BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.	Rulemaking 09-11-014 (Filed November 20, 2009)

THE DIVISION OF RATEPAYER ADVOCATES'REPLY COMMENTS IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS REGARDING 2013 BRIDGE FUNDING AND MECHANICS OF PORTFOLIO EXTENSION

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits the following reply to the opening comments filed by parties on June 16, 2011 in response to the May 27, 2011 "Administrative Law Judge's Ruling Regarding 2013 Bridge Funding and Mechanics Of Portfolio Extension Ruling Soliciting Comments" (ALJ's Ruling). DRA's Reply Comments first identify the areas of apparent agreement between parties, then explain why the Commission should reject the recommendations of some parties to characterize the bridge year as an "extension" of the current 2010-2012 portfolio cycle in order to justify using outdated energy savings estimates for one more year.

II. DISCUSSION

A. Areas of apparent agreement

Most parties support a bridge period of only one year.[1] Most parties agree that contracts

[1] Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company and Pacific Gas and Electric Company ("Joint IOUs") Comments on the Administrative Law Judge's Ruling Regarding 2013 Bridge Funding and Mechanics of Portfolio Extension," June 16, 2011 (Utilities Opening Comments) p. 3. However, the Utilities' Opening Comments also state at page 10 that" if DEER is not finalized by June 1, 2012, the Joint IOUs would strongly recommend an additional one-year extension…"; Opening Comments of The Natural Resources Defense Council (NRDC) on Administrative Law Judge's Ruling Regarding 2013 Bridge Funding and Mechanics of Portfolio Extension, June 16, 2011 (NRDC Opening Comments), p. 1; Comments of the

with local governments should be amended for the bridge year rather than renegotiated.[2] Aside from these two issues, it appears that there are no other areas about which parties that filed opening comments agreed.[3]

B. DRA's Recommendations for the bridge funding year

DRA's opening comments recommended limiting bridge funding to one year and proposed a realistic approach to updating *ex-ante* values based on best available data, most, if not all, of which the Energy Division already has. While necessary and practical, these recommended *ex-ante* updates alone are insufficient to ensure prudent expenditure of ratepayer funds because the updates still do not reflect recent market conditions. Therefore, DRA recommended the adoption of a handful of mandatory measures to promote the prudent use of ratepayer capital: a) deny the application of the Risk/Reward Incentive Mechanism (RRIM) to

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California Energy Efficiency Industry Council (Efficiency Council) in Response to the Administrative Law Judge's Ruling Soliciting Comments on 2013 Bridge Funding and Mechanics of Portfolio Extension, June 16, 2011 (CEEIC Opening Comments), p. 3; Comments of The Utility Reform Network on 2013 Bridge Funding Mechanics of Portfolio Extension, June 16, 2011 (TURN Opening Comments), p. 17; Opening Comments of the National Association of Energy Service Companies (NAESCO) on the Ruling of ALJ Farrar regarding 2013 Bridge Funding and the Mechanics of Portfolio Extension, June 16, 2011 (NAESCO Comments), p.3; The Division of Ratepayer Advocates' Comments in Response to Administrative Law Judge's Ruling Regarding 2013 Bridge Funding and Mechanics of Portfolio Extension, June 16, 2011 (DRA Opening Comments), p .3; Women's Energy Matters [WEM]Opening Comments Bridge Funding and Mechanics of Portfolio Extension, June 20, 2011, p. 4. Although WEM opposes any extension of the current portfolio cycle, it would likely agree that a one-year extension is preferable to a longer extension; Comments of the Local Government and Sustainable Energy Coalition to ALJ Ruling Regarding Portfolio Extension, June 16, 2011 (LGSEC Opening Comments), p. 1.

[2] Utilities Opening Comments, p. 6; NRDC Opening Comments, pp. 4-5; CEEIC Opening Comments, pp. 7-8; NAESCO Comments, p. 5; DRA Opening Comments, p. 4.; LGSEC Opening Comments, p. 4.

TURN goes a step further in its support of local governments and recommends removing those programs from the Utilities' portfolio and, DRA assumes, place these programs under some form of alternative program administration. TURN Opening Comments, pp. 13-14. TURN's proposal would go a long way toward addressing the fundamental concerns that local governments have raised about current utility program administration. DRA recommends that the Commission conduct one or more workshops to develop this concept. Because local governments work closely with the Energy Commission on a host of energy efficiency initiatives and codes and standards, and because local governments have specific obligations under Assembly Bill (AB) 32, DRA recommends the Commission invite both the Energy Commission and the Air Resources Board to also participate in the workshops.

[3] DRA, The Utility Reform Network (TURN), Local Government Sustainable Energy Coalition (LGSEC), the Natural Resources Defense Council (NRDC), the California Energy Efficiency Industry Council (CEEIC), Southern California Edison Company (SCE), San Diego Gas & Electric, (SDG&E), Southern California Gas Company (SoCalGas) and Pacific Gas and Electric Company (PG&E) met and conferred via a conference call on June 22, 2011, but were not able to resolve outstanding differences regarding bridge funding issues. DRA's Reply Comments refer collectively to SCE, SDG&E, SoCalGas and PG&E and Utilities.

the bridge year; b) eliminate compact fluorescent lamp (CFL)[4] and appliance recycling program rebates, incentives and subsidies; c) cap the total budget at one-third of the budget authorized for the 2010-2012 budget plus unspent funds from the 2010-2012 cycle; d) adopt the 2013 energy savings goals indicated by the Commission in Decision (D.) 09-09-047; e) establish a Consolidated Financing Program with an initial budget of at least $85 million (more if possible) to develop and implement financing mechanisms that induce the participation of private financial entities to expand the pool of capital to fund customer energy efficiency projects through low interest loans, consistent with the objectives of AB 758; and f) initially fund the Consolidated Financial Program from monies available through the elimination of rebates, incentives and subsidies for screw-in CFLs and appliance recycling programs; unspent 2010-2012 cycle funds (except those allocated for local government programs); an approximate 50 percent reduction in the evaluation, measurement and verification (EM&V) budget; and adjustments made by the Utilities to their remaining portfolios that may free up additional monies.

DRA recommended an expedited timeline to reach final determination on bridge funding along with a process to quickly resolve disputes on the *ex ante* updates. Finally, DRA expressed its support for the expedited extension of local government programs and contracts and suggested that the Commission firmly encourage the Utilities to build a more collaborative relationship with local governments, which DRA hopes will result in effective and innovative programs that transform the energy efficiency marketplace.

III. THE COMMISSION SHOULD REJECT REQUESTS TO "EXTEND" THE 2010-2012 PORTFOLIO CYCLE THAT WOULD LOCK IN OUTDATED ENERGY SAVINGS ESTIMATES.

Under what they euphemistically characterize as an "extension" of the current cycle, the Utilities, NRDC, NAESCO, and CEEIC[5] recommend that the Commission approve expenditures of more than one billion dollars of ratepayer capital and apply significantly outdated *ex-ante*

[4] DRA's Opening Comments limited the elimination of rebates, incentives and subsidies to all screw-in CFLs.

[5] Utilities Opening Comments, pp. 6-8; NRDC Opening Comments, pp. 5-6; CEEIC Opening Comments, pp. 9-10; NAESCO Comments, pp. 6-8. Although LGSEC supports program continuity and the extension of successful programs, it did not advocate in its opening comments that the Commission use stale data for calculating bridge year savings. This is likely because local governments are concerned that the energy savings their programs achieve are real, rather than merely artifacts of outdated energy savings estimates. LGSEC Opening Comments, pp. 5-6.

values based on data at least eight years old [6] to ensure no one is inconvenienced with a process that incorporates updated values and would likely require changes in energy efficiency portfolios and programs.[7] Any reasonable investor would reject this investment approach and consider it irresponsible, and so should the Commission. Retention of old *ex-ante* values would not reflect current market conditions, would artificially inflate energy savings claims that benefit the Utilities at the expense of ratepayers, and would delay needed improvements to portfolios and programs. OPOWER's opening comments recognized the bridge funding cycle as presenting a "significant opportunity" for the Utilities to "incorporate innovative, cost-effective programs into their portfolios."[8] Updating *ex ante* values as DRA recommends would free up funding that could be used to implement the Consolidated Financing Program that DRA recommends and would allow the consideration of new and cost effective programs into the portfolios by eliminating programs that are no longer cost effective when their energy savings are estimated using more recent information.

Based on the opening comments, there is no dispute the Commission has information available to update the *ex-ante* values. The Utilities acknowledge more recent EM&V data is available and that it is feasible to update the database (DEER),[9] but contend that such updates should be limited to the four updates they support, contending that other updates would not be appropriate for the bridge year.[10] While it may be tempting to maintain the illusion of energy savings to prop up the cost-effectiveness of portfolios by limiting *ex-ante* updates to those that

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[6] Administrative Law Judge's Ruling Regarding 2013 Bridge Funding and Mechanics of Portfolio Extension," Attachment A, p. 6, May 27, 2011, Rulemaking 09-11-014, where the Energy Division acknowledges that the "2010-2012 portfolios were designed based on *ex-ante* values that date from the 2004-2005 cycle, and largely without consideration of 2006-2008 program evaluation results."

[7] Utilities' Opening Comments, pp. 4, 7.

[8] Comments of OPOWER, INC. in Response to Administrative Law Judge Ruling regarding 2013 Bridge Funding and the Mechanics of Portfolio Extension, June 16, 2011, p. 1.

[9] The database contains estimated energy savings values for standard energy efficiency measures. Those values include the expected useful life of the measure, the unit energy savings of the measure, and the net to-gross ratio.

[10] Utilities' Opening Comments, pp.7, 8. The Utilities agreed to make corrections to the large office lighting schedule for linear fluorescent technologies, HVAC package unit updates for Title 24, general Title 24 updates, primarily HVAC, and general lighting updates (primarily linear fluorescent).

the Utilities support, it would not meet the Commission's obligation to ensure prudent use of ratepayer capital.[11]

DRA's recommendation to update *ex-ante* values, combined with additional mandatory measures, would meet this prudency test. Specifically, DRA recommends: (a) updating DEERto incorporate best available net-to-gross ratios, the latest codes and standards in effect, new codes and standards for lighting that went into effect on January 1, 2011, with stricter standards to be phased each year thereafter through 2017 (2007 AB 1109 Huffman Bill), interactive effects, energy savings impacts, and any applicable corrections to the modeling software identified by the DEER team; (b) updating Non-DEER measures that would replace currently used default net-to-gross values with the net-to-gross values used in the updated DEER under "(a)" above; and (c) apply the DEER updates in "(a)" above for the bridge funding year *ex-ante* estimates for DEER and Non-DEER measures as applicable.[12] The Energy Division already has most, if not all, of this data to perform these *ex-ante* updates,[13] and it should be able to complete this work by March 1, 2012.[14] This should provide the Utilities with enough time to incorporate the updated values in their work flows and make necessary or desired improvements to their programs and portfolios. Indeed, the Utilities indicated they would need the Energy Division's output by June 30, 2012 in order to incorporate the updated *ex-ante* values; this would provide the Energy Division an additional four months to accommodate DRA's recommended updates.[15]

TURN also supports the use of best available data during the bridge year, and "assumes ED will perform that task."[16] DRA agrees with TURN that the Commission should prioritize updates that will address changes that should be made to high impact measures and implications

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[11] Public Utilities Code Section 451.

[12] As part of this *ex-ante* update, the Energy Division would be able to change the baselines from which energy savings are calculated, as appropriate.

[13] DRA notes that the Energy Division should already have most of the data needed to perform these updates through its ongoing work, e.g., corrections to the modeling software, the new lighting schedule, appliance recycling, consumer/business electronics, linear fluorescent lighting, and new codes and standards for HVAC. See A.08-07-021 et al. Reporter's Transcript, pp. 252:23-253:20, October 22, 2010 Prehearing Conference in which Energy Division staff member Peter Lai responded to questions from Administrative Law Judge Gamson.

[14] DRA's Opening Comments recommended that the updates be completed by March 1, 2012, except on page 12 of the comments, which incorrectly stated March 1, 2011. This was a typographical error, and should have read March 1, 2012, consistent with pages 3, 4, and 8 of DRA's Opening Comments.

[15] Utilities Opening Comments, p. 8.

[16] TURN Opening Comments, p. 14.

for the current portfolio and bridge year,[17] although DRA continues to believe that its recommended approach is more practical given the time and resource constraints facing the Energy Division staff. Regardless of whether it chooses the DRA approach or the TURN approach to using best available data for the bridge year, it is important that the Commission adopt an approach that recognizes the need to update energy savings estimates.

Under the Commission's current regulatory framework, the Utilities have the incentive and ability to delay updates to energy savings values to keep them outdated.[18] For this reason, DRA anticipates the Utilities, along with stakeholders that have a financial interest in energy savings outcomes, will contest the completed unbiased and independent work produced by the Energy Division and its consultants. In dealing with these challenges, the Commission should reject the notion that because the current *ex-ante* values underwent a more rigorous vetting process, those values are superior to the updated *ex-ante* values DRA recommends. The inescapable truth is that the *ex-ante* values currently in effect were based largely on data from the 2004-2005 program cycle, were not vetted for the upcoming bridge year, and, if applied to the bridge year, would be at least eight years stale.

Adopting the meager updates the Utilities have proposed is insufficient, particularly when the Commission has access to unbiased and independently produced data to provide better input. Under the predicament it is in, the Commission should simply ask itself which proposed alternative will result in *ex-ante* values that: (a) are closer to recent market conditions, (b) meet the requirement for the prudent use of ratepayer capital, and (c) will not unduly impact the Energy Division's ability to meet its deliverables for the 2014-2016 program cycle. The Commission should reject requests to "extend" the 2010-2012 portfolio cycle that would lock in outdated energy savings estimates. Updating *ex-ante* values with best available data is feasible and necessary to ensure prudent use of ratepayer capital.

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[17] TURN Opening Comments, p. 14.

[18] For example, the incorporation of the 2006-2008 Evaluation Reports into the record for A. 08-07-021 et al. is still in contention. DRA agrees with TURN that the "Commission needs to send a very clear signal to the IOUs: either cease the endless entrenchment over outdated values, or relinquish EE Program Administration." TURN Opening Comments, pp. 14-15.

IV. THE COMMISSION SHOULD ADOPT LIMITED MANDATORY PORTFOLIO CORRECTIONS TO ENSURE PRUDENT USE OF RATEPAYER CAPITAL.

In their opening comments, the Utilities assumed the existing *ex-ante* values would remain in effect and therefore offered no specific portfolio improvements, indicating only that programs generally on-target would be continued and those that are not would be re-evaluated and adjusted based on established objectives. The Utilities have had access to post 2004-2005 EM&V data and studies that have been available in draft since late 2009 and in final since early 2010 and chose not to use this information to propose program and portfolio improvements during the 2010-2012 cycle and for the upcoming bridge year. The Utilities also chose to disregard the policy direction clearly articulated by the Commission in D.09-09-047 to phase out screw-in CFLs and to ensure energy efficiency programs are designed and implemented to achieve market transformation outcomes so no further ratepayer support is necessary. Even using the old *ex-ante* values currently in effect that artificially inflate energy savings claims, TURN's opening comments effectively demonstrate the need for portfolio improvements.

In its opening comments, DRA recommended two limited mandatory adjustments for the bridge year: elimination of rebates, incentives and subsidies for all screw-in CFLs[19] and appliance recycling programs. Under DRA's recommendation, the Utilities would then have the discretion to make additional portfolio improvements based on the following criteria: (a)

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[19] In its opening comments, TURN effectively demonstrates that Utility portfolios continue to rely on energy "savings" derived from screw-in CFLs to buttress the cost-effectiveness of the portfolios overall, which TURN shows is nonetheless not cost effective (TURN Opening Comments, pp. 4, 6, 7, 8, and 9). But the facts are actually worse, because the *ex-ante* values for screw-in CFLs were based on 2004-2005 data and, as DRA's opening comments indicate at page 3, a subsequent CFL market effects study, based on 2006-2008 data, concluded that energy savings from Utility CFL programs could not be demonstrated to justify the energy savings claims made by the utilities. Thus, energy savings claimed by the Utilities for screw-in CFLs have been illusory for quite some time now. (DRA's Opening Comments at page 5 indicated customer awareness of CFLs rose to 92%. The correct number for customer awareness in California is actually 96%. Compact Fluorescent Lamps Market Effects Final Report," prepared by The Cadmus Group, KEMA, Itron, Nexus Market Research, and A. Goett Consulting for the California Public Utilities Commission, 2010, pp. v-vi, ix.)

NRDC cited the draft version of that same CFL market effects study (Compact Fluorescent Lamps Market Effects Interim Report DRAFT," prepared by The Cadmus Group in 2009, p. vi) in testimony before the Michigan Public Service Commission in its opposition to Detroit Edison's revised energy efficiency plan. NRDC's testimony before the Michigan Public Service Commission criticized Detroit Edison's high reliance on CFLs. NRDC's testimony noted the CFL programs have "proven in other jurisdictions to experience high free ridership and installation uncertainties" and concluded that it was not prudent to go forward with the plan "without a deeper inquires." Direct Testimony of Dylan Sullivan on behalf of Natural Resources Defense Council, MPSC Case No. U-15806, pp. 3,11, available at **http://efile.mpsc.state.mi.us/efile/docs/15806/0217.pdf** effectiveness in addressing the removal or mitigation of institutional and market barriers, (b) reasonable probability of achieving market transformation so no further intervention will be necessary in the future, (c) reasonable probability the continuance of the program or intervention will do no harm to the market and not impede or reverse market transformation, and (d) cost effectiveness, based on the updated *ex-ante* values recommended by DRA.

Furthermore, consistent with the requirements and objectives of AB 758, DRA recommended that the Commission set aside an initial $85 million, more if possible, from the bridge year budget to establish a Consolidated Financing Program to develop and implement one or more financing mechanisms that leverage private capital to make available to customers low interest loans for energy efficiency retrofit projects. The details of the Consolidated Financing Program would be developed between now and the start of the bridge year, and DRA urges the Commission to act expediently toward its establishment. As the Commission and most parties are well aware, the limited availability of low interest financing is one of the key barriers in the adoption of energy efficiency technologies, products and services. Now is the time to take meaningful action. Leveraging the vast resources available from the financial industry is necessary to truly transform the energy efficiency markets and ultimately reduce reliance on ratepayer capital.

The Utilities argue that if *ex-ante* values are updated, then the Commission should adjust the energy savings goals adopted in D. 09-09-047 for 2013 as well, even though the Utilities request the identical annualized budget plus the discretion to use unspent funds from the current program cycle, a total budget more than one billion dollars.[20] This opposition to updating *ex ante* values, and demand that energy savings goals be lowered in the event *ex ante* values are updated, reveals a fundamental disconnect between the Utilities' current performance as program administrators and the Commission's expectations for energy efficiency programs. The Commission in D. 09-09-047 anticipated that the Utilities, as program administrators, would structure their programs and portfolios with the market transformation objective of compressing the beginning and end points of each market intervention and introducing newer technologies, products and services into the marketplace more quickly.[21] This requires program managers to

[20] Utilities Opening Comments, pp. 3, 4, 7, and 8.

[21] D. 09-09-047, Findings of Fact 25, 26, and 27, p. 338.

have a strong market-based orientation with organizations that are highly adaptable to changing market conditions. The Utilities have not demonstrated these critical characteristics, as indicated in their unwavering opposition to updating *ex-ante* values and using available studies to pro-actively make improvements to their programs and portfolios. The Commission should reject the Utilities' recommendation for meager updates to *ex-ante* values and reductions in energy savings goals in the event *ex-ante* updates are made. The Commission should instead expect the Utilities to improve their programs and portfolios during the bridge year by eliminating or phasing out interventions that are no longer useful and introducing newer ones. To do otherwise would reward Utilities' rigid approach to program administration and their shortcomings in dealing with the complexities and uncertainties of changing market conditions. This is simply not good enough for ratepayers who provide the capital for energy efficiency programs. This should not be good enough for the Commission. Ratepayers deserve more and the Commission should expect more.

The Utilities' demand to change energy savings goals for the bridge year if *ex-ante* values are updated is yet another effort to stall needed updates and needed portfolio improvements. Moreover, the current goals do not include savings from some of the programs within the Utilities portfolios, including appliance recycling and consumer electronics, which if included, would balance decreased savings from using more up-to-date savings estimates.[22] If, however, the Commission finds that energy savings goals <u>might</u> have to be changed in light of updated *ex-ante* values and the removal of CFLs from the portfolio, it should place the burden on the Utilities to justify changes to the energy savings goals, including taking into account energy savings that were not included in their original goals The Utilities could then propose and justify the goal changes when they file their advice letters containing their final bridge year budget (not to exceed the cap proposed by DRA) and portfolios with a minimum Total Resource Cost of 1.5, as proposed as by DRA.

[22] California Statewide Residential Sector Energy Efficiency Potential Study, Final Report, Volume 1 of 2; prepared by Fred Coito and Mike Rufo, KEMA-XENERGY Inc.; April 2003. See pp. 6-9, "Second refrigerator recycling and evaporative cooler measures were not included in our potential analysis"; there is no discussion of consumer electronics.

V. THE EM&V DUE DATES PROPOSED BY THE UTILITIES FOR THE 2014-2016 PORTFOLIO CYCLE ARE OUTSIDE THE SCOPE OF THE ALJ'S RULING, AND IF ADOPTED, MAY IMPAIR THE COMMISSION'S ABILITY TO ENSURE THE MOST RECENT DATA IS USED FOR THE 2014-2016 CYCLE.

As DRA noted in its opening comments, the Commission's regulatory framework for energy efficiency has grown overly complex and increasingly unmanageable, posing greater risk to ratepayers who fund the energy efficiency programs. DRA is sympathetic with the desire to have definitive due dates for various EM&V deliverables and for the Energy Division to adhere to those due dates without delay. This would lead to a more predicable planning process. However, the EM&V due dates proposed by the Utilities for the 2014-2016 portfolio cycle go beyond the scope of the current ALJ Ruling, which seeks information about the mechanics of the expected bridge year. Moreover, the proposed dates would effectively freeze energy savings assumptions <u>nineteen months</u> before the beginning of the 2014-2016 program cycle and could force the Energy Division to cut corners in order to meet the due dates. This may impair the Commission's ability to adhere to its long-standing policy of using the best available data in order to ensure prudent use of ratepayer capital. Rather than ruling on the Utilities'' requested schedule now, the Commission should direct the Energy Division to publish the definitive due dates for its EM&V sufficiently in advance of the 2014 portfolio cycle to allow adequate planning, while also encouraging the Utilities to re-examine their energy efficiency organizations, internal decision making processes, business processes and workflows, and business partnerships to streamline their portfolio design, development, and implementation process and develop more flexibility to adapt to changing conditions.

VI. CONCLUSION

DRA agrees with TURN's goal for its recommendation regarding the bridge funding year: "to ensure that ***ratepayer***-funded [energy efficiency] does *in fact* lower energy consumption during the current portfolio period while supporting economic development and job creation in California."[23] This should be the Commission's goal as well. The best way to achieve that result is to adopt DRA's recommendations for the bridge funding year. Those recommendations provide a practical solution to updating some of the energy savings

[23] TURN Opening Comments, p. 3.

assumptions that would apply to the bridge year, and address a significant market barrier to long lasting energy savings through development of a Consolidated Financing Program, a program that would also promote job growth.

Respectfully submitted,

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