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**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)

**JOINT REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY,
SOUTHERN CALIFORNIA EDISON COMPANY(U338E), SAN DIEGO GAS AND
ELECTRIC COMPANY (U902M), AND SOUTHERN CALIFORNIA GAS
COMPANY(U904G) ON THE PROPOSED THIRD DECISION OF ADMINISTRATIVE
LAW JUDGE GAMSON ADDRESSING THE PETITION FOR MODIFICATION OF
DECISION 09-09-047**

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Dated: May 23, 2011

**JOINT REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY,
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DECISION 09-09-047**

Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company (collectively, the Joint IOUs) hereby submit their reply comments on the Proposed Decision (PD) of Administrative Law Judge Gamson.¹

I. EXECUTIVE SUMMARY

The PD proposes to undo the CPUC’s framework for planning, implementing, and evaluating energy efficiency programs, as established in Decision (D).09-09-047, detailed in a November 2009 Ruling, and affirmed in D.10-12-054. The CPUC and IOUs have relied on one set of energy savings assumptions to set the IOUs’ 2010-2012 EE goals, plan the portfolios, and authorize program design and funding levels. Nearly halfway through the 2010-2012 cycle, this PD proposes to make significant after-the-fact reductions to these same energy assumptions for high impact measures and custom projects,² which constitute a substantial portion of the IOUs’ EE portfolios, thus artificially reducing the energy savings from California’s EE programs by an estimated 10-30%.

As NRDC states, the PD “has major implications for a wide swath of the portfolio of energy efficiency programs overseen by the CPUC....Policymakers throughout state and local governments are keenly interested in opportunities to continue to expand the energy efficiency programs overseen by the CPUC to capture even greater savings, create green jobs, and reinvest utility bill savings to help grow the local economy. But this Proposed Decision would do just the opposite....” (NRDC, pp. 1-2, emphasis added.) Imposition of significant after-the-fact adjustments that are also applied retroactively will have broad-reaching negative impacts, including: (1) reductions to numerous EE programs to maintain portfolio cost effectiveness; and (2) negatively affecting customer and vendor

¹ Opening comments were filed by the Joint IOUs; The Utility Reform Network and the Division of Ratepayer Advocates (jointly, TURN/DRA); the Natural Resources Defense Council (NRDC); NAESCO, Global Partners and Enernoc (collectively, EE Parties); and Women’s Energy Matters (WEM).

WEM requests “consolidation of all EM&V websites,” “independent administration of EE,” and “that the Commission begin to reformulate EM&V.” (WEM, p. 5.) WEM also claims that the IOUs’ reliance on *ex ante* values “seek[s] to raise the level of EE profits,” and that the IOUs’ “overuse of ‘custom’ measures appears to be in part a way to avoid DEER values.” (WEM, p. 1.) None of these issues falls within the scope of the Joint IOUs’ Petition to Modify or ALJ Gamson’s PD, and therefore, the Joint IOUs respectfully request that the CPUC disregard WEM’s comments.

² As described in the PD (at pp. 12, 30), high-impact measures are “those which contribute more than 1 percent of portfolio energy efficiency savings,” and custom 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.”

participation by reducing the energy savings assumptions (and thus incentives) available for custom projects and other measures. The PD would also create additional reporting, administrative, and tracking requirements for custom projects, and significant program process changes for projects with a customized component. It is not reasonable to adopt such significant changes halfway through the EE portfolio cycle.

The Joint IOUs support NRDC's request that the CPUC "faithfully implement its policy to apply *ex ante* values, which by definition, provide upfront certainty."- (NRDC, p. 5.) Affirmation of this fundamental policy is critical to the success of energy efficiency in California. Therefore, the CPUC should reject the PD as drafted and instead (1) adopt the EE values submitted by the IOUs by the CPUC's March 31, 2010 deadline, and (2) adopt the IOUs' proposed modifications to the custom project process to ensure a reliable and timely process for these projects.

I. THE PD CONTRADICTS PREVIOUSLY ADOPTED CPUC POLICY BY CHANGING ENERGY EFFICIENCY ASSUMPTIONS MID-CYCLE AND MAKING THEM EFFECTIVE RETROACTIVELY, THEREBY ARTIFICIALLY REDUCING ENERGY SAVINGS FROM CALIFORNIA'S EE PROGRAMS

The CPUC established the framework for planning, implementing, and evaluating EE programs in D.09-09-047, which was further detailed in a November 2009 Ruling and affirmed in D.10-12-054. The PD would subvert this framework by making significant, after-the-fact adjustments to the EE values used to plan and implement the IOUs' 2010-2012 EE portfolios, and applying these new values retroactively. The CPUC should reject the PD as it shatters the alignment between goals and performance measurement by reverting back to the same policies that embroiled the 2006-2008 program cycle in controversy.

The PD correctly states that the fundamental purpose of *ex ante* values is "to determine whether a utility's forecasted energy efficiency portfolio is expected to be cost-effective. These *ex ante* values are used to estimate the savings from verified installed energy efficiency measures." (PD, p. 6; *quoted in* TURN/DRA, p. 3.) By definition, *ex ante* values should be established before the fact. That is, in order for the IOUs to properly plan and implement their EE portfolios, they need to know how the various EE measures will be valued, and those values should be frozen for a given program cycle. NRDC supports this common-sense approach, and argues: "By definition, retroactively applying new values is an 'ex-post' update, rather than the 'ex-ante' approach the CPUC had directed....The PD's proposal to apply new values retrospectively back to January 1, 2010, would turn the very definition of 'ex-ante' on its head." (NRDC, pp. 3, 5.)

While the CPUC adopted its policy to set and hold assumptions for purposes of planning, implementing and reporting in D.09-09-047, clarified in a November 2009 Ruling that the deadline for the occurrence of this freeze was March 31, 2010, and reaffirmed this policy in D.10-12-054, the

assumptions were not frozen in practice. As late as September 2010, no *ex ante* values had been adopted, thereby triggering the Joint IOUs to file the Petition for Modification to freeze *ex ante* values as of March 31, 2010, the date by which the CPUC had required that assumptions be frozen, per the prescribed process.^{3/}

Not only would this PD adopt significant changes much later than the CPUC-directed deadline, it also proposes to apply new values retroactively back to January 1, 2010. The impact of adopting after-the-fact change to *ex ante* values cannot be overstated. As the Joint IOUs explained, the changes to *ex ante* values will require “a complete review and potential redesign of the IOU EE portfolios,” and “will negatively impact the EE infrastructure in California and will reduce the State’s ability to meet aggressive AB 32 greenhouse gas reduction goals, which rely on benefits produced by IOU EE portfolios....” (Joint IOUs, p. 12.) Such an outcome is contrary to the public interest.

In their comments, TURN/DRA take issue with one value that the PD does not change retroactively: the net-to-gross (NTG) ratio values.⁴ TURN/DRA argue that “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.” (TURN/DRA, p. 6) To date, the Joint IOUs have utilized the most current EM&V data that the CPUC has directed them to use. For example, the southern IOUs are currently using the 2006-2008 Appliance Recycling study results dated February 8, 2010 as the basis for energy savings claim for the Appliance Recycling Program.⁵ While this CPUC-commissioned EM&V study reduced energy savings assumptions by up to 50% for the IOUs, and the Joint IOUs took issue with many of the study’s elements, the southern IOUs nonetheless applied these values for purposes of planning and reporting on the 2010-2012 Appliance Recycling Program, as directed by the CPUC. The additional, downward adjustments that are proposed to be used by the PD for this program are not based on the CPUC’s own EM&V studies. Rather, they would be based on non-study reductions

³ TURN/DRA allege that, “for the most part, it was not until after [March 31, 2010] that the Utilities submitted their workpapers to the Energy Division.” (TURN/DRA, p. 4.) This is factually incorrect. The IOUs submitted all Phase I workpapers (which consist of all measure savings attribution values for programs that began at the start of the 2010-2012 program cycle) to the Energy Division by the March 31 deadline. The IOUs were instructed by Energy Division, however, to hold off on submission of Phase II workpapers (that is, workpapers that include new measures or updates to existing measures).

⁴ As defined in the PD (at p. 16), the Net-to-Gross ratio values “are intended to take into account that some customers are ‘free riders’; in other words...could have undertaken the [EE] programs anyway, even without utility incentives. If, for example, studies show that 30% of customers are ‘free riders,’ then the net-to-gross ratio is 1 minus 0.3, or 0.7. Therefore, the projected savings would be reduced by 30% to account for free ridership.”

⁵ Pursuant to D.09-09-047, Ordering Paragraph 21(d), the Joint IOUs were to make changes to the appliance recycling program based on the final 2006-2008 evaluation report. SCE and SDG&E are currently utilizing energy efficiency assumptions from the Residential Retrofit High Impact Measure Evaluation Report, dated February 8, 2010, p.153 for the 2010-2012 Appliance Recycling Program. PG&E has not updated these values pending resolution of the Joint IOUs’ Petition to Modify. SoCalGas does not have an appliance recycling program.

unilaterally imposed by one Energy Division consultant, working outside of the CPUC's established study process. There are significant flaws and concerns with this consultant's proposed non-study based adjustments that would challenge the fundamental premise of this program based solely on an unsupported opinion. The impact of these reductions is significant, as it could require scaling back of this award-winning program,⁶ resulting in a loss of jobs for the program implementers, in addition to the artificial reduction of energy savings for this program.

Furthermore, the NTG ratios that TURN/DRA support were not issued until after the time that the EE program activities commenced and were explicitly frozen in D.10-12-054 as part of the DEER dataset, which included the referenced NTG ratios. Adoption of new values is a clear violation of both the overarching policy to freeze assumptions, and the specific direction given in D.10-12-054. As such, the IOUs agree with NRDC that "there is no valid reason to reverse course on the clear direction provided in D.10-12-054...." (NRDC, p. 4.)

II. THE JOINT IOUS OPPOSE THE PD'S CUSTOM PROJECTS REVIEW PROCESS AND 20% REDUCTION TO CUSTOM PROJECTS VALUES

The Joint IOUs support NRDC's and the EE Parties' comments opposing the PD's custom projects review process. (NRDC, pp. 8-10; EE Parties, pp. 7-8.) In addition to giving Energy Division the ability to make retroactive changes to *ex ante* values, the PD's custom review process would require the IOUs to adopt whatever *ex ante* estimates Energy Division recommends, regardless of whether there is any evidentiary support or analytical justification. The PD's proposed process also fails to provide "any time constraint on Energy Division project review," which "would force utilities to withhold approval of project applications, threatening timely implementation and reducing participation." (NRDC, p. 8.)

As the EE Parties state, "over the last few years the Commission has worked to establish regulatory certainty for EE programs, because regulatory certainty is a pre-requisite if California is to reach its aggressive energy efficiency goals.... This PD, however, appears to run counter to this longstanding Commission effort, by imposing a new level of uncertainty on some of the largest projects in the program portfolio." (EE Parties, p. 7, emphasis added.)

The Joint IOUs agree with the EE Parties that the PD's custom review process constitutes "a leap backwards that places additional and unnecessary burdens, increased financial risks and unwarranted delays onto customers by duplicating existing and effective Program administrative activities" which will "jeopardize[] EE Program participation and will significantly impede the

⁶ In 2007, SCE was the only utility in the world to receive a US EPA "Stratospheric Ozone Protection Best of the Best Award" for innovation in collection and disposal of low efficiency appliances. SCE was also awarded the US EPA "Stratospheric Ozone Protection" Award in 2004 for the Appliance Recycling Program, in recognition of its efforts to protect the earth's climate and ozone layer.

ability of California to achieve its EE goals.” (EE Parties, p. 4.) Regulatory certainty is essential to the success of the State’s EE programs. Therefore, it is critical that the CPUC adopt the IOU-proposed revisions to the custom review process to ensure clear, specific timelines for Energy Division review of custom projects.

The Joint IOUs also oppose the PD’s proposed application of a Gross Realization Rate (GRR) of 0.80 for custom projects that are not reviewed by Energy Division.⁷ The impact of this is an arbitrary 20% reduction in energy savings for the majority of the IOUs’ custom projects, significantly decreasing the cost effectiveness of these projects. The Joint IOUs agree with both NRDC and the EE Parties that there is “absolutely no evidence in the record” to support the PD’s claim that the 80% value is representative of past years’ outcomes for custom measures (NRDC, p. 6; EE Parties, p. 4.)

WHEREFORE, for the foregoing reasons, the Joint IOUs respectfully request that the CPUC adopt the revisions proposed in the Joint IOUs’ opening comments, including:

- Adoption of the IOUs’ workpapers as submitted to Energy Division by the CPUC-directed March 31, 2010 deadline, rather than the PD’s significant after-the-fact adjustments;
- Adoption of the IOUs’ proposed changes to the Custom Measure Process as detailed in Attachment B to the Joint IOUs’ Opening Comments on the PD, including (a) elimination of the arbitrary application of a 20% reduction (GRR) to all custom projects not reviewed by the Energy Division; (b) addition of a clear timeline for Energy Division to complete review; and (c) addition of a dispute resolution process; and
- Rejection of DRA and TURN’s recommendation to change NTG values that are currently frozen by D.10-12-045 (as part of DEER v 2.05).

Further, if the CPUC does adopt mid-cycle adjustments to energy savings assumptions and the custom process, the Joint IOUs request adoption of a feasible timeline including:

- Rejection of retroactive adjustments. If changes are adopted mid-cycle to the EE assumptions or the custom process, they should be made on a prospective basis only.
- A minimum of 120 days for the rebalancing and/or possible compliance filing required by these changes, including updated workpapers, submission of final ex ante values, and submission of installation rates.
- Allowance for those system related changes that cannot be completed until 2012.

⁷ As described in the PD (at p. 34), the Gross Realization Rate (GRR) “is a multiplier that attempts to take into account the likelihood that not all Commission-approved projects undertaken by utilities will come to fruition.” For example, a GRR of 0.80 assumes that only 80% of an IOU’s approved EE projects will actually occur.

Dated this 23 day of May, 2011.

Respectfully Submitted,

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