

**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)

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) AND
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) ON THE PROPOSED
DECISION OF ADMINISTRATIVE LAW JUDGE THOMAS R. PULSIFER
REGARDING PRIORITIES FOR PROSPECTIVE ENERGY EFFICIENCY INCENTIVE
REFORM, AND THE ALTERNATIVE DECISION OF COMMISSIONER MARK J.
FERRON REGARDING APPROVING 2010-2012 ENERGY EFFICIENCY INCENTIVE
MECHANISM AND DISBURSING 2010 INCENTIVE AWARDS**

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**I.
INTRODUCTION**

Pursuant to the provisions of Rule 14.3, San Diego Gas & Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas" or "SCG") (also referred to as the "Joint Utilities") hereby provide their comments on the November 17, 2009 Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Pulsifer and the Alternate Decision ("AD") of Commissioner Ferron regarding the 2010-2012 Risk Rewards Incentive Mechanism ("RRIM"). The Joint Utilities appreciate this opportunity to provide their comments and to address specific areas of the PD and AD which they believe require modification in order that the Commission may issue a comprehensive and valuable final decision in this proceeding.

Although the PD is correct that adoption of an incentive mechanism at this stage comes too late to influence utility performance during the program cycle that is about to end, the utilities planned and executed their portfolios with the understanding that the Commission would adopt a RRIM to recognize their success at achieving Energy Efficiency goals. It is this understanding that influenced utility performance. Reversing course at this time undermines confidence in the State's commitment to maximizing energy savings.

While the Joint Utilities continue to believe that an incentive mechanism should reward achievement of energy savings, they can accept, on a one-time, non-precedential basis, a RRIM based on a management fee for the current program cycle. However, the management fee-based RRIM proposed in the AD must be modified to eliminate the untested, arbitrary and entirely

subjective scoring mechanism that was raised for the first time in a ruling on September 25, that is not supported by any party to the proceeding, and bears no relation to achievement of energy savings. With such a change, the Joint Utilities support the AD.

II.
THE COMMISSION SHOULD REJECT THE PROPOSED DECISION.

The PD recommends that the Commission not adopt be an incentive mechanism for the 2010-2012 energy efficiency program cycle. The PD Finding of Facts (“FOF”) 10 and 11 are erroneous in their determinations that the absence of a final RRIM has had no material influence on utility performance to achieve Energy Efficiency (“EE”) goals. On the contrary, the Joint Utilities’ 2010-2012 performance has been directed towards achieving the EE goals with the expectation that there would be a RRIM to recognize their performance. This expectation is reasonable given the many efforts that the Commission, its staff and parties have invested over the last four years to develop a 2010-2012 RRIM. Efforts to address a 2010-2012 and beyond RRIM began as far back as April 2009. The PD states in FOF 5 that: “A proposed decision was previously prepared which attempted to devise incentive mechanism for the 2010-2012 budget cycle” in November 2010. At that point there were still two years of the cycle remaining, adequate time for a RRIM to influence utility behavior. Although other issues were addressed in R.09-01-019 that resulted in interruptions, consideration of a new mechanism for 2010-2012 was never halted. In August 2011, the Commission issued a ruling to refresh the record on the RRIM. Continuing to move forward, in response to the January 2012 direction in R.12-01-005 and the December 16, 2011 Assigned Commissioner’s Ruling Soliciting Further Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, the Joint Utilities provided the relevant calculations and supporting assumption applicable to the calculation of a shared savings rate for the 2010-2012 cycle using the steps described in this ruling. Finally, the September 25, 2012 “*Administrative Law Judge’s Ruling Soliciting Comments on Modified Methodology and Use of Data to Derive Incentive Earnings Amounts*” (“September 25 Ruling”), albeit the methodology proposed was not a shared savings mechanism, continued the discussion of a potential mechanism. The Joint Utilities agree that the Commission has not issued an “affirmative policy direction as to whether, or in what manner, an incentive mechanism may be

authorized for the 2010-2012 program cycle”.¹ However, the Commission not only did not disclaim the adoption of such an incentive mechanism, as set forth above, gave every reason that an incentive mechanism could be adopted. All the above described efforts expended between April 2009 and September 2012, towards the development of a potential 2010-2012 RRIM, leads to a reasonable expectation that there will be a 2010-2012 RRIM. In justifiable reliance thereon, the Joint Utilities have been focusing their efforts on achieving program goals with the expectation of a RRIM.

Furthermore, the Commission, as part of its consideration for a 2010-2012 RRIM states:

“On the other hand, the Commission has previously concluded that regularity and continuity in the provision of energy efficiency incentive earnings is important in motivating the utility to treat energy efficiency as a core part of the utility’s business. Providing for some level of incentive earnings to be awarded during calendar year 2012 (based on 2010-2012 efficiency savings amounts) would preserve the continuity of regular annual earnings from incentives.”²

The Commission’s conclusion is still very relevant today. Although there was no final mechanism, the expectation set by the rulemaking’s proceedings was concrete enough to continue to motivate utility performance during the 2010-2012 cycle.

The PD provides various arguments for not recommending any incentive mechanism at this late stage of the program cycle. The Joint Utilities disagree with these reasons cited.

1) Appropriate Form of Incentives Have Not Been Adequately Explored.

The Commission has solicited on more than one occasion recommendations for RRIM proposals. NRDC, TURN and the utilities have provided a wide variety of recommendations to the Commission on all these occasions. The proposals of these parties have not varied significantly over four years in R.11-09-014 and R.12-01-005. Workshops have also been conducted to further inform the Commission as it considers each of the parties’ recommendations. Finding of Fact 12 states: “A number of disputes remain unresolved regarding whether, and if so, how, an incentive mechanism should be designed and implemented for the 2010-2012 cycle.” The Commission has developed a sufficient record to determine a

¹ Assigned Commissioner Scoping Memo and Procedural Ruling, May 16, 2012, page 4.

² Administrative Law Judge’s Ruling Soliciting Comments on Modified Methodology and Use of Data to Derive Incentive Earnings Amounts, September 25, 2012, page 4.

RRIM for 2010-2012 through the last 4 years of the Rulemaking and has had adequate experience on a variety of other utility mechanisms.³ Therefore, now is the time and place for the Commission to make its decision as to the final 2010-2012 RRIM and should not default to determining that no RRIM should be approved for this cycle because of unresolved disputes.

2) Allocating Additional Time and Resources to Devising a 2010-2012 Incentive Mechanism and Adjudicating Claims for Payment of Awards Would Divert Resources.

The Joint Utilities disagree with the notion the establishment of a mechanism for 2010 – 2012 will interfere with the upcoming program cycle. That there will no longer be a need to spend additional time and resources to develop a 2010-2012 RRIM as we are at the end of the cycle and the Commission, as stated above, has all the information before it to makes it final determination on this matter. Furthermore, with D.11-07-030 requiring that all final ex ante assumptions are retroactive to January 1, 2010,⁴ adoption of a gross realization rate for non-reviewed custom projects,⁵ review of selected customer projects be Energy Division,⁶ and disposition of workpapers for non-DEER measure assumptions⁷ have all been resolved such that it should not take significant time to review and approve the utilities’ final accomplishments and expenditures. In addition, the utilities submit cumulative detailed customer participation databases quarterly to Energy Division (“ED”) for their review. The Joint Utilities contend that it should not take more than the time to review the 2010-2012 utility results as it took Commission to review and approve Program Year 2009 incentives.

In conclusion, the Joint Utilities: (1) believe that it is still relevant for the Commission to conclude that regularity and continuity in the provision of energy efficiency incentive earnings is important in motivating the utility to treat energy efficiency as a core part of the utility’s business; (2) contend that it is reasonable for the Joint Utilities to expect that there would a RRIM even in the absence of an affirmative conclusion from the Commission because of the efforts expended on the RRIM over the last four years; and (3) believe the barriers raised by the

³ The Gas Cost Incentive Mechanism (“GCIM”) approved for SoCalGas and in continuous operation since 1994 is an example of such a mechanism.

⁴ D.11-07-030 Ordering Paragraph 1.

⁵ D.11-07-030 Conclusion of Law 13.

⁶ D.11-07-030 Ordering Paragraph 7.

⁷ D.11-07-030 Ordering Paragraphs 2, 3 and 4.

PD to adopting a final 2010-2012 RRIM are moot. Therefore the Joint Utilities strongly recommend that the Commission reject the PD for the reasons stated above.

**II.
THE JOINT UTILITIES RECOMMEND REVISIONS
TO THE ALTERNATE DECISION.**

The September 25 Ruling first contemplated a “new methodology” to determine utility incentive payment awards for the three year 2010-2012 energy efficiency (“EE”) program cycle, of which less than one month remains. The Joint Utilities, in their October 5, 2012 comments strongly disagreed with this “new methodology” and urged the Commission to reject its premise and mechanics, as they are not in any way rationally related to rewarding the utilities for their delivery of EE savings to California. The Joint Utilities submit that the scoring mechanism included in the AD’s proposed RRIM:

- Is flawed given that it is not related to program performance or Commission goals;
- Features a scoring methodology that is arbitrary in application, as it is discernibly subjective, and cannot be objectively measured or replicated;
- Over emphasizes one program element rather than reflecting entire portfolio performance;
- Provides the wrong incentive mechanism signals by focusing on administrative processes rather than program progress;
- Damages California’s reputation as an Energy Efficiency program leader by promoting a mechanism that rewards obedience, punishes dissent, and stifles innovation;
- Is not supported by any party to the proceeding; and
- Is not supported by the record for this proceeding, constitutes legal error and should be dismissed from consideration.

Rather than order the implementation of a RRIM that is flawed by these shortcomings, the Joint Utilities reiterate their request that the Commission adopt the mechanism proposed in their earlier comments in this proceeding, namely the Performance Earnings Basis (“PEB”) adopted and approved by this Commission in earlier RRIMs. If the Commission chooses not to select an approach that is fundamentally tied to program performance, then the Joint Utilities can, in this instance, accept a management fee based on program expenditures in the interest of

bringing the 2010 – 2012 earnings methodology process to a close, as described below. Consistent with their October 5, 2012 comments, the Joint Utilities continue to assert strong disagreement with a management fee approach and it should only be applied as a one-time, *ex post facto* basis. In the interest of efficiency, the Joint Utilities incorporate by reference their complete comments filed on October 5, 2012 and provide highlights below.

The above referenced “new methodology” consists of an annual two tier award structure, with the first tier being a baseline “management fee” set at five percent of annual portfolio expenditures. The second tier, described as a “performance bonus,” capped at one percent is based on how well each utility scored during the 2010-2012 cycle in an untested analysis of how they complied with and implemented the lockdown of *ex ante* parameters for the EE portfolio. The entire mechanism is capped at six percent of annual portfolio expenditures.

This “performance bonus” is, unfortunately, not based on how the IOUs perform in delivering actual EE savings. It is, instead, based entirely on the subjective opinion of Commission staff regarding IOU “conformance” to interpretations of the *ex ante* workpaper and custom project review processes established for the 2010 – 2012 program cycle. This scoring mechanism has not been vetted, tested or validated; its results cannot be objectively measured, replicated, disputed, appealed or audited. As proposed to the Commission, this performance bonus is an *ex post facto* penalty for honest disagreement among knowledgeable EE experts regarding process without regard to actual results. In the April 1, 2009 ED white paper titled: “Proposed Energy Efficiency Risk-Reward Incentive Mechanism and EM&V Activities” (hereafter, the “White Paper”), proposed criteria to serve as a framework for designing an effective incentive mechanism:[§] (1) Effective and strategic; (2) Feasible; (3) Timely and Non-Contentious; (4) Fair and Cost-Efficient; (5) Simple and Transparent; and (6) Technical Integrity. The Joint Utilities carefully detailed in their October 5, 2012 response how the proposed RRIM fails to follow the critical principles reiterated in the June 15 Ruling. In particular the performance bonus fails to meet these principles as follows:

1. *Effective and strategic – The mechanism must be focused on the Commission’s energy efficiency policy goals.*

[§] The California Public Utilities Commission White Paper, Proposed Energy Efficiency Risk-Reward Incentive Mechanism and EM&V Activities, Prepared by the Energy Division, dated April 1, 2009, p. 4.

Portfolio expenditures and unilateral conformance to staff and third party consultant direction to the IOUs in the *ex ante* review process do not focus on and thus will not advance portfolio-wide EE policy goals, and, as a result, are inferior to measurements that capture cost effectiveness and/or energy savings achievements.

2. *Feasible – The CPUC must be able to design and implement the incentive mechanism expeditiously with the current staffing.*

Because the proposed RRIM is *ex post facto* and does not contemplate measurement of savings and/or cost effectiveness, this principle is simply ignored by the “new methodology.”

3. *Timely and Non-Contentious – Incentive payments or penalties should be quantified and processed in a reasonable time frame and acceptable to all stakeholders.*

It appears that in order to be “timely,” the proposed scoring mechanism disregards alignment with Commission objectives in favor of simplified calculations. IOU scores for the *ex ante* review process are subjectively given without any due process. No party supported the scoring mechanism in their comments on the September 25 ruling. This approach is far from non-contentious. Thus, this criterion has been partially and selectively applied. Adoption of such a mechanism, even on an *ex post facto* basis, will not influence behavior to promote Commission goals on a going forward basis. In particular, a performance bonus based on a subjective scoring of IOU interaction with ED staff would stifle innovation and critical thinking.

4. *Fair and Cost-Efficient – The mechanism should provide reasonable opportunity for awards to utilities for successful management while protecting against unreasonable costs and poorly managed programs.*

The scoring mechanism as proposed in the September 25 Ruling does not incent cost-effectiveness but instead establishes a series of subjective measures. A disproportionate amount of focus is placed on *one* administrative process by associating a majority of the incentive award with the *ex ante* review. This does injustice to the remaining portfolio of programs, and will demand unwarranted attention be paid to administrative processes, thereby diminishing cost effectiveness, and hampering genuine debate and collaborative resolution between peers.

5. *Simple and Transparent – The mechanism should be simple and understandable.*

The *ex ante* review process scoring is completely opaque, particularly since the “Scorecard Metrics” were never made known until the September 25 Ruling. The evaluation was performed unilaterally and without any disclosure. Again the “performance bonus” model

provides no clear objective basis for the scoring, and cannot be replicated as it presents itself as purely subjective.

6. *Technical Integrity – The mechanism should maintain the technical integrity of all EM&V research, savings estimates, and energy efficiency forecasts.*

This principle does not appear to have been taken into account in the formulation of the proposed RRIM, which disregards energy savings and provides for only one party to unilaterally make decisions regarding technical matters.

In agreement with the Commission’s White Paper, the Joint Utilities stated in earlier comments that a RRIM, based on *ex ante* assumptions, can serve the purpose of motivating superior performance in the utility acquisition of energy efficiency savings. In order to describe how the Joint Utilities would adopt, apply and adhere to these principles, the six principles were distilled and restated into four. The Joint Utilities stated there must be: (1) one clear goal - achieving energy savings; (2) a clear benchmark for energy savings - *ex ante* savings assumptions established prior to the planning and the execution of the energy efficiency program; (3) objective and replicable measurement of results, i.e. clear, simple accounting standards for measurement of program energy savings based on the verified installations; and (4) a level of incentives that the Commission determines is proportional to the ratepayer benefits. These same restated principles should be applicable to all mechanisms, but are absent from the “new methodology,” as described below:

1) Clear goal

In order to influence behavior in a meaningful way, it is important that objectives are clear and consistent. With respect to whether the proposed RRIM achieves a clear goal, it is first necessary to note that the September 25 Ruling contemplates an *ex post facto* mechanism that cannot not be determined / known *during* the program period, and thus did not, cannot, and will not have influence over behavior or results. The Joint Utilities believe the RRIM behavioral objective must thus be evaluated within the context of the primary goals they were provided and would have focused on in the context of an earnings framework.

The AD states (at page 36) “We assume that there is a correlation between the scores associated with these metrics and actual portfolio-driven energy savings. We make this assumption because the metrics are focused on due diligence and the standard of care used in calculating the *ex ante* savings parameters. Consequently, we consider the utility scores

associated with these metrics to represent a reasonable proxy for effective portfolio implementation and resulting ratepayer savings.” There has been no evidence establishing direct correlation between conformance to the *ex ante* review process and utility administration of their program performance. The Joint Utilities submit that the AD assumption regarding the correlation of these performance scores and diligence and standard of care appears on the surface to be reasonable for the limited program areas to which it would apply. However, the Joint Utilities contend that for the metrics to be reasonable and objective it is necessary to (1) have these criteria provided up front; (2) develop an objective standard by which to evaluate performance relative to these criteria; and (3) provide a forum or mechanism to verify the results. SDG&E, in its November 5, 2012 Reply Comments to the PD approving the 2013-2014 EE program and budgets (at pages 3 to 5) stated that there are no clear and approved measurement protocols to address the development of non-DEER and custom workpapers and recommended that a set of protocols or standards be developed so that there will be an objective standard by which to measure conformance. For as long as there is no clear yardstick for these criteria and the results cannot be replicated by other parties, this performance bonus mechanism cannot be deemed reasonable and objective. There is no other way to view this scoring methodology but as an *ex post facto* penalty for honest disagreement among knowledgeable EE experts regarding process without regard to actual results. That is not to say that the Joint Utilities did not strive to deploy their programs to the fullest extent or perform as strongly as possible in the *ex ante* process, but unquestioned conformance with subjective direction given by Energy Division staff or their consultants is not a suitable *ex post facto* mechanism for the 2010 – 2012 cycle (i.e., representative of the clear and overarching goal for entire program performance).

2) Clear benchmarks have not been set.

This principle is not applicable for the management fee component of the proposed RRIM (i.e., based on 5 percent of annual program expenditures). For the “performance bonus” component, we note the *ex ante* review process is relatively newly established (the most recent aspects approved in mid-2011, after the 2010 period for which the performance bonus would be awarded by the AD), and the Joint Utilities are not aware of any benchmarking. The proposal contains a scoring scale from 1 – 5 associated with four primary metrics (each with multiple sub-

metrics) for non-DEER workpapers and Custom Projects, resulting in a final score between 20 – 100. The 1 – 5 scale is proposed as follows:²

1. *Consistent underperformer in meeting the basic Commission expectations;*
2. *Makes a minimal effort to meet Commission expectations but needs dramatic improvement;*
3. *Makes effort to meet Commission expectations, however improvement is required;*
4. *Sometimes exceeds Commission expectations while some improvement is expected; and*
5. *Consistently exceeds Commission expectations.*

The scoring system only rates utility performance relative to “Commission expectations,” a subjective criteria resulting in scores that are neither measureable nor replicable. In a process defined through the noted decisions, the Joint Utilities and the Energy Division staff are to work collaboratively, with the utilities submitting workpapers or information regarding selected custom projects, and Commission staff reviewing such materials. This specific scoring system was only provided to parties through the September 25 Ruling, nearly three years into the program cycle without having been being vetted, tested, or otherwise exposed to scrutiny on the record. Specific communication with the IOUs translating “Commission expectations” into scores of 1 – 5 (e.g., if you do this specific action, score moves up / down by one point) never occurred.

The Joint Utilities emphatically note a great deal of *effort* has gone into implementing and succeeding at the new *ex ante* review process to optimize program performance. This is acknowledged by Metric 1A, which recognizes for both SDG&E and SoCalGas that they “submitted CMPA in September 2011, first among all IOUs.”¹⁰ However it appears little acknowledgement of this effort is expressed in the scoring. It is significant that at no time were the Joint Utilities notified that their conformance with staff/consultant direction, or conversely that disagreement with staff over customer benefits and energy savings, would become the yardstick by which the majority of performance would be measured.

² September 25 Ruling, p. 6.

¹⁰ CMPA is the Custom Measure and Project Archive, an electronic archive of all custom measures and projects containing a series of information.

3) Clearly Measurable and Identifiable

The program expenditure component of the RRIM can be determined and verified through accounting processes. With regard to the “performance bonus,” as noted above, no clear benchmark has been established, as scoring is relative to conformance with Commission staff/consultant expectations that have not been articulated in the particular manner expressed in the September 25 Ruling.

The Joint Utilities respectfully point out that the September 25 Ruling errs in setting a RRIM for 2010 – 2012 that would result in awards for 2010 and 2011 that are based on the comprehensive *ex ante* review process that was not established for more than half the program cycle. As noted in the September 25 Ruling, the *ex ante* review requirements were established in D.09-09-047 adopting the 2010-2012 energy efficiency portfolios, D.10-04-029 regarding the non-Database for Energy Efficiency Resources (“DEER”) workpaper review process, D.10-12-054 freezing *ex ante* values for the 2010-2012 energy efficiency portfolios, and D.11-07-030 adopting final *ex ante* values for non-DEER measures and the custom project *ex ante* review process. As such, the custom project review process was not finalized and approved until mid-2011. This is a gross simplification that amplifies flaws inherent in mechanisms that over-emphasizes administrative process relative to program achievement.

Notwithstanding these fundamental problems with the “new methodology,” the Joint Utilities have reviewed the scoring comments and note a lack of consistency regarding the results.¹¹ In reviewing these metrics, beyond a description of the Category, there is no description of each specific Metric associated with the Category. Therefore, there is no credible means to determine how the actual scores were assigned. The qualitative description of utility performance attached to each metric can be subjective since descriptions changes but the scores are the same. For example, with respect to Category 1 Metric 3, incorporation of Commission-adopted policy and direction, all four of the IOUs were given very similar, if not identical comments for custom projects. However, both PG&E and SCE were given a score of 2, while the Joint Utilities were each given a score of 1.

¹¹ The Joint Utilities choose to only discuss selected issues to illustrate noteworthy overarching flaws to the *ex ante* scoring, rather than specific issues with SDG&E / SoCalGas scores, but note disagreement with the scores and objection to their admittance into the record without the benefit of due process or any level of transparency.

There are similar issues with Category 4 Metric 10, timely action to implement all aspects of the adopted DEER, as three utilities were given similar remarks but PG&E was given a score of 4 and SCE and SoCalGas each received a score of 3. These examples highlight the subjectivity of the evaluations and the lack of foundation that predominate the determinations.

The Joint Utilities are compelled to point out one of the more concerning evaluations, for Category 3 Metric 7, regarding the incorporation of Commission staff comments and input into project activities. The IOU scores for custom projects were associated to some degree with frequency of disagreements with staff. The Joint Utilities noted a correlation of scoring 4 for rare disagreements, 3 for moderate disagreements but perceived willingness to implement staff directions, and 2 for moderate disagreements with lack of certainty how staff direction is implemented. However, the custom process approved in D.11-07-030 mapped out an approach for addressing and resolving disagreements, which did not indicate they would be perceived negatively. To wit, the Resolution of Disagreements section begins: “Should Energy Division and a Utility have a technical disagreement on a project’s *ex ante* values, Energy Division and the Utility shall meet to discuss and resolve the differences.”¹²

The Commission should not adopt a mechanism that contradicts its own process, rewards obedience, punishes dissent, and stifles innovation. In summary, the “performance bonus” component is not objective, replicable, clearly measurable or identifiable.

4) An Appropriate Incentive Level Should Be Determined.

The AD, similar to the September 25 Ruling provides the utilities the opportunity to receive an incentive equal to five percent of annual program expenditures and an additional one percent of program expenditures based on the “performance bonus.” The Joint Utilities submit that expenditures are *not the goal* of the program, but rather a byproduct of program deployment. Over-emphasis on expenditures to the point of exclusivity should be discouraged given the Commission’s policy to strive for cost efficiencies through innovation and administrative achievement. Utilities that have met or exceeded program goals, but have done so at a more cost effective level resulting in lower expenditures, should not be penalized with relatively lower

¹² D.11-07-030, p. B9.

incentives compared to utilities that did not meet an equal level of cost efficiencies (relative to savings achievements).

III. A NON-PRECEDENTIAL ALTERNATIVE

As noted earlier, the June 15 Ruling foretold an alternative RRIM structure with both base and performance bonus incentive earnings. Although the Joint Utilities are interested in alternative mechanisms and evaluating their effectiveness, timing is a critical element. Plainly, this is not the right time to create an alternative incentive model, the *ex post facto* implementation of which does not provide an opportunity to influence program administration regarding implementation practices, and accordingly, to truly gauge its effectiveness. Given the current circumstances regarding the RRIM for the 2010 – 2012 program cycle, the Commission should use an approach consistent with existing Commission decisions and grounded in record evidence, such as the Performance Earning Basis (“PEB”) as proposed by the Joint Utilities.

The Joint Utilities describe above the deficiencies and lack of merit of the AD’s proposed “new methodology” mechanism, particularly the “performance bonus” scoring mechanism. The AD acknowledges that various other options were under consideration, including the 2009 RRIM. The 2009 RRIM provided the correct incentive to motivate superior performance to deliver cost effective savings. Similar to the 2009 situation wherein a new RRIM was not approved prior to the implementation of the program period, the Commission implemented the 2009 RRIM with a lower sharing rate of 7% to reflect the increased certainty of rewards and the inability to provide adequate and timely feedback for program improvement, unpredictable, and contentious impacts of *ex post* EM&V.

We find ourselves in the same situation wherein the program cycle is at its end and a RRIM will not be in place to make any positive impacts on program delivery or IOU behavior. The Joint Utilities understand and appreciate the Commission’s desire for a timely and simple resolution. Although the 2009 RRIM is a preferable mechanism, the Joint Utilities can accept an alternative to the September 25 Ruling based on the proposed RRIM framework, i.e., rewards calculated on a percentage of program expenditures. If the Commission chooses to not select an approach that is fundamentally tied to program performance, the Joint Utilities would accept a management fee based on program expenditures in the interest of bringing the 2010 – 2012 earnings methodology process to a close.

Due to the circumstances under which this mechanism is to be approved, i.e., *ex post facto* relative to the conclusion of the program cycle, it should be considered *only* for this particular program cycle and should *not* be considered precedential. Nor should it prejudice any considerations of future RRIMs. For the 2013 – 2014 programs, where a RRIM can be established to influence behavior during the program cycle, we emphasize the adoption of a mechanism that is consistent with the principles reiterated in these comments, such as the savings-based mechanism proposed by the Joint Utilities in their October 1, 2012 comments. It is critical the Commission maintain a structure based on its principal tenets to:

- Affirm state policy of making EE the top priority in resource planning;
- Help to make investments in efficiency on par with putting “iron in the ground”;
- Encourage performance excellence and innovation in execution of the programs;
- Align the interests of customers and shareholders;
- Maintain the clarity of rules and assumptions, so there is integrity in the RRIM process and methodology, in support of all of the above.

**IV.
THE ALTERNATE DECISION CONTAINS FACTUAL ERRORS THAT SHOULD BE CORRECTED**

The AD errs in its calculation of SCG 2010 earnings amount. The methodology proffered in the AD would multiply SCG’s total expenditures, not including EM&V, by a management fee and bonus percentage. However, the AD includes EM&V expenditures in SCG’s total 2010 expenditures. These should be removed to align SCG earnings with the methodology put forth in this Decision. SCG’s 2010 expenditures, not including EM&V are \$50,408,021, as reported in its December 2010 EE Monthly Report, and 2010 EE Annual Report, both posted on EEGA. The AD should be corrected as follows:

2010 EE Expenditures (excluding EM&V)	Baseline Management Fee (5%)	Performance Incentive (SCG - 0.36%)	Total Earnings
\$50,408,021	\$2,520,401	\$181,469	\$2,701,870

As elaborated in the comments above, SCG strongly opposes the implementation of the bonus scoring mechanism incentive, but offers to the corrected figures in the table above.

IV. CONCLUSION

The Joint Utilities support an incentive mechanism for the 2010 – 2012 program cycle. However, the RRIM proposed in the AD is not aligned with portfolio-wide Commission policy emphasis and therefore, the primary IOU focus during the three-year period. The “performance bonus” component of the mechanism does not resolve the issue of mitigating contentiousness, as the scoring of the *ex ante* review process is highly subjective, inconsistent, not replicable or verifiable, nor consistent with the Commission’s established custom review process and regulatory due process. The process was also not comprehensively in place during two of the three years of the program cycle, so should not be used as a measure for awards in 2010 or 2011. Imposition of The “performance bonus” scoring mechanism is contrary to Commission EE goals, absent in the record and not supported by any party to the proceeding.

Given these issues, the Joint Utilities return to the proposal from earlier comments and recommend the Commission rely on the PEB measurement, which is consistent with program-wide goals and rewarding achievements. If, however, the Commission chooses not to select an approach that is fundamentally tied to program performance, the Joint Utilities would accept a management fee based on program expenditures in the interest of bringing the 2010 – 2012 earnings methodology process to a close and reject the “performance bonus” component due to its prejudicial nature. The Joint Utilities strongly emphasize that it should only be applied as a one-time, *ex post facto* solution.

Dated: December 4, 2012.

Respectfully submitted

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