BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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

COMMENTS OF THE UTILITY REFORM NETWORK ON NEW METHODOLOGY FOR AN ENERGY EFFICIENCY INCENTIVE MECHANISM FOR 2010-2012

TURN
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Marcel Hawiger, Energy Attorney
Cynthia Mitchell, Energy Economics, Inc.

THE UTILITY REFORM NETWORK
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: (415) 929-8876 ex. 311
Fax: (415) 929-1132
Email: marcel@turn.org

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COMMENTS OF THE UTILITY REFORM NETWORK ON NEW METHODOLOGY FOR AN ENERGY EFFICIENCY INCENTIVE MECHANISM FOR 2010-2012

Pursuant to the directions of the September 25, 2012 "Administrative Law Judge's Ruling Soliciting Comments on Modified Methodology and Use of Data to Derive Incentive Earnings Amounts" ("the ALJ Ruling"), the Utility Reform Network ("TURN") respectfully provides very limited comments concerning a Risk/Reward Incentive Mechanism ("RRIM") for utility energy efficiency activities conducted in 2010-2012. TURN previously submitted comments on a 2010-2012 incentive mechanism on September 23, 2011 in R.09-01-009.

TURN supports the general structure proposed in the ALJ Ruling, with a "management fee" payment equal to 2% of actual spending, and a cap on total incentives equal to 5% of actual spending. The Ruling proposes that the other portion of the incentive be determined through an incentive payment based on four identified metrics and capped at 3% of spending. The four proposed metrics measure utility performance with respect to the Commission's *ex ante* review process. TURN fully appreciates the importance of the Evaluation, Measurement & Verification process ("EM&V") process, and we understand the intent of the mechanism is to improve this process for the future. However, as a general matter of regulatory policy, TURN believes that if the utilities have failed to conform with prior Commission orders and processes, the Commission should issues an order to show cause and penalize the utilities for noncompliance.

1. TURN Supports a Model using a Cap on Incentives Based on 5% of Spending

One of the main elements of the proposal is that potential incentive awards for the three-year 2010-2012 portfolio cycle are capped at 5% of expenditures, or approximately $120 million in total for all utilities. TURN strongly supports such a mechanism.

This type of mechanism appropriately awards the utilities a management fee for administering the portfolio of energy efficiency programs. It is a sum large enough to attract management attention to the energy efficiency activity so as to provide the department with sufficient corporate priority.

Some parties have criticized such an approach as giving utility profits just for "spending the money," irrespective of the outcomes or quality of the programs. TURN is extremely sensitive to these criticisms. In an ideal world we would prefer a more explicit outcome-based metric. However, we have long seen in practice that incentives based on 'savings' or 'net benefits' do not absolutely translate into the "best" programs for ratepayers, have caused continuing disputes concerning EM&V, and have diverted resources and attention to battles over accomplishment results. Likewise, we have historically observed that energy efficiency results are strongly correlated with spending. Indeed, the ACEEE State Energy Efficiency Scorecard weighs "electricity and gas program budgets" slightly higher (8 points) than "programs savings" (5 points) in scoring "utility public benefits programs and policies."[1] For these reasons, we believe that at least in the near term, and even for the already past 2010-12 period, an incentive cap based on actual spending is a preferable mechanism. Given that the spending has happened,

[1] See, ACEEE, 2012 State Energy Efficiency Scorecard, October 2012, p. 22, available at http://aceee.org/sector/state-policy/scorecard .

it is an absolutely no risk payment of money to the utilities for managing these large program budgets and multiple programs in 2010-12.

2. TURN Does Not Support Incentives Based on Utility Compliance and Cooperation with Commission-ordered Processes

The Ruling proposes four main metrics and a number of submetrics that in aggregate measure utility performance with respect to implementing the *ex ante* review process and activities that were designed to ensure timely and accurate determination of *ex ante* parameter values to be used for portfolio planning, program evaluation, and risk/reward incentive determination.

TURN certainly understands the need to focus on the EM&V process. One of the major changes to the incentive mechanism as originally adopted in for 2006-08 in D.07-09-043 was a shift from *ex post* evaluation to the use of *ex ante* values for determining performance. This change was driven by the utility complaints that using *ex post* values "shifted the goal posts" and was fundamentally unfair.

TURN reluctantly supported using *ex ante* values for incentive calculation, though we strongly advocated a lower incentive rate based on this large reduction in risk. One of the key issues after 2008 was the timely determination of *ex ante* values that would be based on the most recent EM&V results. We have observed, and have criticized the utilities, for dragging out the process of "fixing" *ex ante* values for these purposes. Thus, we are quite sympathetic to the goal of improving the *ex ante* review process.

Nevertheless, from a regulatory policy perspective it is not ideal to provide "incentives" for utilities to comply with Commission orders and processes. The EM&V processes have been guided by an extensive series of detailed Commission decisions and rulings including:[2]

- D.05-04-051 "Updated Policy Rules for Post-2005 EM&V and Threshold Issues Related to EM&V of EE Programs", April 21, 2005;
- R.01-08-028 "ALJ Ruling on EM&V Protocols", September 2, 2005;
- D.05-11-011 "EM&V Funding for the 2006-2008 Program Cycle and Related Issues", November 18, 2005;
- R.01-08-028 "ALJ Rulings on EM&V Protocols", September 2, 2005, January 11, 2006, April 25, 2006;
- R.06-04-010 "ALJ Ruling Adopting Annual EE;
- **D.08-01-04 2 "Joint Petition for Modification of D.07-09-043," January 31, 2008;**
- **D.08-12-059 Granting in Part and Denying in Part the PFM"**, December 18, 2008;
- D.09-05-037 "Determining Policy and Counting Issues for 2009-2011 EE Programs", May 21, 2009;
- A.08-07-021 "ALJ Ruling Regarding Non-DEER Measure *Ex Ante* Values", November 18, 2009;
- A.08-07-021 "ALJ Ruling Regarding EM&V Issues", November 20, 2009;

[2] Decisions and Rulings in bold pertain to IOUs PFMs to various aspects of D.09-09-047 which changed the performance basis from *ex post* to *ex ante*.

- D.10-04-029 "Determining EM&V Processes for 2010 through 2012 EE Portfolios", April 8, 2010;

- D.10-10-033 "EM&V of California IOU EE Programs", October 28, 2010; and

- **D.11-07-030 "Third Decision Addressing PRM of D.09-09-047", July 14, 2011.**

The regulatory attention and detail to EM&V issues, often in response to arguments from the IOUs that the EM&V process is generally unfair, burdensome, and onerous, has required inordinate amount of regulatory time and resources. Given this history, TURN is extremely sympathetic to the Commission's desire to fix the EM&V process.

However, to the extent utilities have failed to comply with these processes, the more appropriate regulatory response is to issue an order to show cause and potentially penalize the utilities for noncompliance. TURN does not support, as a matter of policy, creating an incentive mechanism that rewards the utilities for cooperating with Commission staff and complying with Commission orders.

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Respectfully submitted,

By: __________/s/______________

Marcel Hawiger, Staff Attorney

Cynthia Mitchell, Energy Economics, Inc.

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San Francisco, CA 94104
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