

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)

OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY
(U 39 M) ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE
PULSIFER AND ALTERNATE PROPOSED DECISION OF
COMMISSIONER FERRON

ANN H. KIM
MARY A. GANDESBERY

Law Department
Pacific Gas and Electric Company
P. O. Box 7442
77 Beale Street, MSB30A
San Francisco, CA 94120
Telephone: (415) 973-0675
Facsimile: (415) 973-5520
E-Mail: MAGq@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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I. INTRODUCTION

Pacific Gas and Electric Company (PG&E) submits these opening comments on the Proposed Decision (PD) of ALJ Pulsifer and Alternate Proposed Decision (APD) of Commissioner Ferron, both dated November 14, 2012, regarding the 2010-2012 energy efficiency incentive mechanism.

PG&E supports the APD as a reasonable solution for all stakeholders for the 2010-2012 program cycle. Of the two proposed decisions, the APD would best support Commission policy to reward the investor-owned utilities' (IOUs') energy efficiency accomplishments, and would continue the Commission's support for energy efficiency programs.

PG&E opposes the PD, which would deny an incentive mechanism for the 2010-2012 cycle, without regard to the significant efforts by the IOUs to meet and exceed the Commission's goals for energy efficiency. Instead the PD proposes to only devote resources on a prospective basis to devise a forward-looking incentive for the 2013-2014 program cycle. The PD does not support energy efficiency as the top resource in the state's loading order, and would send a message to stakeholders that energy efficiency is no longer a state priority.

II. THE APD SUPPORTS THE STATE'S ENERGY EFFICIENCY GOALS.

PG&E supports the APD because it signals the Commission's strong endorsement for energy efficiency as the first resource in the loading order. Consistent with PG&E's earlier comments, PG&E would prefer a savings-based mechanism, as it would best promote energy efficiency as top of the loading order resource, align with state energy policy, and allow customers and shareholders to share the benefits of a successful program. However, given the timeframe presented, the APD is a rational compromise and would support California's long-standing policy to provide to the IOUs a shareholder incentive to encourage energy efficiency investments.¹

PG&E agrees with the APD that: "In order to be the most effective, the IOUs should be able to book incentive earnings on a regular basis and in a manner that can be anticipated by the investment community."² The APD reasonably supports this policy by adopting a mechanism with a defined timeline and process for approving future incentive claims for program years 2011 and 2012. The amount of the fee – up to 6 percent of the IOUs' audited and approved energy efficiency expenditures – is below the national average management fee of approximately 10 to 11 percent for utilities who administer energy efficiency portfolios.³ The mechanism should be adopted for the 2010-2012 program cycle and the 2010 program year earnings should be awarded as shown in the APD for recovery through PG&E's Annual Electric True Up (AET) and Annual Gas True Up (AGT) filings for rates effective January 1, 2013.⁴

¹ See EAP I, p. 5; Energy Action Plan II, p. 5, Key Action 12; 2008 EAP Action Plan Update, p. 8.

² APD, pp. 23-24.

³ *Carrots for Utilities: Providing Financial Returns for Utility Investments in Energy Efficiency*, January 2011, American Council for an Energy-Efficient Economy, p. 10 ("The average incentive earned is 10 – 11% of program spending.")

⁴ APD, p. 39.

Since the incentive mechanism for the 2010-2012 program cycle would be based on program expenditures rather than on a net benefits basis under the prior shared-savings mechanism, the APD should be revised to explicitly state that the recovery of the incentive award should be allocated to gas and electric customers on the same basis that the portfolio costs are allocated. For PG&E, the allocation would be 82 percent to electric customers and 18 percent to gas customers.⁵

III. THE PD IS INCONSISTENT WITH STATE ENERGY POLICY AND SHOULD NOT BE ADOPTED.

The PD should not be approved as it is inconsistent with state policy for several reasons. The PD relies in large part on the lack of a prior Commission decision on an incentive mechanism to justify denying the incentive mechanism for 2010-2012.⁶ The PD rationalizes the delay in potentially modifying the incentive mechanism with a lengthy discussion that the issues are complicated and controversial and that the parties hold widely-divergent views.⁷ The Commission has a long history of making difficult decisions in multi-party proceedings involving extremely controversial and complicated matters. The fact that an earlier decision was not issued does not logically support denying the incentive.

As PG&E's earlier comments repeatedly suggested,⁸ the Commission could have taken a fairly simple approach and continued the existing shared-savings mechanism through 2012. The PD does not adequately address why the Commission could not adopt this approach; and, instead dismisses PG&E's suggestion by stating that its proposal was not uniformly supported by all parties. The PD also notes that the portfolios changed from 2006-2008, but does not explain why

⁵ Advice Letter 3065 G-A/3562E-A, approved October 21, 2010.

⁶ PD, pp. 23-29.

⁷ PD, p. 27.

⁸ PG&E Opening Comments on ALJ Ruling (Oct 5, 2012); PG&E Prehearing Conference Statement (Mar. 19, 2012); PG&E Opening Comments (Feb. 2, 2012); PG&E Reply Comments (Feb. 16, 2012).

the portfolio changes would make the use of the prior mechanism inappropriate.⁹ The mechanism confirmed for program year 2009 was largely similar to the previous mechanism, which PG&E took into account when designing and operating its portfolio to maximize cost-effective energy savings for customers. While this approach admittedly would not have been without controversy, this would have been a reasonable result and would have allowed a decision approving a mechanism tied to energy savings to be issued earlier in the current cycle. The IOUs should not be penalized for the Commission's decision to re-open the incentive mechanism or the lack of a decision earlier in the proceeding. The PD's promise to redouble efforts to issue a decision for the 2013-2014 cycle¹⁰ provides little comfort when paired with the lengthy discussion of the reasons it did not resolve the same controversial and difficult issues during the current portfolio period.

The PD inappropriately relies on the IOUs' uncertainty regarding whether an incentive would be awarded as a basis for denying the award. The PD states: "The IOUs had no foreknowledge of future Commission action regarding how (or whether) a RRIM might be designed or implemented for 2010-2012."¹¹ Based on the Commission's prior statements on the rationale for continuing the incentive mechanism consistently over time, the IOUs had a reasonable expectation that the Commission would approve a mechanism for 2010-2012.¹²

The PD concludes that disapproving a mechanism for 2010 to 2012 would not impact the

⁹ PD, pp. 27-28.

¹⁰ PD, p. 24.

¹¹ PD, p. 26.

¹² See e.g. D.11-12-036, p. 10 ("By adhering to the treatment of 2009 incentive claims laid out in D.10-12-049, we underscore our commitment to promoting energy efficiency and preserve credibility in the consistency of our regulatory treatment."); D.08-07-047, OP 6 ("Commencing in late 2008, Energy Division shall study the interaction of using gross energy savings goals for 2009 through 2011 and the risk/reward incentive mechanism, leading to a limited review of the risk/reward incentive mechanism and/or other aspects of the energy efficiency regulatory structure in a Commission proceeding.") (emphasis added); D.07-09-043, OP 1 ("Today's adopted incentive mechanism applies to the energy efficiency programs funded for the 2006-2008 program cycle and for subsequent program cycles until further Commission notice.").

IOUs' performance for 2010-2012 or 2013-2014.¹³ However, if the PD is adopted, the decision certainly would send a message regarding the priority the Commission places on energy efficiency.

Finally the PD would deny an incentive irrespective of whether the IOUs achieved their energy efficiency savings targets. While the energy savings have not been verified, the Commission's September 4, 2012 press release regarding its 2010-2011 Energy Efficiency Annual Progress Evaluation Report to the Legislature acknowledges the success of the IOUs' 2010-2012 energy efficiency portfolios:

The California Public Utilities Commission (CPUC) today said that the groundbreaking energy efficiency programs approved by the CPUC resulted in savings of 5,900 gigawatt-hours of electricity in 2010-2011 based on utility reported savings estimates, enough to power more than 600,000 households for a year and the equivalent of two major power plants. In addition, the estimated savings cut CO² emissions by 3.8 million tons, the equivalent of removing more than 700,000 cars from California's roads.¹⁴

At this point, there is every indication that the IOUs have met their energy savings targets through at least 2011. Thus it would be unfair at the end of the portfolio period to deny the IOUs an opportunity to be rewarded for these significant achievements.

IV. PG&E AGREES WITH THE APD AND PD THAT A FUTURE MECHANISM SHOULD BE DECIDED PROMPTLY.

The PD and the APD both support further reforms to the mechanism for the 2013-2014 program cycle.¹⁵ PG&E agrees with the approval of the mechanism in the APD for timeliness, certainty, and continued support of energy efficiency as stated above. However, the Commission should consider all proposals for the 2013-2014 program cycle, particularly proposals by several

¹³ PD, Finding of Fact 10.

¹⁴ The report is available at www.cpuc.ca.gov/NR/rdonlyres/89718A1B-C3D5-4E30-9A82-74ED155D0485/0/EnergyEfficiencyEvaluationReport.pdf.

¹⁵ PD, p. 4; APD, p. 3.

parties for a savings-based mechanism, and approve a mechanism expeditiously for the 2013-2014 portfolios.

V. CONCLUSION

PG&E thanks Commissioner Ferron for his continued support of the IOUs' energy efficiency programs and requests that the Alternate Proposed Decision be adopted in full with PG&E's recommended clarifications.

Respectfully submitted,

ANN H. KIM
MARY A. GANDESBERY

By: _____ /s/
MARY A. GANDESBERY

Law Department

Pacific Gas and Electric Company
P. O. Box 7442
77 Beale Street, MSB30A
San Francisco, CA 94120
Telephone: (415) 973-0675
Facsimile: (415) 973-5520
E-Mail: MAGq@pge.com

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Appendix A
Proposed Changes to Findings of Fact, Conclusions of Law, and
Ordering Paragraphs In Proposed Decision.

Findings of Fact:

~~2. Implementation of RRIM has become a diversion consuming valuable and limited time and resources.~~

9. Although the Commission expressed the intention in September 2009, to freeze ex ante assumptions used to develop the 2010-2012 portfolio for tracking savings against goals, contingent on compliance and consistency in utility data, ~~controversies precluded finalization of the ex ante values until July 2011,~~ the Commission clarified the process in subsequent decisions outlining the non-DEER workpaper review process (D.10-04-029), freezing ex ante values (D.10-12-054) and the custom project and ex ante review process (D.11-07-030).

10. Since the 2010-2012 cycle is nearing its conclusion, any adopted incentive mechanism applied to the 2010-2012 portfolio would have no material influence on the nature, extent, or success of utility action to achieve EE savings, ~~either during the 2010-2012 budget cycle or for the 2013-2014 cycle.~~

~~14. Allocating additional time and resources to the devising an incentive mechanism for the 2010-2012 cycle, and adjudicating related claims for payment of awards would divert resources from the priority goal of developing and implementing effective prospective incentive policies early in the 2013-2014 cycle.~~

17. In D.09-09-047, the Commission approved both 2008 DEER and non-DEER ex ante measure values as of the beginning of the 2010-2012 cycle for purposes of establishing savings goals ~~and portfolio performance~~ over the 2010-2012 program cycle.

Conclusions of Law:

~~3. A decision not to divert further resources to devise and administer an incentive mechanism applicable to the 2010-2012 cycle is consistent with the Commission's goal to adopt timely prospective incentive reforms early in the 2013-2014 cycle.~~

~~4. No further resources should be devoted to devising an incentive mechanism to apply to the 2010-2012 cycle.~~

~~5. Since no mechanism is to be adopted for 2010-2012, there is no need to resolve disputes as to an appropriate risk-adjusted shared savings rate for 2010-2012.~~

Ordering Paragraphs:

~~1. No further proceedings shall be conducted concerning whether, or if so, how, to design an incentive mechanism for the 2010-2012 energy efficiency program cycle.~~

~~2. No incentive mechanism for the 2012-2012 energy efficiency program cycle shall be adopted.~~

~~3. No incentive earnings or penalties shall be assessed for 2010-2012 energy efficiency program activities.~~

Proposed Changes to Findings of Fact, Conclusions of Law, and Ordering Paragraphs In Alternate Proposed Decision.

Findings of Fact:

~~25. It is reasonable to assume that utility conformance with ex ante review requirements will be highly correlated with portfolio performance.~~

~~26. It is reasonable to provide performance bonuses consistent with variation of conformance of the EM&V process between the various utilities.~~

Conclusions of Law:

8. PG&E, SCE, SDG&E and SoCalGas should each file a Tier 3 Advice Letter

seeking 2011 and 2012 incentive awards by the third quarter for approval by the Commission in the fourth quarter in 2013 and 2014 for Program years 2011 and 2012 respectively in accordance with the mechanism.

Ordering Paragraphs:

4. Pacific Gas and Electric Company is authorized to record its 2010 incentive award of \$21,037,091 in its electric and gas Customer Energy Efficiency Adjustment Balancing Account, for inclusion in its Annual Gas and Electric True-Up advice letters for recovery in rates effective January 1, 2013. As the mechanism is based on program expenditures and not net benefits, the incentive shall be apportioned between electric and gas customers on the same basis as portfolio expenditures. For PG&E, this equates to 82 percent to electric customers and 18 percent to gas customers.