Concurrence of Commissioner Michel Peter Florio on Item 47 [D.11-07-XXX]
Third Decision Addressing Petition for Modification of Decision 09-09-047

This is the third decision on a Petition for Modification of Decision 09-09-047 filed by the four major California energy utilities. The decision adopts modifications and clarifications regarding the utilities' energy efficiency portfolios for program years 2010 through 2012.

This proceeding (Application 08-07-021 and related matters) was assigned to me after the mailing of the proposed decision, in the twilight of the proceeding. As such, I want to acknowledge ALJ Gamson, Commissioner Grueneich, and President Peevey for their stewardship of this proceeding. All credit for this decision should be fairly attributed to them. I would also like to thank Energy Division staff for all of their hard work on this matter.

This decision has two clear advantages. First, it brings finality and certainty to the determination of *ex ante* energy savings values for the 2010-2012 portfolios. Our evaluation team and the utilities have been debating for some years over this point. Concluding that debate has some intrinsic value for everyone involved.

The second advantage of this decision – particularly from my perspective -- is that it closes this proceeding and allows for the Commission to consolidate its consideration of energy efficiency matters in Rulemakings 09-11-014 and 09-11-019, both under the leadership of Commissioner Ferron.

In the parlance of energy efficiency, this decision adopts final *ex ante* energy savings workpapers for non-DEER energy efficiency measures for program years 2010 through 2012. The decision also adopts a custom project *ex ante* value review process. These determinations are made effective January 1, 2010, the beginning of this portfolio implementation period, consistent with the policy of employing *ex ante* estimates. The decision allows utilities 60 days to make any energy efficiency portfolio program design changes required to adapt to the workpapers and the custom project *ex ante* review process adopted here.

For those of you, like me, for whom energy efficiency is not your native language, let me provide a simplified translation: the workpapers adopted here complete our estimation of how much energy we'll save through somewhat unusual and non-standard improvements to the efficiency of California buildings and equipment. We're making these estimates nearly 19 months after we began making those improvements. Furthermore, with regard to the custom project review process adopted by this decision: some projects are so unique that we don't know how much energy savings will result from a set of unique actions, so we're blessing a process proposed by our Energy Division that tries to balance effective implementation and independent evaluation of such projects.

This decision provides a decidedly imperfect conclusion to an unfortunate situation. Our energy efficiency evaluation staff has been working with the utilities to lock down these estimates for several years. While both the evaluators and the utilities made concessions along the way, they remain at odds over many key assumptions. From my perspective, the need for Commission intervention nearly 19 months after the programs began is evidence that the energy efficiency policy framework we have in place is fundamentally flawed. While this decision provides a reasonable arbitration of the immediate debate, it does not even begin to address the core problems threatening the success of energy efficiency in California.

One of the threats facing energy efficiency in California is the shareholder incentive mechanism that purportedly rewards utilities for successful administration of energy efficiency programs. I believe that the Commission's recent attempts at using utility shareholder incentives to encourage better performance in the energy efficiency arena represent a failed experiment, and that we should seriously consider eliminating or dramatically reforming the shareholder incentive mechanism and restructuring our regulatory framework for energy efficiency program delivery.

The shareholder incentive mechanism has concentrated and amplified utility criticism of the commission's energy efficiency program evaluation efforts and thereby clouded future program planning. Since the shareholder earnings mechanism used for the 2006-2008 program cycle relied heavily on the results of the commission's program evaluation efforts, utilities had a vested financial interest in discrediting any results that negatively impacted their bottom line, whether those results were valid or not. While program evaluation results are never perfect and reasonable minds can disagree about these measurements, utilities have been steadfastly adamant in their opposition to many of the commission's evaluation results. The bitter disputes over these evaluation results not only created considerable controversy about shareholder earnings, but also disrupted many of the commission's efforts to improve program choice and implementation. For this cycle the Commission has tried to employ *ex ante* savings estimates instead but, as evidenced by today's decision, that has not served to reduce the level of controversy.

Going forward, I am considering recommending to my colleagues that we shift our energy efficiency paradigm to more closely parallel that used for general electricity procurement. In the procurement context the commission requires that the utilities follow a "market first" approach, in which competitive purchases from independent third parties are the first procurement option. Utility-owned generation is typically authorized only if it provides a better deal for ratepayers or the market fails to deliver what is needed. The utilities effectively act as purchasing agents on behalf of their customers, and the costs are passed through in rates. There has been no form of incentive mechanism applied to this procurement activity for at least the last decade.

It appears to me that we are fast approaching the point where there will be adequate numbers of third-party energy efficiency providers – including private sector firms, local governments and non-profit entities – to allow for competitive procurement of the vast majority of energy efficiency services. The utilities could conduct solicitations and purchase "negawatts" in much the same way that they procure energy and capacity today. Only where other parties fail to step forward with viable and economical programs would the utilities need to run such programs themselves. Rather than having our commission staff that are in charge of program evaluation becoming the target of controversy over the measurement of performance, the buyers and sellers of efficiency services would be forced to work though these issues themselves, like normal commercial counterparties. This would also have the beneficial effect of freeing up commission staff to focus on overall program evaluation in a far less contentious environment, and allow them to steer utility solicitations in the direction of more promising efficiency initiatives.

I will look forward to exploring these and other potential reforms through the energy efficiency rulemakings.