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**

WOMEN'S ENERGY MATTERS APPLICATION FOR REHEARING OF D1012049

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WOMEN'S ENERGY MATTERS
APPLICATION FOR REHEARING OF D1012049

Women's Energy Matters (WEM) files this Application for Rehearing (AFR) of D1012049 pursuant to Rule 16.1. The decision was issued December 26, 2010, therefore this filing is timely.

Introduction

WEM is deeply saddened by the necessity of filing this Application for Rehearing. We have the greatest respect for the processes of the Public Utilities Commission and the hard work by Commissioners, judges, and staff at all levels. We also have great fondness for people who work in energy efficiency, including those who work for utilities. WEM has worked in energy efficiency (EE) proceedings for a decade, and we believe all participants have been doing their best to try to craft policies and programs that provide widespread benefits to ratepayers, the environment, and the economy, within the constraints of each person and organization's experiences and beliefs about what is important and what is the best path forward for our species in addition to our personal and organizational goals.

We have witnessed huge changes in the past decade, during which the importance of energy efficiency has grown tremendously in response to the disasters of climate change, which more people now understand as a current reality rather than a vague threat in some far-off future.

WEM believes that our duty as a ratepayer advocate requires us to call out the evidence of serious misuse of EE processes and programs (and patterns of misuse) which cross the line into illegal activities. With large sectors of the economy in ruins, individuals and local governments throughout our state and nation are facing severely reduced circumstances, even bankruptcy. Forcing them to pay profits to utility shareholders based on fraudulent energy efficiency claims is repugnant, as well as illegal.

WEM is aware that this is a dicey moment for the Commission to expose the falsehoods behind the supposedly green energy efficiency leadership of California's utilities. Zealots are gaining visibility and political office, nationally, who seem to be allergic to any government program that benefits ordinary people and the environment; many of them appear to have ties to the worst players in the corporate energy sector that

supports the continued and increased exploitation of fossil fuels and nuclear power rather than a transition to clean renewables and efficiency.

It can be dispiriting for progressive people to see that the goals of California's supposedly green energy corporations are not so different from the others, despite their fervent greenwashing. However, there is little to gain and much to lose from deluding ourselves and our clean energy allies about what is happening in these EE programs, and what is *not* happening.

California and its environment can't really afford to have still another generation of fossil fuel power plants built while we tell ourselves (and energy corporations including PG&E and Chevron constantly advertise to us), that "we're going green." The planet can't afford to have California lead the nation and other countries into fraudulent supposedly green practices that actually perpetuate old fossil fuel/nuclear energy paradigms — based on California's claims of leadership, in documents in these proceedings as well as three decades of promotion by utilities, this agency and other public officials.

Wouldn't it be better to clean up our own act now and get on with the good work of making these claims real, rather than wait for anti-environmental forces to expose the scams and have people turn off to EE and everyone associated with it? Many ordinary people already suspect that there's something fishy about these EE programs, that there is more hype than actual benefits to them — after all, Californians' rates are some of the highest in the nation.

These are not simply theoretical questions. Throughout the past decade, PG&E has faced competition from non-profit public entities that offer to provide (and many of which already do provide) genuinely greener programs, relying on higher levels of efficiency, renewables, and non-nuclear GHG-free resources (e.g. large hydro) than California utilities. As WEM has reported in this and other proceedings, PG&E's preferred weapon to undermine support for its competitors has been its energy efficiency programs and its purported national leadership in this area.

While California voted to preserve AB32 in the last election, a vote will be needed to extend EE surcharges past January 2012 — and it may require a supermajority, because of Prop 26. Many people are already incensed by reports of undeserved EE

profits in traditional as well as social media. If the Commission and utilities continue to stonewall much-needed reforms in order to preserve shareholders incentives and utility control of EE, they risk turning the people of California against energy efficiency and/or those who perpetrated and benefitted from EE scams.

As described in this Application for Rehearing and comments by WEM, TURN, DRA, other parties and the public throughout this and other energy efficiency proceedings, it's high time to put an end to utilities collecting EE profits on fraudulent grounds; double charging ratepayers for redundant resources; committing mail and wire fraud to promote themselves throughout California and the US as the great green leaders in energy efficiency; using fear and bribery (from "charitable contributions" and political donations) to silence non-profit groups and public officials that should be blowing the whistle on these frauds; and attempting to convince Public Utilities Commissions and utilities in other states to follow California's example.

Procedural History

D1012049 is the final "true-up" (i.e. final decision) of 2006-08 Risk-Rewards for energy efficiency. It is the third of three decisions awarding profits to utilities for alleged energy savings.

The first of these decisions, D0812059, providing "interim awards" for 2006-07, was made in the EE rulemaking R0604010 prior to the opening of this proceeding, R0901019, aka the Risk Reward Incentive Mechanism (RRIM) proceeding. The second decision, D0912045, providing interim awards for 2008, was made in R0901019.

The decision creating the RRIM mechanism (D0709043) was made in R0604010.[1]

The decision at issue here, D1012049, relates to utility-administered energy efficiency programs applied for and authorized in another proceeding, A0506004.

[1] The same ALJ who authored D0709043 wrote Dxxx in 1994 creating an earlier "shareholders incentives" mechanism along with an EM&V system run by utilities, which were in many respects similar to the 2007 RRIM and the current EM&V. Utility profits under that mechanism were determined in a series of proceedings called the Annual Earnings Assessment Proceedings (AEAPs), the last of which concluded in 2005.

Energy efficiency goals governing 2006-08 programs were set forth originally in D0409060 in an earlier rulemaking, R0108028, and revised since then in several decisions in subsequent rulemakings.

The important decision transferring authority for Evaluation, Measurement & Verification (EM&V) of EE programs — from the utilities to the CPUC Energy Division (ED)— was D0501055, made in R0108028. Rules and protocols for EM&V were set in several rulings and decisions in R0108028, A0506004 and subsequent proceedings.

The *Energy Efficiency Interim Performance Basis Report,* prepared by Energy Division May 5, 2008, provides a list of the data sources that were as of that date expected to comprise the "Minimum Performance Standard" for final evaluations (pp. 5-6), and a discussion of how each parameter would be updated (pp. 21-23). There are references throughout the report to key EM&V rulings and decisions in these various proceedings, and other issues that affect the interpretation of those decisions and the calculations of incentives.

It is difficult to impossible at this time to access all the documents in these many proceedings online. A0506004, R0108028 and the first year or so of R0604010 took place prior to the Commission posting all filings on its website. Previously, the documents in those proceeding were available at PG&E's website, but they appear to be no longer posted there.

It is also difficult to access the EM&V documents in this case. The Commission maintains two different websites: one called "Evaluation Measurement and Verification (EM&V)" is at http://www.cpuc.ca.gov/PUC/energy/Energy+Efficiency/EM+and+V/ . The other is the "Energy Efficiency Groupware Application" (technical reports related to EM&V) at http://eega2006.cpuc.ca.gov/PEBCalcs2.aspx . These web pages do not appear to be linked. The EM&V studies on particular programs in the utilities' portfolios, from which ED's final evaluation was formed, do not appear to be posted at either of these sites; instead, they are posted at a site maintained by utilities, http://www.calmac.org/ . One must know to search for "impact evaluations" for 2006-08 program years to access those studies.

Legal and factual errors

Rule 16.1 requires Applications for Rehearing to lay out specific errors of fact and law. WEM has identified major legal errors in the decision and the background to it in this and earlier proceedings, which include false statements, fraud, bribery, and extortion which we describe further below.

Commissioner Grueneich's dissent listed false assumptions in majority's decision

Commissioner Grueneich, who has been in charge of most EE proceedings except this one since 2006, voiced a scathing critique in her remarks prior to the vote on Dec. 16, 2010 and wrote a stinging dissent.

> The factual premise of the alternate decision – that the utilities had no reasonable basis to know their assumptions were not changing market conditions – is simply untrue. Equally component of the alternate decision – to absolve administrators from responding to expeditiously changing evaluation feedback – sets a dangerous for subpar performance. Dissent of Commissioner Dian M. Grueneich, p. 2.

Her dissent dissected and demolished the claim that utilities could not have known that there were problems, or known in time to modify their portfolios accordingly. It is worth quoting at length because it clearly lays out reasons why this decision must be repealed:

> Contrary to the central factual premise of the alternate decision, there is substantial evidence showing the utilities were well aware that some of their most critical 2006-2008 ex ante assumptions were unrealistically high. Anticipating this debate, I issued an Assigned Commissioner Ruling on October 5, 2007 documenting the numerous instances of forewarning on this issue. This ruling is cited in the proposed decision on page 53, footnote 39. The ACR and its Attachment A are attached to this Dissent as Appendix A.
>
> Let me give some examples listed in my 2007 ruling. First, my 2007 ruling references a Joint Case Management Statement (CMS) filed by the utilities on July 21, 2005 in which PG&E acknowledges concerns with its ex ante assumptions and commits to "adjust its 2006 portfolio lighting savings to reflect more realistic and updated assumptions on [net to gross] ratios."
>
> This joint utility filing was made almost six months before the utilities began the programs under review here. The alternate decision does not address or even mention the utilities' 2005 filing.

Let me give other factual information set forth in my 2007 ruling and ignored completely in the alternate decision. Of key importance is D.05-09-043, issued in September, 2005. In that decision, the Commission identified net-to-gross (NTG) as a potential risk and ordered the utilities to manage their portfolios to manage that risk. As the Commission noted in the decision:

Our decision today on how best to bound the uncertainty associated with this key savings parameter for planning purposes is predicated on the expectation that **NTGs *will* in fact be adjusted (trued-up) on an *ex post* basis when we evaluate actual portfolio performance.** We believe that this is entirely consistent with the resolution of threshold EM&V issues in D.05-04-051.

So that there is no further confusion on this issue, we clarify today that NTG assumptions should be trued-up in evaluating the performance basis of resource programs. (pp. 97-98, emphasis added)

The alternate decision deletes footnote 39 of the proposed decision and any mention of the critical facts listed in my October 2007 ruling as well as even the existence of the October 2007 ruling. That is not surprising because the premise of the alternate decision is that the utilities had no notice before 2006 and a 2005 utility filing showing not only utility notice but a promise to change the assumptions to update them and be more realistic, as well as the numerous other facts cited in the 2007 ruling (including D.05-09-043) undermine the basic premise of the alternate decision.

Further evidence that the utilities received sufficient signals to adjust course can be seen in actions of Southern California Edison Company. Again, contrary to the alternate decision's conclusion, Edison recognized rising freeridership in its compact fluorescent lighting programs and adjusted its ex ante assumptions downward. While noteworthy, these corrections were insufficient to correct the course of Edison's portfolio. I am also aware that there were numerous communications by Energy Division staff to utility staff and management that the assumptions in the utility portfolios were unrealistic and significant changes were needed. Let me turn now to the policy issue before use today – should this Commission and ratepayers accept and pay for performance that does not deliver savings nor adapt to market conditions.

Having spent my thirty- plus year career passionately supporting energy efficiency, I have considered this question in depth and I conclude that effective energy efficiency programs and their administrators must be able to adapt to evolving markets in real-time. This is especially true in California where energy efficiency is first in our loading order and where we spend over one billion dollars annually in this effort.

It is not enough to set programs in motion and revisit them three years later. Program administrators must be prepared to recognize shifts in the market and

> adapt their efforts accordingly. Otherwise, as we see here today, actual savings may fall alarmingly short. In concluding that it is unreasonable to hold utilities to a standard of adapting programs to changing markets and thus being held accountable for promised savings, the alternate decision adopts a policy that undermines the basic structure of ratepayer-funded energy efficiency.
>
> The larger question, however, is whether this outcome is the only option before the Commission. If utility administrators will not adapt programs to changing market conditions – for fear of losing shareholder profits – then the time has come to examine alternate administrative structures that can adapt to dynamic market conditions, abide by independent savings evaluations, while delivering promised savings and lowering costs. This is a matter that President Peevey raised in 2005 and it is timely to revisit it. Grueneich Dissent, pp. 2-4

PG&E envisioned program modifications that D1012049 says were impossible:

PG&E's June 1, 2005 application for 2006-08 programs described its proposed budget, stressing "flexibility so that PG&E can adapt its 2006- 2008 programs to reflect updated information and analyses regarding the relative costs and benefits of the programs to customers." Here is the full passage, so there can be no mistake about its meaning:

> The proposed total portfolio budget for years 2006-2008 is $936 million. The total proposed portfolio budget is comprised of $345.3 million of electric Public Goods Charge ("PGC") funds; $459.7 million of electric procurement funds; and, $131 million of Gas Public Purpose Program surcharge. However, PG&E's proposals include spending and budgeting flexibility, so that PG&E can adapt its 2006-2008 programs to reflect updated information and analyses regarding the relative costs and benefits of the programs to customers. This flexibility means that PG&E will be authorized to spend up to the budget levels requested in this application, consistent with PG&E's flexibility proposal in Chapter 4, and will retain the flexibility to reduce incremental spending where it determines that certain programs or initiatives are cost-ineffective. PG&E Application, June 1, 2005, pp. 3-4.

May 2005 warning that values should be updated to "maintain credibility"

In May 2005, prior to the first draft of IOU applications being filed, the Commission directed administrators to use more accurate values, even if they were not in the current versions of the DEER. Challenges to CFL values were raging at the time, because of the huge shortfalls in the Express Efficiency report on 2003 programs due to CFLs, which was published in February 2005:

> We agree with Joint Parties that a general policy of adjusting the performance basis based on the results of load impact studies is necessary to ensure quality

> control and to maintain the credibility of the energy efficiency programs. As they point out:
> "... If an existing ex ante [Database for Energy Efficiency Resources] DEER value is known to be too high, the administrators should use the value they expect to be more accurate, since they know they will be compensated based on ex post evaluation, until the DEER value is corrected. This is essential since the resource planners will be relying on these savings as a resource and the forecasts should be based on the best available information."
> D0504051, p. 51 [quoting from "Joint Parties" - ORA, NRDC and TURN 2/18/05].

IOU-controlled EM&V, the 2005 DEER and the failure to update NTG

D1012049 bases its findings on key parameters from the 2005 DEER, which were discredited practically as soon as they were published (in particular, Net to Gross).

A little background. For fifteen years (at least) utility-run EM&V promoted exaggerations by various means, including delaying studies and misapplying studies. For example, a 1994 study on residential CFLs was used through 2005 for calculating parameters for all CFLs, including those in business settings, which have completely different hours of use among other things.

The 2005 DEER (which IOUs controlled, and took four years to produce) failed to fully update all parameters for CFL measures, although they formed the bulk of the portfolio savings.

Utilities particularly avoided updating the net-to-gross (NTG) parameter in the DEER. This was obviously fraudulent, because the purpose of the NTG parameter was to measure the adoption of EE choices by the public, in order to determine to what extent EE programs had "transformed the market," in other words motivated a large percentage of the public to buy popular measures on their own so that programs could shift to addressing lesser-known measures.

It is absurd to ignore the changes in public acceptance caused by California utilities' five years of massive promotion of CFLs and upstream rebates that lowered retail costs from ten to fifteen dollars to one or two dollars, plus utility encouragement and assistance for the industry to redesign bulbs so they fit better in light fixtures and have better color.

These are some of the reasons why it is fraudulent for D1012049 to revert to the ex ante assumptions from the 2005 DEER, which the ALJ's proposed decision specifically rejected (p. 21). The decision even quotes DRA's point that utilities have a perverse incentive to exaggerate if they can get away with it (p. 32).

Other early warnings; false data underlying the 2004 goals decision

The goals in D0409060 were based on potential studies and other EM&V data, all of which was controlled by IOUs, although the Commission began exerting greater oversight in 2002. WEM commented at the time and in this proceeding that the goals were based on greatly exaggerated values, particularly for CFLs. WEM filed a thorough analysis of CFL savings 10-23-03 in our Joint Motion in R0108128, which demonstrated nearly 600% exaggerations in some programs.

This was prior to the extremely significant downward revisions of several parameters affecting CFL values in the official 2003 Express Efficiency report, that was published in early 2005 and reduced CFL savings in that program to about a quarter of ex ante values. (CFL values in other programs were not revised at that time, and were not even investigated pursuant to the enormous changes in the Express report.)

False claims that EE is a resource

These decisions typically contain multiple passages claiming that EE is a "resource" that defers or displaces supply side resources. For example:

> Findings of Fact
> 1. In D.07-09-043, the Commission adopted the RRIM to encourage achievement of Commission-adopted energy efficiency goals, and to extend California's commitment to making energy efficiency the highest energy resource priority. D1012049, pp. 66-67.

However, this decision also has a revealing passage that indicates Commission members see EE as different and removed from "energy resources:"

> Unlike expenditures for energy resources that are measured through arms-length transactions, energy savings cannot always be as easily quantified. D1012049, p. 24.

This statement is untrue. In fact EE resources *can* be quantified in terms of resources to ensure grid reliability. WEM has recommended in this proceeding the adaptation for

California of New England ISO's Guidelines for Measurement of Demand Side Resources. New England ISO is so comfortable with quantifying EE that it allows EE to bid into RFOs (as WEM has also recommended).

D0308067 promised that the Commission would focus on "integration of EE programs with procurement activities:"

> This order seeks to maintain continuity and the stability of currently successful programs to enable the Commission and interested parties to focus on developing of an integrated energy efficiency policy framework, including integration of EE programs with procurement activities... D0308067, p. 4.

The only thing that was ever integrated was the budget for EE; the portion over and above what is raised for EE from the Public Goods Charge (approximately 2/3 in 2006-08) is called "procurement EE."

WEM has recommended in this and other proceedings that the Commission coordinate with procurement planners and CAISO, and develop EM&V parameters like those of New England ISO, which are essential for determining the reliability of EE as grid resources.

An ALJ ruling mentioned coordinating with ISO and resource planners procurement but said they had more pressing concerns at the time:

> WEM recommends the inclusion locational data by specific transmission and distribution substations in the reporting requirements. This recommendation is predicated on WEM's assessment of what information is most useful for the Independent System Operator and other resource planners, as well as for Community Choice Aggregators. I believe it is premature to consider the inclusion of this level of locational detail in reporting requirements until Joint Staff has completed its assessment of what information will be specifically required for resource planning purposes, and how that handoff of information should occur in the context of the EM&V Cycle. Given the other priorities in this proceeding, this effort is still underway. Feb. 21, 2006, ALJ Ruling on Reporting Requirements, p. 13.

To WEM's knowledge there has never been a followup effort to involve CAISO or procurement planners. This is a very serious omission that makes a mockery of the supposed use of EE as a resource, "Number one in the loading order" according to the Energy Action Plan.

WEM attempted to provide some coordination by questioning PG&E procurement planners about EE in the LongTerm Procurement Proceeding hearings in

2007 (R0602013). Four top procurement planners and one EE witness admitted that there was no communication between EE and procurement, and procurement planners had only the most cursory information about EE.

The ALJ in that proceeding was unimpressed with IOUs' EE performance, and the decision in that case, D0712052, credited only 20% of EE goals as available to serve load.

WEM has pointed out repeatedly that the failure to coordinate with procurement and ISO means that neither the utilities nor the Commission treat EE seriously as a resource. But it's worse than that. Ratepayers are funding EE and also funding power procurement and transmission that should have been deferred or displaced by EE but was not. Plus we are paying profits for redundant resources on both sides — i.e. utilities are double dipping based on the fraudulent claim that EE is "first in the loading order" and displaces supply side resources. Procurement of redundant resources is expressly banned in D0409060:

> Order #6 - The energy savings goals adopted in this proceeding shall be reflected in the IOU's resource acquisition and procurement plans so that ratepayers do not procure redundant supply-side resources over the short- or long-term. D0409060.

The Commission has continued to approve unnecessary power plants and transmission in PG&E territory (and probably other IOU territories although WEM has focused primarily on PG&E's service area in recent years). At the same meeting where the EE profits were approved, December 16, 2010, the Commission moved forward on PG&E's proposed Oakley power plant; PG&E also plans new power plants for Antioch and Hayward. Two of these are in hot Bay Area locations with massive untapped potential for residential energy efficiency.[2]

Discrimination against residential ratepayers

Residential ratepayers pay approximately 40% of EE surcharges, however PG&E provided only 12% of its 2006-08 programs for "residential programs." Those programs consisted largely of upstream CFL rebates. ("Residential" programs also include substantial sums for landlords, which should be classified as commercial.)

[2] The three communities have large people of color populations, citing more power plants in such communities is a violation of environmental justice.

The Commission has justified these unfair allocations as beneficial for residential customers, claiming that everyone has benefitted from lower bills since supply side resources have been reduced by EE. However, this is untrue. California has some of the highest electricity rates in the nation. As noted above, the procurement of supply side resources and transmission (and the cost of those non-EE resources) has been reduced only a fraction as much as utilities should have achieved with these EE budgets, in part because of poor performance by utilities, in part because of the lack of EM&V for grid performance of EE measures — particularly for addressing the peak.

The need for peak resources has continued to increase, being the main driver for construction of new power plants. As WEM has reported in this and other proceedings, PG&E procurement witnesses in LTPP hearings were unable to envision using more efficient HVAC or shell measures to reduce peak load. Either they were lying or the utilities and the Commission have failed to an astonishing degree to inform key players about how to use EE in the development and integration of energy resources.

Either way, the result is the same – utilities double charging ratepayers for redundant resources, collecting EE profits on fraudulent grounds, and committing mail and wire fraud to promote themselves throughout California and the US as the great green leaders in energy efficiency, and attempting to convince utilities and Public Utilities Commissions in other states to follow California's example, exporting this system of EE profits based on fraudulent claims.

Bribery in Novato

WEM has reported to the Commission in this and other proceedings that there was a very clear instance, which WEM videotaped, where PG&E used EE to bribe city council members in Novato to reject Marin's Community Choice program. We also have letters showing PG&E's EE folks offered EE as bribes to Marin County Supervisors.

There was a paragraph inserted in the 2010-12 portfolios decision D0909047 vaguely telling utilities not to misuse EE funds, but it failed to specifically reference WEM's detailed descriptions and videos of this and other instances of the misuse of EE funds to oppose Community Choice. ED resolution E-3260 was better, but again failed to reference WEM's filings or draw conclusions about what had happened. WEM subsequently elicited sworn testimony on this topic in the GRC proceeding.

To date no one at the Commission has even hinted at imposing sanctions on PG&E or any other consequences for these activities.

Malfeasance by the ALJ

The Commission should ask, why was the ALJ who devised the RRIM and the EM&V system so slow to get evaluations rolling for 2004-05 (as well as 2006-08)? Did it have anything to do with the Commission's vote to establish the RRIM in D0709043, that these extremely poor 2004-05 EE results were delayed until after that decision?

In September 2006, when the ink on the contracts for most EE partnerships was still wet and Marin and San Francisco contracts were still unsigned, the undersigned attended and photographed an energy fair that was held in the ALJ's home town of Volcano (Pop. 92), where she was a public official. The fair was coproduced by the Mother Lode EE Partnership with PG&E, for which she had approved funding.

The ALJ presided at the registration table, alongside PG&E's EE manager. Attendance was extremely sparse; it was virtually a private party for the ALJ's family and EE personnel from PG&E. WEM presented photos of this affair at the July 15, 2009 workshop in this proceeding and also discussed it in comments. (A video of the presentation, with the slides, is posted on WEM's website at http://www.womensenergymatters.org/video/CPUC/pgvideo_2009-07-15volcano.htm).

WEM brought these and other serious concerns about the ALJ to the Commission, all of which were ignored or rejected.[3] This certainly appeared to demonstrate bribery, but to WEM's knowledge the Commission has taken no action. After the ALJ left the Commission in 2008, she took a position at the National Association of Regulatory Utility Commissions (NARUC), which has been promoting shareholders incentives similar to California's system nationally.

[3] These include the many decisions she wrote, egged on by PG&E, that unfairly criticized WEM's positions and provided zero compensation to WEM throughout 4-1/2 years of EE proceedings, despite our many substantial contributions to these cases, as described in our Application for Rehearing of D0705012, and our supporting comments. Our AFR was ultimately denied in D0708033, but we still believe there is a connection between PG&E generally taking the lead among utilities to try to make it intolerable and costly for WEM to continue to represent ratepayers in these proceedings, the company's improper history of bribery with the ALJ, and her decisions to deny 100% of WEM's compensation.

Spreading a fraudulent system

The service list for this and other EE proceedings include parties from all around the US, many of whom have a financial stake in the programs and/or the utilities themselves, as well as media representatives who publicize these decisions to a much larger national audience, some of whom will make investment decisions to invest in utilities based on the misinformation in the decisions. This constitutes mail, wire and electronic fraud.

Indeed, Pres. Peevey's proposed decision specifically mentions the importance of [deceiving] the investment community to his thinking, although the following language was deleted from the final:

> Failure to make the modifications adopted herein, we believe, will undermine the credibility of the incentive mechanism to the utilities and the investment community and compromise its ability to effectively motivate the utilities to aggressively pursue energy efficiency going forward. Pres. Peevey's Alternate, Nov. 16, 2010, p. 6.

Goals based on fraudulent data drove enormous increases in program budgets

D03-08-067 authorized IOUs 2004-05 budgets as simply the amount they collected from the Public Goods Charge, namely:

> The following table shows expected revenues by utility for 2004 and 2005:

Category	SDG&E	SoCalGas	SCE	PG&E	Total
2004 and 2005 EE PGC Collections	$75,000,000	$53,990,000	$180,000,000	$240,956,000	$549,946,000

D0308067, pp. 4-5.

However, for the first time, the final decision on 2004-05 portfolios authorized "procurement EE" funds in addition to PGC funds, for 2004-05:

> In this decision, funding for energy efficiency programs is increased by $245 million or 43% above statutorily authorized levels due to the integration of energy efficiency and procurement
> programs. Specifically, this decision disburses $493.86 million to several companies, government agencies and organizations to undertake a variety of programs for residential, commercial and industrial customers. It also authorizes $15.71 million for measurement and verification studies for the utilities' 2004-05 programs and other projects." Decision 03-12-060, p. 3.

The original two year budget and goals for 2004-05 for all PG&E & non-utility programs were:

PG&E Area Programs Total $208,413,999, 198,755kW, 1,018,411,672 kWh, 17,464,712 therms. Decision 03-12-060, Attachment 1, p. 11.

The following year, D0409060 set the goals as follows (Attachment 1, p. 11):

TABLE 1A
PG&E Total Electricity and Natural Gas Program Savings Goals

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total Annual Electricity Savings (GWh/yr) (1)	744	744	829	944	1,053	1,067	* * *	1,086	1,173	1,277
Total Cumulative Savings (GWh/yr)	744	1,487	2,317	* * *	4,313	5,381	6,396	7,483	8,656	9,933
Total Peak Savings (MW) (2)	161	323	503	708	936	1168	1388	1624	1878	2156
Total Annual Natural Gas Savings (MMTh/yr)	9.8	9.8	12.6	14.9	17.4	20.3	21.1	22.0	23.0	25.1
Total Cumulative Natural Gas Savings (MMTh/yr)	9.8	19.6	32.1	47.0	64.4	84.8	105.9	127.8	150.9	176.0

Showing comparable data, D0409060 increased the original 04-05 goals from D0312060 thus: 198MW to 480MW; 1,018 GWh to 2231 GWh; and 17 MMth/yr to 19.6 MMth/yr.

The utilities didn't come anywhere close to meeting those goals, as described further below. ***The utilities were surely aware of these problems because they were still nominally in charge of EM&V for 2004-05 programs.***[4] However as noted above, the Commission was exercising more oversight and ED started to insist on more accurate numbers. Perhaps Commissioners were not aware of these reports because they were inexplicably delayed for *years.* ***The studies would normally have been completed by late 2006 or early 2007, but hardly any appeared prior to the RRIM decision in September 2007. Some were delayed through mid-2008.*** ED's Report quoted above stated:

> Finalized evaluation results from the 2004-2005 cycle will be the first source for 2004-05 IOU savings accomplishments. As of April 30, 2008, most of the evaluations have been completed or drafts are being reviewed by ED. Final and

[4] In a long series of rulings, the ALJ approved EM&V contracts for 2004-05 one by one. Xxxcheckthey cited some sort of delays??

> draft evaluation results are available for 75% of GWh, 82% of MTherm, and 76% of MW savings. ED's Interim Performance Basis Report, p. 5, emphasis added.

The 2004-05 evaluations were showing big changes in net to gross (NTG) values, which is a major reason they came out so badly. In other words, the same problem that caused IOUs to kick up a ruckus re 2006-08 evaluations was already visible in 2004-05 evaluations. So it's completely disingenuous for the Commission to say the IOUs couldn't possibly know there was a problem, as if IOUs suddenly found out in late 2010 that there was anything wrong, long after the 2006-08 program cycle ended. In fact, they knew from the 2004-05 program evaluations that their exaggerations would no longer fly, now that independent parties were in charge of EM&V.

Conclusion

For all the reasons described above, WEM asks that the Commission rehear this decision

Dated: January 26, 2011

Respectfully Submitted,

/s/ Barbara George

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CERTIFICATION OF SERVICE
R0901019

I, Barbara George, certify that on this day January 26, 2011 I caused copies of the attached WOMEN'S ENERGY MATTERS APPLICATION FOR REHEARING OF D1012049 to be served on all parties by emailing a copy to all parties identified on the electronic service list provided by the California Public Utilities Commission for this proceeding, and also by efiling to the CPUC Docket office, with a paper copy to Administrative Law Judge Thomas Pulsifer, and President Michael Peevey.

Dated: January 26, 2011 at Fairfax, California.

/s/ Barbara George

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