspecified, unscheduled future proceedings, as prescribed in the PD. The Sempra Utilities contend that effective resolution of sustained RRIM controversies requires a comprehensive decision that balances the many moving parts of the

RRIM (i.e. treatment of non-resource program and custom measures savings) that each directly bear on the ability of the mechanism to provide a reasonable opportunity for “meaningful earnings” sufficient enough “to send a strong message to the utility to pursue cost-effective energy savings as quickly and as aggressively as possible throughout the program cycle” (PD, p.12). Piecemeal treatment of RRIM issues in the PD invites further unnecessary controversy, as it represents an incomplete consideration of material RRIM issues and thus guarantees a lack of balance in any decision the Commission reaches regarding RRIM matters.

Although expected decisions in other energy efficiency proceedings will address related specific energy efficiency controversies, the Sempra Utilities further note that the PD’s attempt to rely upon “reasoned judgment” to craft a decision to reach a balance between reduced certainty and reward opportunity captured in the 5.4% shared savings rate is deficient, insufficient, and premature. This exact issue is the subject of a pending decision concerning 2006-2008 incentive rewards in this proceeding, and there is no compelling reason why the balancing of risk and certainty applied to 2006-2008 incentives should not inform a final shared savings rate for the 2010-2012 program cycle. The Sempra Utilities contend that, as it stands in this PD, the proposed 5.4% savings rate does not achieve the Commission’s supply-side equivalence objectives for energy efficiency.

Furthermore, there is no compelling reason why the Commission should deliberately refuse to consider in 2011 Program Year (“PY”) 2009 utility program energy savings. The balancing of risk and certainty applied to PY 2006-2008 incentives can and should be applied to PY 2009 energy savings, in accordance with the intent of the Commission to provide an annual opportunity for annual energy efficiency earnings.

Finally, the Sempra Utilities contend that the advice letter process, rather than an application, is the appropriate mechanism to process annual incentive claims in light of the simplicity and noncontroversial process introduced by the reforms specified in the PD and the proper use of the Commission’s scarce resources.

**II.**  
**THE SEMPRA UTILITIES AGREE WITH SEVERAL PROPOSED REFORMS:  
RETAINING SHARED SAVINGS, THE ELIMINATION OF GOAL THRESHOLDS  
AND PENALTIES, AND EX ANTE CALCULATION OF SAVINGS AND INCENTIVES.**

The Sempra Utilities agree with the following proposed reforms in the PD:

1. Retention of the shared savings rate and the Performance Earnings Basis as a means to calculate utility incentives. The shared savings rate continues to provide the proper incentive to both maximize potential energy efficiency savings while controlling the costs of energy efficiency programs.
  
2. Use of *ex ante* metrics to calculate energy efficiency savings and utility performance. The Sempra Utilities agree that the imposition of *ex post* updates for the purpose of calculating utility savings and incentives has proven to be a central source of enduring contention in the current RRIM. Decoupling *ex post* EM&V from the incentive mechanism provides for greater transparency and simplicity in the application of the incentive mechanism, effectively eliminating the “moving of the [DEER] goalposts” that has been highly objectionable to the utilities. Moreover, the use of *ex ante* assumptions to calculate utility performance and incentives is a correct and wholly warranted policy change, given that it is impractical to require the utilities to adjust energy efficiency programs to updated DEER during a portfolio cycle and given that it is chronologically impossible to adjust programs to DEER updates after the program portfolio has ended.
  
3. The Sempra Utilities further agree that EM&V activities should continue under the new framework prescribed in D.10-10-033 in order to provide an updated basis for energy efficiency potential studies, goal setting, and future portfolio design and approval. Properly vetted and methodologically sound EM&V activities and results are essential to energy efficiency programs. Fully vetted and collaboratively debated and agreed upon EM&V methodologies and results should indeed be applied to the starting *ex ante* goalposts for utility energy

efficiency portfolios, rather than unfairly and impractically being applied to “move the goalposts” during the active administration of those portfolios.

**III.**  
**THE COMMISSION SHOULD APPROVE A COMPREHENSIVE REFORM OF THE RRIM THAT INCLUDES CUSTOM PROJECT SAVINGS.**

The Sempra Utilities urge the Commission to approve a comprehensive reform of the RRIM. The extant PD only offers ineffective piecemeal reforms that fail to provide the Commission or the parties in this proceeding a basis on which to calculate the overall expected earnings opportunity for the 2010-2012 portfolio cycle. Deferring incentive mechanisms for non-resource and custom projects to a later, separate proceeding renders impossible a determination of whether the reformed RRIM provides an opportunity for “a meaningful level of shareholder earnings” as intended by the Commission in D.07-09-043 (p.2). There have been ample comments in this proceeding as to the elements of RRIM reform, and relegating essential elements of a functioning RRIM to future and separate proceedings serves to unnecessarily complicate the task of reform and to duplicate the administrative effort necessary to achieve a comprehensive reform of the RRIM.

The Sempra Utilities are on the record as supporting a separate earnings mechanism for non-resource costs and have previously stated that providing a separation of non-resource costs and benefits from resource program costs and benefits liberates the utilities to more effectively pursue Strategic Plan activities without negatively affecting the cost effectiveness of overall utility portfolios. This bifurcation of resource and non-resource programs has been discussed on the record as a potential accommodation for Strategic Plan activities that have long-term benefits but do not produce short term savings.

The Sempra Utilities note, however, that nowhere in the record of this proceeding has the separation of custom projects savings from the RRIM been discussed or proposed. The Sempra Utilities strongly oppose any further atomization of the RRIM by establishing a separate mechanism for customized projects that is not supported with record evidence, unwarranted, not needed to facilitate Strategic Plan activities and works against the purpose of this proceeding to simplify and streamline, rather than further complicate, the incentive mechanism. Despite the pending resolution on freezing the custom programs process in A.08-07-022/023, there is no reasonable basis to treat a significant portion of utility energy efficiency savings separately. To

do so casts a dark shadow of uncertainty and spreads the fog of confusion over the utilities' aggressive pursuit of custom programs that necessarily involves protracted negotiations with its customers. The failure to provide procedural certainty to the pursuit of custom savings, either by adopting Energy Division's custom measures proposal in A.08-07-022/023 or by unnecessarily placing custom savings and corresponding incentives in regulatory limbo, undermines the ability of the utilities' to achieve these savings and works against state policy objectives to achieve all cost-effective savings.

Moreover, the negative impact of these proposals on customers cannot and should not be ignored. Large custom projects, by design, require large capital investments by the customer. Injecting unnecessary uncertainty into the process that adds cost to the project, that potentially delays implementation, and that places the size of the customer's incentives in jeopardy will have a devastating impact on customer satisfaction, customer participation and ultimately the energy savings achieved in the utility programs.

Savings from custom projects are not trivial, and in the case of the Sempra Utilities' 2006-2008 portfolios, custom programs accounted for 32% of therm savings for SoCalGas and 21% of kilowatt-hour savings for SDG&E. In the 2010-2012 portfolios, SoCalGas and SDG&E project that custom savings (should the pending decision in A.08-07-022/023 support rather than obstruct the ability of the utilities to achieve custom project savings) could comprise 42% of SoCalGas therm savings and 16% of SDG&E kilowatt-hour savings. Therm, kilowatt, and kilowatt-hour savings from custom programs are indistinguishable from therm, kilowatt, and kilowatt-hour savings from other programs and should therefore not be afforded any less favorable treatment than savings from other programs for purposes of calculating incentives.

The Sempra Utilities further note that custom projects have been among the most cost-effective measures in the utilities' Commission-approved arsenal of energy efficiency measures. Failure to afford the same incentive treatment to custom savings and to support practical and common sense EM&V protocols for custom projects (as proposed by the utilities in A.08-07-022/023) provides an uncertain incentive to pursue custom programs and will inevitably reduce the cost-effectiveness of the utilities' overall program portfolios, thereby potentially affecting the inclusion in those portfolios of less cost-effective and mostly residential measures.

The Sempra Utilities assert that it should not be the policy of the Commission to exclude as valuable a segment of energy efficiency savings as are custom project savings from the

incentive mechanism and to purposefully and unnecessarily create regulatory uncertainty, where none should reasonably exist, in pursuit of state energy efficiency and greenhouse gas reduction policies. The fact that the “*ex ante*” EM&V treatment of custom projects is pending is wholly irrelevant to the inclusion of custom projects on a non-discriminatory basis in the RRIM. The Sempra Utilities point out that the freezing of DEER savings for rebate and other programs is also pending, yet the PD does not place the proposed incentive mechanism for those programs in stasis as it does for custom projects.

**IV.  
THE PD’S PROPOSED RRIM REFORM IS INCOMPLETE AND MAKES  
PRACTICALLY IMPOSSIBLE REASONABLE CONSIDERATION OF THE  
RISK/REWARD BALANCE IN A REFORMED RRIM.**

The PD’s exclusion of custom measures and non-resource programs from the RRIM makes it practically impossible to determine what the overall shared savings rate and the potential for earnings should be. On its own, the Sempra Utilities submit that the 5.4% shared savings rate proposed by DRA and accepted by the PD is grossly insufficient to achieve the larger goals of the RRIM in promoting energy efficiency as the first resource in the state’s energy loading order on par with traditional resources. The Sempra Utilities agree that a reduction in the shared savings rate is reasonable in light of the reduction of risk and uncertainty to the utilities, but the PD simply goes much too far by suggesting a 58% reduction in the earnings cap, from the current \$450 million to \$189 million. Moreover, with the lowered savings assumptions (the 2009 DEER) of the 2010-2012 portfolios, the required non-cost effective market transformation programs and the non-resource program costs; the calculated maximum earnings for all four energy investor-owned utilities would be less than \$100 million, making the cap effectively moot. The PD’s proposed 5.4% shared savings rate fails to provide “a strong motivation for utility commitment to energy efficiency goals” (PD, p.7) and is nowhere close to providing a comparable equivalent to investments in supply-side resources.

The Sempra Utilities remind the Commission that in prior comments in this proceeding, the Sempra Utilities proposed a graduated shared savings rate of 10 percent as a reasonable rate in light of reduced risk and uncertainty. However, even that rate may be too low given the severity of savings reductions under 2008 DEER. A savings rate somewhere between 10% and 15% may be needed to match earnings potential with an appropriate cap.

**V.**  
**THE COMMISSION SHOULD APPLY A NEW RRIM TO PROGRAM YEAR 2009 SAVINGS OR EXTEND THE FINAL TREATMENT OF PY 2006-2008 UTILITY SAVINGS AND INCENTIVES TO THE CALCULATION OF PY 2009 INCENTIVE AWARDS**

The Sempra Utilities strongly disagree with the PD's proposed deliberately failing to consider earnings for PY 2009 energy efficiency activities. This proposal is inexcusable as it is in direct conflict with the intent of the RRIM to provide an annual opportunity for earnings that is recognized by utility management and investors as a part of the utilities' regular earnings and operations, effectively supporting energy efficiency as part of the utility's financial and operational DNA. The Sempra Utilities submit that the Commission can and should approve a comprehensive RRIM in early 2011 for application to PY 2009 savings. In fact, D.07-09-043 specifically contemplates the continuation of the existing earnings mechanism through 2012:

As recommended by most parties, we establish today a schedule for revisiting the specific risk/reward mechanism we adopt today, after we have gained experience with its implementation. Specifically, we direct Energy Division to prepare an evaluation report by February 1, 2011, so that we may consider any recommended modifications to today's adopted risk/reward incentive mechanism in time for the 2012-2014 program cycle. (D.07-09-043, p.169-170)

Therefore, the Commission should apply the expected procedural resolution of the final PY 2006-2008 final earnings claim to PY 2009 savings, if the Commission desires to further deliberate RRIM reform well into 2011.

The Sempra Utilities agree with the PD that "... in view of the modified and streamlined calculation protocols being adopted, we expect the awards of incentive earnings claims to be noncontroversial." (p.55).

Due to an expected, less combative process free of the contentious *ex post* evaluation and measurement updates, the Sempra Utilities note that there is no need for the PD's prescribed 50% holdback. Per the use of *ex ante* assumptions and installation verification to calculate utility savings and performance, as proposed in this PD, calculation of savings and incentives should be straightforward with very little risk to ratepayers of overpayment. Under the reforms stated in this PD, risk of overpayment could only arise from application of final installation rates to *ex ante* calculations of savings. Historical SoCalGas and SDG&E installation rates have hovered



above 98%. The Sempra Utilities agree that verification of installation in the third claim is necessary to ensure that utilities performed as intended and that measures paid for by ratepayers are fully accounted. The proposed 50% holdback for the first and second claims, however, is unreasonable considering the Sempra Utilities' historical installation performance, unsupportable and should be reduced to 10% which provides more than adequate headroom over historical adjustments.

**VI.**  
**THE COMMISSION SHOULD USE A COMBINATION OF ADVICE LETTER AND APPLICATION FILINGS FOR PROCESSING FUTURE INCENTIVE AWARDS**

The Sempra Utilities disagree with the PD's recommended annual application process to award incentives. Given the expected lack of controversy, the use of the advice letter process for the first and second claims should be sufficient to process straightforward *ex ante* calculations of savings and incentives that should be free of contention. Energy Division adherence to the calculation process prescribed in the PD should prove to be a mechanical endeavor that will produce annual resolution of earnings claims by the Commission. A yearly application for the first two *ex ante* claims is simply unnecessary, would result in the misuse of scarce Commission resources, and runs counter to the objectives of this and other related proceedings to streamline, simplify, and reduce the costs of administering the RRIM. The Commission, however, should consider the application process appropriate for the third incentive claim due to the incorporation of the installation rate true-up.

Dated this December 6, 2010.

Respectfully submitted

By       /s/ Steven D. Patrick        
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing **COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON ADMINISTRATIVE LAW JUDGE PULSIFER'S PROPOSED DECISION REGARDING RISK/REWARD INCENTIVE MECHANISM REFORMS** on all parties of record in **R.09-01-019** by electronic mail and by U.S. mail to those parties who have not provided an electronic address to the Commission.

Copies were also sent via Federal Express to Commissioner Bohn and Administrative Law Judge Pulsifer.

Dated at Los Angeles, California, this 6<sup>th</sup> day of December, 2010.

*/s/ Marivel Munoz*

Marivel Munoz

**CALIFORNIA PUBLIC UTILITIES COMMISSION**  
**Service Lists: R.09-01-019 - Last changed: November 29, 2010**

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