BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Reform the Commission's Energy Efficiency Risk/Reward Incentive Mechanism.	Rulemaking 12-01-005 (Filed January 12, 2012)

THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS IN RESPONSE TO THE COMMISSION'S ORDER INSTITUTING RULEMAKING TO REFORM THE COMMISSION'S ENERGY EFFICIENCY RISK/REWARD INCENTIVE MECHANISM

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits these reply comments in response to comments on the Commission's Order Institution Rulemaking (R.) 12-01-005, and on the December 16, 2011 "Assigned Commissioner's Ruling Soliciting Further Comments and Production of Data Regarding Energy Efficiency Incentive Reforms" (December 16, 2011 ACR), which was issued in Rulemaking (R.) 09-01-019[1] following the August 30, 2011 Assigned Commissioner's Ruling to Refresh the Record on Outstanding Issues (August 30, 2011 ACR).

DRA has explained previously that that:

> [t]he fundamental flaw of the RRIM (or any incentive mechanism for utility-administered energy efficiency programs), is that it rests on two mistaken premises: that the Utilities are the appropriate entities to administer market-driven, energy-conserving programs such as energy efficiency, and that the correctly designed incentive mechanism will motivate the Utilities to design superior energy efficiency programs.[2]

There is simply no correlation between the level or existence of financial incentives and the performance of utility-run energy efficiency programs.[3] Moreover, the August 30, 2011 ACR recognizes that the Risk Reward Incentive Mechanism (RRIM) has wasted ratepayer resources:

> "[i]nstead of inspiring greater innovation in program design or implementation to realize more aggressive goals and reap the rewards, the RRIM has instead channeled resources largely into procedural disputes

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[1] The Commission opened R.12-01-005 on January 12, 2012 and directed that the comments ordered in the December 16, 2011 ACR be filed in this rulemaking.

[2] The Division of Ratepayer Advocates' Comments in Response to the Assigned Commissioner's Ruling to Refresh The Record on Outstanding Issues, filed September 23, 2011 in R.09-01-019; *see also* The Division of Ratepayer Advocates' Reply Comments In Response to the Assigned Commissioner's Ruling To Refresh The Record On Outstanding Issues, filed October 7, 2011 in R.09-01-019; DRA's Amendment to its Protest on the 2009 IOU Energy Efficiency Consolidated Applications, filed August 8, 2011 in A.11-06-032 et al.

[3] *See* DRA Opening Brief on the Appropriate Shared Savings Rate for Ratepayer Funded Energy Efficiency, filed June 18, 2007 in 06-04-010, pp. 33-34; DRA Protest to the consolidated 2009 RRIM Applications, A.11-06-027, A.11-06-028, A.11-06-031, and A.11-06-032, filed August 5, 2011 and amended August 8, 2011. DRA therefore disagrees that SDG&E/SoCalGas chart on pages 3 of their comments establishes a correlation between energy savings and the existence of an incentive mechanism. *See* San Diego Gas & Electric Company and Southern California Gas Company Comments on Order Instituting Rulemaking R.12-01-005 and Assigned Commissioner's Ruling Soliciting Further Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, February 2, 2012 (SDG&E/SoCalGas Comments) p. 3.

over process and measurement protocols. These activities seem to have often overshadowed and distracted efforts to effectively adapt programs to changing markets and new information."[4]

As these questions have been addressed within the record of this proceeding, DRA will not repeat these arguments here, but will instead respond to some of the opening comments of other stakeholders.

II. DISCUSSION

A. If the Commission determines to adopt an incentive mechanism, notwithstanding evidence that it is impossible to align ratepayer and shareholder interests in pursuing energy efficiency, then it should pursue a "much simpler, and less lucrative mechanism."[5]

The Natural Resources Defense Council (NRDC),[6] Pacific Gas and Electric Company,[7] and San Diego Gas & Electric Company/Southern California Gas Company[8] remain committed to an energy efficiency incentive mechanism based on shared savings, with a few recommended changes: use of *ex ante* savings estimates, elimination of non resource programs from calculation of costs, and changes to the avoided cost methodology, including use of the Program Administrator Cost test rather than the currently used Total Resource Cost Test and revising the discount rate. It is unlikely that any of these changes would have reduced the controversy

[4] "Assigned Commissioner's Ruling to Refresh the Record on Outstanding Issues," issued August 30, 2011 in R.09-01-019, p. 4.

[5] Initial Comments of the Utility Reform Network on Order Instituting Investigation and in Response to the December 16, 2011 Assigned Commissioner Ruling, February 2, 2013 (TURN Comments), p. 20.

[6] Opening Comments of the Natural Resources Defense Council (NRDC) on Order Instituting Rulemaking and on the Assigned Commissioner's Ruling Soliciting Further Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, February 2, 2012 (NRDC Comments) pp. 2, 8-9 recommending use of *ex ante* savings estimates and *ex post* verification of cost and installations, reducing the discount rate to incentivize long-term savings, and exclusion of non-resource programs from calculation of RRIM).

[7] Opening Comments of Pacific Gas and Electric Company, February 2, 2012 (PG&E Comments), pp. 5, 8-11 (recommending use of *ex ante* savings estimates and *ex post* verification of cost and installations, continued reliance on combined TRC/PAC test, and exclusion of non-resource programs from calculation of RRIM).

[8] SDG&E/SoCalGas Comments pp. 6-7 (recommending use of *ex ante* savings estimates and *ex post* verification of cost and installations, continued reliance on combined TRC/PAC test, and exclusion of non-resource programs from calculation of RRIM).

surrounding the 2006-2008, or 2009 RRIM. For example, the Commission in D.09-09-047 determined to use *ex ante* savings estimates for the 2010-2012 portfolio savings, and the controversy merely shifted to the beginning of the proceeding, as evidenced by the Petition to Modify D.09-09-047 filed September 17, 2010[9] and the fact that *ex ante* values for the 2010-2012 portfolios were not finalized until July 2011.[10] It is also unlikely that these recommended changes to the shared savings RRIM would reduce the inherent utility bias in favor of supply-side procurement.[11] With regard to changes in the avoided cost methodology, DRA agrees with TURN[12] that these topics are under consideration in R.09-11-014 under the Avoided Cost Ruling and should be vetted and addressed in the appropriate methodological context. Finally, under no circumstance should the Commission adopt a performance earnings based incentive mechanism that excludes non-resource costs. Excluding such costs would remove real costs of energy efficiency programs and would skew the benefits side of the equation, painting a false picture of cost-effectiveness.

In contrast, Southern California Edison Company (SCE) questions whether the current shared savings mechanism can be an effective approach, given its primary focus on resource acquisition, rather than market transformation and comprehensive Strategic Plan activities.[13] SCE acknowledges that the RRIM did not function as anticipated:

> "[i]nstead of being an effective, predictable and reliable mechanism that focused utility management of producing energy efficiency results, the most recent mechanism focused everyone's attention on the state's measurement and evaluation processes…"[14]

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[9] 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 09-09-047, filed September 17, 2010 in A.08-07-021 et al.

[10] Decision 11-07-030, issued July 22, 2011.

[11] Division of Ratepayer Advocates' Comments in Response to the Assigned Commissioner's Ruling to Refresh the Record on Outstanding Issues, filed September 23, 2011 in R.09-01-019, pp. 3-5.

[12] TURN comments, p. 19.

[13] Southern California Edison Comments on Order Instituting Rulemaking to Reform the Commission's Energy efficiency Risk/Reward Incentive Mechanism (SCE Comments), p. 9.

[14] SCE Comments, p. 2.

SCE therefore recommends that the Commission and stakeholders work to develop a "comprehensive and aligned approach" to an energy efficiency incentive mechanism.[15] SCE suggests the possibility of "a mechanism that increases the IOU's ability to satisfy its Renewable Portfolio Standard requirements though lower cost energy efficiency or a mechanism that utilizes greenhouse gas allowance credits as an incentive."[16]

The Utility Reform Network (TURN) does not support a shared savings incentive mechanism based on supply-side equivalence,[17] and recommends that if the Commission adopts an energy efficiency incentive mechanism, it should be one that is "much simpler, and less lucrative."[18] DRA agrees that if the Commission is determined to reward the utilities for their administration of energy efficiency portfolios, it should devise a mechanism that is less costly to ratepayers and less likely to divert resources from the administration and oversight of energy efficiency programs.

B. DRA agrees with SCE that efforts spent on any incentive mechanism are better focused on going forward, not the current cycle, which is more than 2/3 over.

SCE observes that the purpose of an energy efficiency incentive mechanism is to motivate utility administrators to implement effective programs that exceed the Commission's energy efficiency goals, noting that

> "any Commission Decision on a 2010-2012 incentive mechanism would be issued well into 2012, and, as such, would provide a weakened incentive signal regarding the construction and execution of the program portfolio. For this reason, SCE is convinced that everyone's collective time and efforts would be best spent looking ahead..."[19]

DRA agrees that it makes little sense to award the Utilities incentives for a three-year portfolio cycle that will be over in about ten months. If the Commission nevertheless decides to develop a shared savings mechanism to incent performance after the fact, then DRA recommends that

[15] SCE Comments, p. 9.
[16] SCE Comments, p. 10.
[17] TURN Comments, p. 2.
[18] TURN Comments, p. 20.
[19] SCE Comments, p. 10.

the Commission adopt TURN's proposed earnings target of $90 million for all the utilities, using a 55% risk adjustment factor to account for the reduced risk resulting from the Commission's use of *ex ante* savings estimates to calculate the performance earnings basis.[20] DRA also agrees that since the performance earnings basis for 2010-2012 will be calculated using gross rather than net savings, the shared savings rate should be adjusted downward to account for that factor.[21]

III. CONCLUSION

DRA recommends that the Commission eliminate the energy efficiency incentive mechanism and consider an alternate administrative structure for energy efficiency in which the administrator would pursue a single goal: delivering market transforming energy efficiency programs that will decrease California's energy use and lower the State's greenhouse gas emissions. If the Commission chooses to pursue another energy efficiency incentive mechanism, then DRA agrees with TURN and SCE that such a mechanism must be simplified and less costly than the 2006-2008 RRIM.

Respectfully submitted,

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[20] TURN Comments, p. 11.

[21] TURN Comments, p. 12.