BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of its 2009-2011 Energy Efficiency Program Plans And Associated Public Goods Charge (PGC) And Procurement Funding Requests.	Application 08-07-021 (Filed July 21, 2008)
And related matters.	Application 08-07-022 Application 08-07-023 Application 08-07-031 (Filed July 21, 2008)

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rules 8.2(c), 8.3, and 8.5 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) gives notice of the following oral *ex parte* communication, which occurred on June 7, 2011 at 4:00 p.m. in the Commission's San Francisco office. DRA Policy Advisor Cheryl Cox, DRA project coordinator Monisha Gangopadhyay, and Diana Lee of the Commission's Legal Division initiated the communication with Commissioner Timothy Alan Simon's advisor Paul Phillips. The communication was oral and written. The written material is attached to this notice.

DRA explained that the Commission should adopt the Proposed Third Decision of Administrative Law Judge Gamson Addressing the Petition for Modification of Decision (D.) 09-09-047 (PD), incorporating DRA and The Utility Reform Network's recommendations to:

- replace the PD's use of outdated default net-to-gross values with measure specific net-to-gross values from the 2006-2008 evaluation, measurement and verification (EM&V) studies;

- allow the Energy Division to review and revise as necessary utility workpapers for energy efficiency measures that become high impact measures (HIM) that contribute to at least 1% of the portfolios energy savings during the course of the program cycle, even if those measures were not initial expected to become high impact measures; and
- reflect Energy Division's recommended gross realization rates for energy savings from custom projects.

Copies of this Notice may be obtained by contacting Sue Muniz at (415) 703-1858 or sam@cpuc.ca.gov.

Respectfully submitted,

/s/ DIANA L. LEE

DIANA L. LEE

Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-4432
Email: dil@cpuc.ca.gov

June 8, 2011

ATTACHMENTS

Contact: Cheryl Cox, DRA Policy Advisor - (415) 703-2495 - cxc@cpuc.ca.gov
PROCEEDING NO: A.08-07-021 June 7, 2011

Energy Efficiency
- Proposed Decision on Ex Ante Assumptions -

DRA Position: The Commission should adopt the Proposed Decision (PD) regarding Ex Ante Assumptions and Review of Non-DEER measures and Custom Projects for 2010-2012 Energy Efficiency (EE) portfolios, with modifications.

Background

- D.09-09-047 and November 18, 2009 ALJ Ruling required:
  - Ex-ante assumptions for **DEER** (Database for Energy Efficient Resources) and **Non-DEER** measures be frozen using the best available information as the 2010-12 program cycle was beginning.
  - Energy Division (ED) to develop a schedule to accomplish that freeze including the review of IOU Non-DEER values.

- ED's schedule to determine ex ante values and review process had many delays:
  - Negotiations between ED and the IOUs took longer than expected.
  - The IOUs refused to accept the ED's recommendation for modifying the workpapers or the proposed custom review process.
  - IOUs filed a joint PFM to alter the review processes.

- ED's final determination follows Commission direction and utilizes best information on Non-DEER assumptions available in early 2010.

- All ED processes and assumptions, including the process for reviewing custom project workpapers, were developed with stakeholder input.

- September 17, 2010: PG&E, SCE, SDG&E and SoCal Gas jointly filed Petition for Modification (PFM) of 2010-2012 Portfolio Decision [D.09-09-047].
  - The PFM sought 28 separate changes in 8 subject areas.

- Two CPUC decisions resolved many of the issues raised in the IOUs' PFM [D.11-04-005, D.10-12-054].

- PD addresses the remaining issues and would determine the ex ante energy savings values for Non-DEER measures and the method for reviewing custom projects for the 2010-2012 Energy Efficiency (EE) portfolio cycle.

  - The PD adopts much, but not all, of ED's final input.

The CPUC Should Use Energy Division (ED) Sanctioned Data

- 2010-2012 EE portfolio is largely based on outdated energy savings assumptions derived from the 2004-2005 portfolio cycle, despite the existence of updated 2006-2008 information.
- The few updates and processes proposed by ED would allow the current portfolio to incorporate substantiated and more realistic, updated savings assumptions.
- ED review of custom projects that later turn out to be High Impact Measures (HIMs) would prevent distortions in utility reported savings.
- ED-recommended updates based on historical data are essential, otherwise frozen values are more likely to be over-stated:
  - Updated Gross Realization Rates
  - Updated Net-to-Gross (free-ridership) estimates replacing default values

DRA Recommendations

- The PD should be revised to:
  - Use ED's updated Net-to-Gross values in place of default values.
  - Allow ED to review and revise necessary utility workpapers for energy efficiency measures that become High Impact Measures (HIMs) during the program cycle, even if those measures were not initially predicted to be HIMs.
  - Use Gross Realization Rates recommended by ED and substantiated by past performance.

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of its 2009-2011 Energy Efficiency Program Plans And Associated Public Goods Charge (PGC) And Procurement Funding Requests.	Application 08-07-021 (Filed July 21, 2008)
And Related Matters.	Application 08-07-022 Application 08-07-023 Application 08-07-031 (Filed July 21, 2008)

COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK ON PROPOSED THIRD DECISION ADDRESSING PETITION FOR MODIFICATION OF DECISION 09-09-047

DIANA L. LEE
Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Email: dil@cpuc.ca.gov

MONISHA GANGOPADHYAY
Analyst for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1417
Email: mgbl@cpuc.ca.gov

ROBERT FINKELSTEIN
Legal Director
THE UTILITY REFORM NETWORK
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: (415) 929-8876
Fax: (415) 929-1132
E-mail: bfinkelstein@turn.org

May 16, 2011

451096

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CPUC DECISION

COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK ON PROPOSED THIRD DECISION ADDRESSING PETITION FOR MODIFICATION OF DECISION 09-09-047

I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rule of Practice and Procedure, the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) submit these comments on the Proposed Third Decision of Administrative Law Judge Gamson Addressing the Petition for Modification of Decision (D.) 09-09-047 (PD).

In D.09-09-047 the Commission approved the $3.1 billion[1] ratepayer-funded 2010-2012 energy efficiency portfolios of Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E)[2] and included directives for implementing those portfolios. A critical element of that decision (as well as many decisions both before and after D.09-09-047) is the emphasis on an extensive and rigorous evaluation, measurement and verification (EM&V) program to ensure that the utility programs actually deliver electricity and natural gas savings at the levels necessary to achieve cost-effective programs, but also to achieve California's broader energy and greenhouse gas reduction goals. The Commission has long recognized that effective EM&V is critical to achieving a successful energy efficiency program, and its decision here should be consistent with that ongoing emphasis on and commitment to achieving effective EM&V.

The Utilities filed a Petition for Modification of D.09-09-047 (PFM)[3] "seeking 28 separate changes to the Decision in eight subject areas."[4] Two earlier decisions decided many of the issues raised in the Utilities' PFM, including freezing *ex ante* energy savings estimates for energy efficiency measures based on the 2008 Database of Energy Efficient Resources (DEER)[5]

---

[1] D.09-09-047, p. 2.

[2] DRA and TURN's comments refer collectively to SoCalGas, SDG&E, SCE, and PG&E as Utilities.

[3] Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company's Petition for Modification of Decision (D.) 09-09-047, filed September 17, 2010 (PFM).

[4] PD, p. 3.

[5] "The database contains estimated energy savings values for standard energy efficiency measures. Those

Footnote continued on next page

version 2.05, adding language to provide a State Action Doctrine defense against antitrust claims for utilities engaging in joint energy efficiency activities that are consistent with state policy and supervised by the Commission[6] and adopting a reporting process for limited statewide program variations among the Utilities to allow flexibility for appropriate regional and utility differences.[7]

The PD would have the Commission resolve the remaining issues and "bring[] finality and certainty to the determination of ex ante energy savings values for the 2010-2012 portfolios and closes the proceedings."[8] For the most part, DRA and TURN support the PD, which generally adopts the Energy Division's revisions to the Utilities' work papers estimating the energy savings of energy efficiency measures that are not in DEER. The PD would also approve a reasonable process for reviewing estimated energy savings that are specific to the customer's site and therefore not able to be calculated in advance using either DEER or the Utilities' workpapers. The Commission should make several important revisions to the PD:

- replace the PD's use of outdated default net-to-gross values with measure specific net-to-gross values from the 2006-2008 evaluation, measurement and verification (EM&V) studies;
- allow the Energy Division to review and revise as necessary utility workpapers for energy efficiency measures that become high impact measures (HIM) that contribute to at least 1% of the portfolios energy savings during the course of the program cycle, even if those measures were not initial expected to become high impact measures; and
- reflect Energy Division's recommended gross realization rates for energy savings from custom projects.

values include the expected useful life of the measure, the unit energy savings of the measure, and the net-to-gross ratio. Non-standard energy efficiency measures are referred to as non-DEER measures. Non-DEER measures include custom energy efficiency projects designed for a single customer. The most recent updated DEER (the 2008 DEER version 2.05) was adopted by Ruling in R.06-04-010 in August 2008." PD, p.3.

[6] D.10-12-054, p.7-9; 28-33.

[7] D.11-04-005, pp. 12-16.

[8] PD, p. 2.

II. DISCUSSION

The remaining issues from the Utilities' PFM have to do with how best to develop accurate forecasts of future energy savings or capacity reductions. As the PD describes, the Commission and the Utilities:

> "use *ex ante* energy savings values for energy efficiency measures based on historical data and analysis to determine whether a utility's forecasted energy efficiency portfolio is expected to be cost-effective. These *ex ante* values are also used to estimate the savings from verified installed energy efficiency measures, and may be used as part of determining the level of rewards utilities can receive for successful energy efficiency efforts."[9]

The Utilities have long raised concerns that updating energy savings estimates during the energy efficiency program cycle unfairly required them to adapt to changing market conditions (even though non-regulated businesses must respond constantly to changes in the market if they wish to remain competitive). DRA and TURN have generally supported using updated results whenever possible, in order to better ensure that the billions of ratepayer dollars being spent on energy efficiency programs are providing sufficient benefits to make this a good use of those dollars. In its attempt to achieve an outcome that balanced the two positions, D.09-09-047 determined to freeze *ex ante* values, but based on "the best available information at the time the 2010-2012 activity is starting," even if that meant delaying the date of the freeze until after the start of the portfolio period.[10]

As it turned out, the process for developing the *ex ante* values to be frozen was arduous and more time-consuming than the Commission anticipated. A November 18, 2009, Administrative Law Judge's Ruling regarding Non-DEER Measure *Ex Ante* Values, and attached staff paper (November 18, 2009 Ruling) detailed the requirements and procedure for the Utilities to submit non-DEER measure workpapers for Energy Division's review and approval as part of the process for freezing the *ex ante* values.[11] Staff from the Energy Division and the Utilities met for several hours two to three times per week from December 2009 through May 2010 to discuss the process for reviewing and freezing *ex ante* values of measures not in the DEER

---

[9] PD, p. 6.

[10] D.09-09-047, pp. 42-43 and Conclusion of Law 26, p. 356.

[11] Administrative Law Judge's Ruling regarding Non-DEER Measure *Ex Ante* Values, and Attachment, November 18, 2009 (November 18, 2009 Ruling), pp. 2-3.

measures.[12] The November 18, 2009 Ruling expected that the *ex ante* values would be frozen by March 31, 2010.[13] But for the most part, it was not until after that date that the Utilities submitted their workpapers to the Energy Division, and even then there were continuing disputes about the contents of the workpapers, and the review process was still ongoing. The Utilities and the Energy Division agreed to continue discussing the workpapers through April 30, 2010, and Energy Division posted the results of its review on the workpaper review website on May 3, 2010.[14] Energy Division made three types of recommendations regarding the workpapers: approval, approval with revision, or rejection. On July 12, 2010, Energy Division further clarified the disposition of the pending and outstanding workpapers.[15]

When the Utilities were unable to achieve their preferred *ex ante* values through the Energy Division review process, they filed the PFM on September 17, 2010, requesting that the Commission freeze the *ex ante* values they submitted on or after March 31, 2010, for the duration of the energy efficiency program cycle, even though the issues raised in those workpapers had not been resolved at the time of their submission.[16] The PD would reject the Utilities' request to use their unverified and often incorrect *ex ante* values for estimating energy savings and would instead freeze the *ex ante* values using the values in Attachment A to the PD, which for the most part reflect Energy Division's review and analysis. DRA and TURN support this result, but recommend revising two aspects of the PD as it relates to freezing non-DEER *ex ante* results.

A. The Commission should revise the Proposed Decision to use net-to-gross values reflecting updates with available and improved new information.

The "Net-to-Gross" ratios used to calculate *ex ante* values are a critical element of the EM&V process and, more broadly, of ensuring that ratepayers are getting good value for the billions they are spending on energy efficiency programs. As the PD explains:

---

[12] Reporter's Transcript (RT), Peter Lai/Energy Division, p. 278:5-9.

[13] PD, p. 10, citing November 18, 2009, Ruling, p. 4.

[14] RT, Lai/ED, p. 284-285.

[15] See *e.g.*, October 29, 2010, Administrative Law Judge's Ruling Seeking Comment, Attachment 1.

[16] PFM, p. 7.

"Net-to-Gross (NTG) ratio values for energy efficiency measures are intended to take into account that some customers are "free riders"; in other words, some customers who receive utility incentives for energy efficiency measures would have undertaken the programs anyway, even without utility incentives. If, for example, studies show that 30% of customers are "free riders," then the net-to-gross ratio value is 1 minus 0.3, or 0.7. Therefore, the projected savings would be reduced by 30% to account for free ridership."[17]

When the Commission adopted frozen DEER values in D.10-12-054, the NTG values fell into one of two categories: those that were specific to a particular energy efficiency measure, and those that were more generic (labeled "default"). The PD explains that the "default values were included to provide an NTG ratio value to be used when there is no measure specific NTG ratio value, because there was no reliable or appropriate study from which an NTG ratio value could be drawn."[18]

After the Energy Division finalized DEER 2.05, it published the results of the 2006-2008 EM&V studies[19] that included specific NTG ratios for measures on which DEER had previously assigned only default values. Energy Division published the 2006-2008 EM&V studies in draft in December 2009 and the final results in February 2010. The Energy Division recommended that the frozen *ex ante* values for those measures in DEER 2.05 that relied on default NTG values be updated with measure-specific NTG ratios, explaining that "the default NTG ratio values in the adopted DEER were intended for use when no measure-specific values were available in relevant or appropriate recent studies."[20] Energy Division further proposed to limit the number of measures for which an updated, measure-specific NTG ratio might be used instead of the default ratio, by requiring the change only if the difference between the default value and the measure-specific value was greater than 5 percent.[21]

According to the PD,

---

[17] PD, p. 16

[18] PD, p. 16.

[19] See e.g., EM&V studies of commercial facilities, http://www.energydataweb.com/cpuc/topicView.aspx?tid=15; EM&V studies of commercial retrofitting http://www.energydataweb.com/cpuc/topicView.aspx?tid=14; EM&V of PG&E fabrication and manufacturing studies, and other 2006-2008 EM&V topics at http://www.energydataweb.com/cpuc/home.aspx.

[20] PD, p. 17.

[21] PD, p. 17.

> "[i]is arguable that the utilities should have updated their NTG ratio values with available and improved new information last year, as it was not clear at the time which version of DEER would be adopted."[22]

Updating the Utilities' NTG ratios with new and more accurate information is entirely consistent with the direction in D.09-09-047 that *ex ante* values should be frozen using best available data at the beginning of the 2010 program cycle and the events that unfolded after D.09-09-047 issued. The PD errs in concluding that it would be inconsistent with D.10-12-054 to replace default NTG values with measure specific values consistent with the 2006-2008 EM&V studies. In fact, it would be a prudent use of the $97 million EM&V studies funded by ratepayers and would produce the most accurate estimates of energy savings from the 2010-2012 portfolios. If the Commission adopts those values now, it will promote certainty and finality for the remainder of the program cycle.

In D.10-12-054, the Commission adopted DEER values, but explicitly deferred making a determination on the non-DEER values.[23] The Proposed Decision would have the Commission effectively re-write this element of D.10-12-054 so that the earlier decision determined the default NTG values to be used for evaluating non-DEER measures. This would contravene the PD's promise that "we will not allow the mere fact of delay to overrule the concepts for adopting *ex ante* values previously articulated in D.09-09-047," and the correct recognition that "the utilities themselves were responsible for a significant part of the delay" in the review process.[24] As noted earlier, here the delay was truly minimal, as the updated NTG ratio values are from the 2006-2008 EM&V reports that were published in draft form in December 2009 and in final form in February 2010. Rather than treat this matter as having been decided in D.10-12-054 (despite that decision's explicit statement that it was not addressing non-DEER measures), the Commission should use the updated NTG values from the 2006-2008 EM&V reports as the outcome most consistent with D.09-09-047 and that decision's promise to use the best available information, even if it meant delaying the date of the freeze until early 2010.[25]

---

[22] PD, p. 18.

[23] D.10-12-054, p. 15.

[24] PD, pp. 9, 15-16.

[25] D.09-09-047, pp. 42-43.

The Commission should therefore revise the PD so that it uses specific NTG values for those measures for which there were previously only default NTG values available. Using measure specific NTG ratios for those measures that had only default values in 2.05 DEER would be consistent with two of the concepts from D.09-09-047 recognized by the PD: use of best available information and finality, with a freeze date for ex ante values in early 2010.[26]

B. The Commission should allow the Energy Division to review and revise as necessary utility workpapers for energy efficiency measures that become High Impact Measures during the program cycle, even if those measures were not initially predicted to be High Impact Measures.

DRA and TURN support the PD's proposed adoption of Energy Division's revisions to the Utilities' workpapers for non-DEER, High Impact Measures (HIM),[27] appended as Attachment A to the PD. DRA and TURN agree that this will promote finality and certainty, while at the same time maintaining the meaningful review process of ex *ante* values that was contemplated by D.09-09-047.

However, the PD proposes to further promote finality by freezing identification of HIMs to the current set of 70 identified for the current portfolio cycle, even if some of the measures currently not included as a HIM subsequently achieve more savings than forecasted and as a result would qualify as a HIM.[28] The Commission should revise the PD so that it allows Energy Division to review and revise workpapers of energy efficiency measures that were previously accepted without review because they were not expected to be high impact measures,[29] if in fact, an energy efficiency measure becomes a HIM during the course of the program cycle.

Energy Division's extensive review process of expected HIMs supports the PD's conclusion that "it is likely that utilities and Energy Division have already identified most,

---

[26] PD, p. 8.

[27] High Impact Measures or HIMS are "defined as those which contribute more than 1 percent of portfolio energy efficiency savings. There were approximately 50 high-impact measures reviewed by Energy Division, which were in some cases subdivided to produce 70 workpapers." PD, fn. 8, p. 12.

[28] PD, p. 26.

[29] The Energy Division accepted without review non-HIM workpapers submitted by the Utilities. PD, p. 12, citing RT 283-284.

although not all, HIMs."[30] However, the following statement in the PD is not supported by the record: "[i]n the [event] that existing measures turn out unexpectedly to be high impact measures, using the utility-proposed *ex ante* values—even if inaccurate—should have a small impact on overall portfolio evaluations." There were no comments or evidence on the potential impact of using unreviewed utility workpapers for measures that contribute a higher than expected proportion of portfolio[31] savings. Given the numerous utility errors and incorrect assumptions that Energy Division identified and revised in its review of HIM workpapers, the Commission should not assume that any such errors would necessarily have a small impact on portfolio evaluations. Instead, the Energy Division should be allowed to review and revise workpapers for measures that become HIMs during the course of the energy efficiency program cycle.

If the Commission determines not to allow the Energy Division to allow such a review, it should in any case delete the "should have a small impact" sentence as unsupported by the record. Its removal from the final decision would prevent the possibility that in the future the comment might be quoted or cited out of context.

C. The Commission should revise the Proposed Decision to include the Gross Realization Rates recommended by the Energy Division.

Custom projects, because they are site specific, cannot use *ex ante* values that are frozen in advance because the energy savings estimates are not created until the project is developed. As the PD explains:

> "[c]ustom measures and projects are energy efficiency efforts where the customer financial incentive and the ex ante energy savings are determined using a site-specific analysis of the customer's facility. Customized projects, by their nature, require unique calculations for each project, as they do not rely on fixed DEER or workpaper values."[32]

It is therefore necessary to devise a process that allows *ex ante* savings estimates from custom projects to be reviewed as they are developed. The PD approved a process that would allow the Energy Division to review some custom projects prior to their implementation. DRA

[30] PD, p. 26.

[31] PD, p. 26.

[32] PD, p. 30.

and TURN support the proposed custom project review process, which balances the need of the customers who are undertaking the energy efficiency projects for certainty about the incentives they will receive with the need of the ratepayers who are funding the incentives for the oversight necessary to ensure that energy savings will materialize as forecasted.

However, the Energy Division will not review all custom projects because of time and resource constraints. For those projects that Energy Division does not review, the PD would adopt a Gross Realization Rate (GRR) that accounts for the reality that not all forecasted savings will be achieved. The PD would maintain the GRR of 0.80 adopted by D.09-09-047 for all savings parameters (kilowatt (kW), kilowatt hour (kWh) and therm) and for all Utilities.

The problem with the PD's approach on this issue is that 2006-2008 EM&V results show GRR lower than 0.80 for some Utilities and some savings parameters. In fact, the GRR for some projects was well under 50 percent.[33] Based on this more recent data, Energy Division recommended the adoption of lower Gross Realization Rates, as set forth below.

IOU	kWh	kW	Therm
PG&E	0.7	0.7	0.75
SCE	0.8	0.8	
SDG&E	0.8	0.7	0.7
SoCalGas			0.75

The Commission should adopt the more recent and more accurate GRR's reflected in this table as better estimating energy savings likely to be achieved from custom projects that are not specifically reviewed by the Energy Division. As with the net-to-gross ratio values discussed earlier, the updated realization rates were available to the Utilities as early as December 2009 in draft and in February 2010. Use of the Energy Division's recommendation is consistent with the D.09-09-047 to use the best data available at the time the 2010-2012 activity is starting, even if that requires delaying the date of the freeze beyond the start of 2010.

[33] See e.g. EM&V studies of commercial facilities, http://www.energydataweb.com/cpuc/topicView.aspx?tid=15; EM&V studies of commercial retrofitting http://www.energydataweb.com/cpuc/topicView.aspx?tid=14; EM&V of PG&E fabrication and manufacturing studies, and other 2006-2008 EM&V topics at http://www.energydataweb.com/cpuc/home.aspx.

III. CONCLUSION

The Commission should adopt the PD with the changes recommended in these comments.

Respectfully submitted,

/s/ DIANA L. LEE

DIANA L. LEE

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-2262

/s/ ROBERT FINKELSTEIN

Robert Finkelstein

Robert Finkelstein, Legal Director

THE UTILITY REFORM NETWORK
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: (415) 929-8876
Fax: (415) 929-1132
E-mail: bfinkelstein@turn.org

May 16, 2011

APPENDIX A

Proposed Changes to Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the PD

Findings of Fact

8. D.10-12-054 modified D.09-09-047 to adopt frozen DEER values based on the 2008 DEER version 2.05, but some of those values were not measure specific, but were default values for use when no measure specific information was available for net-to-gross ratios.

9. Energy Division provided data to utilities and the public regarding net-to-gross values for energy efficiency measures in draft form in December 2009 and in final form in February 2010, including specific net-to-gross values for some measures that had previously only had default values available in DEER version 2.05.

10. Net to gross ratio values for energy efficiency measures were contained in the 2008 DEER version 2.05 adopted in D.10-12-054, but some of those values were not measure specific, but were default values for use when no measure specific information was available.

18. A GRR adjustment factor of 0.8 for non-DEER custom energy efficiency projects was adopted in D.09-09-047, but it did not incorporate analyses of 2006-2008 energy efficiency results that were unavailable at that time.

19. Revised Energy Division GRR values for non-DEER custom energy efficiency projects include more accurate data than used for D.09-09-047, as it takes into account analyses of 2006-2008 energy efficiency results which was unavailable for consideration in D.09-09-047. ~~However, t~~These updates were ~~was not~~ available in draft in December 2009and was finalized near the beginning of the program cycle ~~until~~ in February 201~~1~~0

Conclusions of Law

4. D.10-12-054 adopted 2008 DEER version 2.05, including net-to-gross ratio values. Therefore, the adopted net-to-gross ratio values in the 2008 DEER version 2.05 should be used for determining *ex ante* values for the 2010-2012 energy efficiency portfolios for specific measures, but default values in 2008 DEER version 2.05 should not be used when there is measure-specific information available from 2006-2008 EM&V studies..

8. Consistent with the Commission's policy adopted in D.09-09-047 to freeze *ex ante* values for energy efficiency measures at the start of the portfolio cycle, ~~no~~ additional non-DEER workpapers contained in the set of those submitted by utilities for Energy Division review and approval by March 31, 2010 should only be considered as high impact measures for the purpose of determining *ex ante* values if measures that were originally not expected to be high-impact measures become high impact measures during the course of the program cycle .

Energy Division, in its Phase 2 review and approval process of utility non-DEER *ex ante* workpapers, should continue to review and approve mid-cycle workpapers for possible high-impact measure workpapers.

12. ~~No new facts or circumstances have been raised here to justify changing~~ D.09-09-047's ~~with regard to~~ gross realization rate values for determining *ex ante* values for non-DEER custom energy efficiency projects should be revised consistent with 2006-2008 EM&V studies that showed gross realization rates lower than .50 for some utilities and measures.

13. The gross realization rate value of 0.8 adopted in D.09-09-047 should be ~~retained and used for~~ revised as shown below for determining *ex ante* values for non-DEER custom energy efficiency projects.

IOU	kWh	kW	Therm
PG&E	0.7	0.7	0.75
SCE	0.8	0.8	
SDG&E	0.8	0.7	0.7
SoCalGas			0.75

451096

Ordering Paragraphs (DRA and TURN additions are in bold and underlined)

1. Ordering Paragraph 48 of Decision 09-09-047 (as modified by Decision 10-12-054) is modified to read: "The *ex ante* (also known as estimated) energy savings values for energy efficiency measures established for use in planning and reporting accomplishments for 2010-2012 energy efficiency programs shall be frozen. This freeze of *ex ante* energy savings values shall apply both to energy efficiency measures contained in the Database for Energy Efficient Resources (DEER) and non-standard energy efficiency measures (non-DEER measures). The frozen version of DEER shall be 2008 DEER version 2.05, dated December 16, 2008, as currently posted at the DEER website (http://www.deeresources.com) maintained by Energy Division. **For measures for which the net-to-gross ratios in DEER version 2.05 are default values and more recent measure specific information is available in the 2006-2008 EM&V studies, measure specific net-to-gross values shall be used.** The frozen non-DEER *ex ante* values shall be based upon the values adopted in Attachment A to this decision. All non-DEER energy efficiency measures not referenced in Attachment A to this decision (except for custom measures) shall have *ex ante* energy savings values frozen based on workpapers submitted to Energy Division by March 31, 2010, pursuant to the Administrative Law Judge Ruling of November 19, 2009 in this proceeding. All non-DEER *ex ante* energy savings values shall be effective as of January 1, 2010."

6. Energy Division shall compile all Commission-adopted frozen *ex ante* energy savings values into one website, **including measure specific net-to-gross ratios for measures in DEER version 2005 that contain only default net-to gross ratios.**. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall cooperate with Energy Division in this effort. Energy Division shall identify the specified website in a filing in this proceeding within 10 days after the date of this decision. The filing of this report will not reopen this proceeding.

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of its 2009-2011 Energy Efficiency Program Plans And Associated Public Goods Charge (PGC) And Procurement Funding Requests.	Application 08-07-021 (Filed July 21, 2008)
And Related Matters.	Application 08-07-022 Application 08-07-023 Application 08-07-031 (Filed July 21, 2008)

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED THIRD DECISION ADDRESSING PETITION FOR MODIFICATION OF DECISION 09-09-047

DIANA L. LEE
Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Email: dil@cpuc.ca.gov

MONISHA GANGOPADHYAY
Analyst for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1417
Email: mgb@cpuc.ca.gov

May 23, 2011

451877

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PROPOSED THIRD DECISION ADDRESSING PETITION FOR MODIFICATION OF DECISION 09-09-047

I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rule of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these reply comments on the Proposed Third Decision of Administrative Law Judge Gamson Addressing the Petition for Modification of Decision (D.) 09-09-047 (PD). DRA's reply comments respond to some of the unfounded assertions in the opening comments of Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E);[1] the Natural Resources Defense Council (NRDC), and the National Association of Energy Service Companies, Enernoc, Inc., and Global Energy Partners LLC.[2]

The Commission should reject the efforts of the Utilities, NRDC, and NAESCO *et al* to eviscerate the Commission's commitment to use the best data available near the start of the 2010-2012 energy efficiency portfolio cycle for estimating energy efficiency savings. DRA requests instead that the Commission adopt the PD consistent with the modifications recommended in DRA's and The Utility Reform Network's joint opening comments,[3] which would promote finality and certainty, while at the same time maintaining the meaningful review process of *ex ante* values that was contemplated by D.09-09-047.

II. DISCUSSION

A. The PD's adoption of Energy Division's modifications to the Utilities' workpapers is consistent with D.09-09-047's direction to use the "best available information at the time the 2010-2012 activity is starting…"

The Utilities acknowledge that D.09-09-047 required that energy savings assumptions for the 2010-2012 energy efficiency portfolios should be "based upon the best available

---

[1] DRA's reply comments refer collectively to SoCalGas, SDG&E, SCE, and PG&E as Utilities. The Utilities filed joint opening comments.

[2] DRA's reply comments refer collectively to the National Association of Energy Service Companies, Enernoc, Inc., and Global Energy Partners LLC as NAESCO *et al.*

[3] Comments of DRA and TURN on the Proposed Third Decision Addressing Petition for Modification of D.09-09-047, filed May 16, 2011.

information at the time the 2010-2012 activity is starting. The Utilities also acknowledge that delaying the date of that freeze until early 2010 is a reasonable approach to better ensure that the maximum amount of updates is captured before the freeze takes effect."[4] The Utilities admit that D.09-09-047 and the subsequent November 18, 2009 ruling directed them to work with the Energy Division to determine which values should be frozen.[5] The Utilities do not dispute that their March 31, 2010 workpapers failed to incorporate Energy Division's recommended changes or the 2006-2008 evaluation, measurement and verification (EM&V) results that were available in February 2010. Yet the Utilities nevertheless argue that the PD's refusal to approve the Utilities' March 2010 workpapers improperly "adopts mid-cycle reductions that artificially reduces IOU energy savings."[6]

There are at least two problems with the Utilities' statement. First, the reduction to estimated energy savings would occur "mid-cycle" only because the Utilities failed to incorporate Energy Division changes that were finalized in July 2010,[7] choosing instead to disregard those recommendations and file their current Petition for Modification.[8] The PD recognized that "the [U]tilities themselves were responsible for a significant part of the delay" in the review process and therefore correctly concluded "we will not allow the mere fact of delay to overrule the concepts for adopting *ex ante* values previously articulated in D.09-09-047."[9]

---

[4] Joint Opening Comments of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company on the Proposed Third Decision of Administrative Law Judge Gamson Addressing the Third Petitions for Modification of Decision 09-09-047, filed May 16, 2011, (Utilities' Joint Comments), p. 4, citing D.09-09-047, pp. 42-43.

[5] November 18, 2009 Administrative Law Judge Ruling regarding Non-DEER Measure *Ex Ante* Values, and attached staff paper (November 18, 2009 Ruling).

[6] Utilities' Joint Comments, p. 4.

[7] See *e.g.* October 29, 2010 Administrative Law Judge Ruling Seeking Comment, Attachment 1.

[8] This is the third PFM that the Utilities have filed to adjust the way the Commission measures energy efficiency savings. Each such PFM attacks the underlying premise of independent verification and use of up-to-date information established in earlier Commission decisions. *See e.g.*, Petition for Modification of Decision 07-09-043 by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company, filed October 31, 2007 in R.06-04-010 (seeking removal of the requirement to true-up energy savings at the end of the portfolio cycle); Petition for Modification of Decisions 07-09-043 and 08-01-042 by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company, filed August 15, 2008 in R.06-04-010 (seeking payment of interim incentives for 2006-2007 using self-reported savings and *ex ante* parameters that had not been updated).

[9] PD, pp. 9, 15-16.

Second, the use of updated information about energy savings estimates that resulted from the Energy Division's review would not "artificially reduce" energy savings, but would instead more accurately estimate those savings. If the use of more accurate energy savings estimates requires "significant rebalancing of the IOU portfolios," then the result will be that ratepayers' investment in energy efficiency are directed to measures and programs that will save more energy. The Commission should endorse this result, which allows EM&V results to continually improve program delivery.

NRDC's criticism that "the PD's proposal to apply new values retrospectively to January 2, 2010, would turn the very definition of *ex ante* on its head,[10]"suffers from a flaw similar to the Utilities' argument: failure to recognize that the delay in updating the *ex ante* energy savings estimates is a consequence of the Utilities' refusal to incorporate Energy Division guidance as contemplated by the November 18, 2009 ruling. Delay in the process is not an acceptable reason to freeze *ex ante* values using stale and inaccurate data.[11] The Commission should reject the arguments of NRDC and the Utilities to freeze energy savings estimates using outdated data that fails to accurately reflect the energy that will be saved by the 2010-2012 energy efficiency portfolios.

---

[10] Opening Comments of The Natural Resources Defense Council (NRDC) on Proposed Decision of ALJ Gamson on Third Decision Addressing the Petition for Modification of Decision 09-09-047, filed May 16, 2011, (NRDC Comments), p. 5.

[11] For example, an important parameter in measuring savings from compact fluorescent lamps (CFLs) is the in-service rate (ISR), which measures how many bulbs are installed during the program period. If a bulb is not installed (perhaps because the purchaser has already filled the available sockets and has purchased the bulb as a back up), then it will not produce energy savings during the program period. Despite the availability of evaluation reports from the 2006-2008 EM&V process, the Utilities' workpapers for CFLs used in-service rates of 0.9 for residential CFLs and 0.92 for nonresidential CFLs from 2005 DEER, which as based on results from early 2000. Yet the 2006-2008 Upstream Lighting Evaluation recommended that installation rates of between 0.67 and 0.77 be used for residential CFLs and 0.76 for nonresidential CFLs. Final Evaluation Report: Upstream Lighting Program, Volume 1, KEMA, February 8, 2010, pp. 43-44, available at http://www.calmac.org/publications/FinalUpstreamLightingEvaluationReport_Vol1_CALMAC_3.pdf.

The Utilities also used outdated information for base case energy use and other parameters, even though more recent data are available. For example, PG&E relied on a 1999 study to support its hours-of -use (HOU) data for CFLs in multi-family common areas, despite the availability of more recent information based on logging. PG&E's preferred study from more than a decade ago shows that lights in multi-family common areas are in use 8,198 hours per year, even though more recent data supports a figure around 6,000 hours a year. Non-DEER High Impact Measure (HIM) Review: CFL Lamp Measures, May 14, 2010, page 4, Section 3.3.2 Operating Hours. ftp://deeresources.com/pub/WorkpaperReview/10-12Phase1/. File Group NonDEERWorkpaperReviewPhase1.exe, NonDEERExAnteReview2010-2012, DMQCFiles,

B. The Commission should reject the attempt of the Utilities, NRDC and the NAESCO *et al* to use a Gross Realization Rate of 1 for Custom Projects.

The Gross Realization Rate (GRR) is a factor applied to forecasted energy savings from custom projects[12] that accounts for the reality that not all forecasted savings will be achieved. The PD would maintain the GRR of 0.80 (or 80%) adopted by D.09-09-047 for all savings parameters (kilowatt (kW), kilowatt hour (kWh) and therm) and for all Utilities. NRDC opposes the PD's application of 0.80 to custom measure impacts and claims as an "arbitrary discount" for which "there is no justification" in the record.[13] NAESCO *et al* claim that the "*de facto* 20% discount is not supported by the record in this case."[14] The Utilities claim that the PD's proposed GRR is "unsupported," "completely arbitrary" and "bypasses any established EM&V process."[15]

The Utilities, NRDC and NAESCO *et al* recommend that the Commission adopt a GRR of 1.0, a value that presumes that every custom project will achieve 100% of forecasted savings. That optimistic assumption is completely at odds with 2006-2008 EM&V studies,[16] which showed that realization rates for custom projects were as low as 20%. The statewide gross realization rates for 2006-2008 custom programs reflected savings of 67% for cumulative savings (kWh), 66% for annual peak savings (kW) and 74% for gas savings (therms).

DRA and TURN recommended that the Commission consider development of more granular default GRRs.[17] The use of a one-size-fits-all for each utility means that program

[12] "Custom measures and projects are energy efficiency efforts where the customer financial incentive and the ex ante energy savings are determined using a site-specific analysis of the customer's facility. Customized projects, by their nature, require unique calculations for each project, as they do not rely on fixed DEER or workpaper values." PD, p. 30. As explained in the PD, the GRR would be applied to projects that the Energy Division did not review individually under the proposed custom review process.

[13] NRDC Comments, p. 5.

[14] Joint Comments of the National Association of Energy Service Companies, Enernoc, Inc, and Global Energy Partners LLC on the Proposed Decision of Administrative Law Judge Gamson Addressing the Third Petitions for Modification of Decision 09-09-047, filed May 16, 2011 (NEASCO, Enernoc, Global Energy Partners Joint Comments), p. 7.

[15] Utilities' Joint Comments, p. 10.

[16] The 2006-2008 EM&V realization rates are summarized in Attachment A to these comments.

[17] Motion of SDG&E, et. al, Seeking The Right To File Case Management Statement Report, filed February 18, 2001, Attachment A, p. 27.

implementers who achieve the highest levels of performance will not see the full benefit of their efforts, while other implementers that perform more poorly see a windfall from the use of a GRR that exceeds their actual experience.

In the absence of more granular GRRs based on actual program performance, DRA and TURN's PD comments supported the GRRs recommended by the Energy Division. The Energy Division applied GRRs ranging from 0.7 to 0.8 to take into account differences between the Utilities and the three savings parameters, while at the same time recognizing that planned improvements in the process of calculating estimated energy savings would likely result in higher realization rates during the current cycle than during 2006-2008. The Commission should adopt the GRRs recommended by the Energy Division as a reasonable allocation of the risk to ratepayers that their energy efficiency investment actually results in savings. Alternatively, DRA would support the development of more granular GRRs based on 2006-2008 program performance. In no event should the Commission adopt an across the board GRR of 1 for all Utilities and all savings parameters, which would unfairly saddle ratepayers with the very real risk that savings would not materialize as planned.

III. CONCLUSION

The Commission should adopt the PD with the changes recommended in these reply comments and the opening comments of DRA. NRDC claims that the direction of the PD, which would require the use of more recent energy savings estimates to value energy efficiency comments "would create a situation in which the proverbial 'tail is wagging the dog.'" NRDC is incorrect. Adopting the changes proposed by NRDC, the Utilities, and NAESCO *et al* would instead create a situation in which the proverbial "fox is guarding the hen house." The Commission should instead endorse the independent oversight of the Energy Division as provided in the PD, with the modifications proposed in the comments of DRA and TURN.

Respectfully submitted,

/s/ DIANA L. LEE

DIANA L. LEE

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-2262

May 23, 2011