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)

WOMEN'S ENERGY MATTERS COMMENTS ON PROPOSED DECISION AND ALTERNATE

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WOMEN'S ENERGY MATTERS
COMMENTS ON PROPOSED DECISION AND ALTERNATE

Women's Energy Matters (WEM) appreciates this opportunity to comment on the Proposed Decision ("PD") of ALJ Pulsifer and the Alternate Proposed Decision ("Alternate") of Commissioner Ferron. Pursuant to Rule 14.3, we focus on factual, legal or technical errors in the proposed or alternate decision.

Introduction

WEM respectfully asks the Commission to approve ALJ Pulsifer's Proposed Decision, and reject the Alternate. Further, we urge the Commission to terminate any further attempts to develop a "Risk-Reward Incentive Mechanism."

Whether disguised as "management incentives," "incentives for superior performance," or some new characterization, these are exclusive, unfair payments to utilities that serve to prop up their monopoly over energy efficiency without solving their conflicts of interest — thereby robbing Californians of the benefits of fully independent administration of energy efficiency, which is mandated by AB117.

The benefits of independent administration of energy efficiency include larger energy savings, bill reductions, and more effective reduction of the greenhouse gas emissions and other pollution caused by utilities' procurement portfolios that are largely dependent on fossil fuels and nuclear power and fail to utilize energy efficiency for any specific procurement tasks.

The Commission should immediately begin moving towards fully independent administration of energy efficiency instead of trying to find another "new, improved" RRIM.

Why the legal choice is to reject the RRIM for 2010-12 — and beyond

The PD and Alternate agree that utilities are biased against EE, as noted in the Energy Action Plan:

> As noted in the Energy Action Plan11 and past Commission decisions, there is an inherent utility bias towards supply-side procurement under cost-of-service regulation. Investor-owned utilities generate earnings when they invest in supply-side resources, but not when implementing cost-effective energy efficiency measures. PD, p. 8, Alternate, p. 7.

They also agree about the purpose of the Risk Reward Incentive Mechanism: *it was devised to address the utility bias in favor of supply-side resources:*

> The RRIM was devised to address the utility bias in favor of supply-side resources by providing the opportunity for incentive earnings on par with investment opportunities from supply-side resources. PD, p. 8; Alternate, pp. 7-8.

They also both stress the position of EE as California's "highest energy resource priority" pursuant to the Energy Action Plan and PU Code 454.5(b)(9)(c), and state that the RRIM was designed to "extend" that commitment, which seems to mean "reinforcing" it:

> Relevant statute,[1] California's Energy Action Plan,[2] and past Commission decisions all prioritize EE as the first resource to meet California's energy demand. The RRIM was originally designed to extend California's commitment to making EE the highest energy resource priority. PD, p. 1; Alternate, p. 7.

The PD concludes:

> We are not persuaded that any of the incentive earnings proposals are appropriately designed to motivate management to view EE programs as a core part of utility regulated operations. Based on the IOUs' own calculations, an unacceptably high shared-savings rate would be needed to approximate earnings from supply-side resources.[19] PD, p. 29.

A footnote lists what these rates would be:

> The calculations provided February 2, 20102, by the IOUs of shared savings rates for 2010-2012 necessary to produce incentive earnings on par with corresponding supply-side investments were as follows: PG&E: 43.2%' SCE 77%; for SDG&E: 28%-35%; and for SoCalGas, 24%.

The PD adds that everyone tacitly acknowledged that this level of incentives would be unfair to ratepayers:

> No party claims that the IOU calculations of those high shared savings rates would provide a fair share of net benefits to ratepayers. PD, p. 27.

Both the PD and Alternate note that three utilities offered to settle for a lower rate of 7% shared savings "essentially as a pragmatic default, claiming it is less controversial…" PD, p. 27; Alternate, p. 25. The PD goes on to note that DRA, TURN, and WEM oppose a 7% rate; "SCE takes the position that adopting any particular shared savings rate is problematic." Ibid. *The PD notes, "NRDC proposes a somewhat higher shared savings rate of 8% to 10%." PD, p. 28.*

The PD rejects any incentives for 2010-12.

Was the earlier RRIM successful?

Both agree that the brand new mechanism developed in 2007 didn't work:

> As early as the first installment awarded in December 2008, the Commission recognized that the RRIM was not functioning as intended. PD, p. 9; Alternate, p. 8.

Several modifications failed to resolve controversies, which ultimately spilled out in an exceptionally rancorous dissent by the Assigned Commissioner in 2010, in one of her last decisions before being termed out:

> Let me turn now to the policy issue before use today – should this Commission and ratepayers accept and pay for performance that does not deliver savings nor adapt to market conditions. …
>
> It is not enough to set programs in motion and revisit them three years later. Program administrators must be prepared to recognize shifts in the market and adapt their efforts accordingly. Otherwise, as we see here today, actual savings may fall alarmingly short. In concluding that it is unreasonable to hold utilities to a standard of adapting programs to changing markets and thus being held accountable for promised savings, the alternate decision adopts a policy that undermines the basic structure of ratepayer-funded energy efficiency.
>
> The larger question, however, is whether this outcome is the only option before the Commission. If utility administrators will not adapt programs to changing market conditions – for fear of losing shareholder profits – then the time has come to examine alternate administrative structures that can adapt to dynamic market conditions, abide by independent savings evaluations, while delivering promised savings and lowering costs. This is a matter that President Peevey raised in 2005 and it is timely to revisit it. Grueneich Dissent to D1012049, pp. 2-4.

Ignoring this scathing dissent by the Commissioner in charge of the 2006-08 and 09 programs, the Alternate cites the fact that the Commission awarded incentives for the 2006-08 cycle as a reason why it should do so again this year. FOF 2, Alternate, p. 41.

The RRIM actually *prevents* effective use of EE as a resource

The problem is not only that EE incentives would have to be prohibitively expensive to match supply-side profits and thereby "motivate management to view EE programs as a core part of utility regulated operations." There is a deeper problem: it does nothing to address the utilities' avoidance of EE for any particular procurement task.

DRA claims that despite years of various incentive mechanisms, the

> IOUs have engaged in over procurement of supply-side resources and underachievement of energy savings while challenging independent evaluations of their energy savings achievements. As a result, DRA claims that ratepayers have been forced to fund underperforming EE investments, including the payment of incentives, while also funding higher supply-side costs. PD, p. 20.

WEM presented further evidence of this problem. The PD (not the Alternate) noted that WEM provided specific data on utility over-procurement of supply-side resources: "WEM compiled a chart reflecting the CPUC Planning Assumptions for the Long-Term Procurement Plans, to show system wide surpluses of 150% this year, and 156% in 2020." PD, p. 21.

Both the PD and the Alternate acknowledge WEM's critique of the EE Evaluation, Measurement & Verification system:

> WEM believes that RRIM works against better EE programs, and that EM&V, as developed for the purpose of calculating RRIM earnings, is largely useless for determining the grid-reliability of EE… WEM claims that the time lag is excessive between when a measure is installed versus when EM&V is performed, with a delay of as many as three or four years after an EE measure is installed. WEM argues, for example, that earnings are awarded at a time when many CFLs funded by the programs have already burned out. WEM complains that EM&V provides hardly any reports on the distribution of energy savings in relation to the needs of procurement and transmission/distribution planning. PD, p. 21; Alternate, p. 21.

The fact that EE is not tracked in a way that addresses the needs of procurement means that utility procurement planners and CAISO ignore EE as a way to meet any specific procurement need.[1] WEM described PG&E and CAISO's failure to count EE towards g "local capacity," in our 2-12-12 Opening Comments on the OIR, p. 7.

Call it "shared savings" or a "management fee" — *it's just a protection racket*

The Alternate claims:

> A shareholder incentive mechanism is a core part of the state's strategy to <u>successfully</u> deploy Energy Efficiency. Alternate, p. 2, emphasis added.

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[1] In 2012, despite SCE, CAISO, and CPUC's alarm about potential shortfalls in the Local Capacity Areas of Los Angeles, Orange Co. and San Diego in the absence of the San Onofre Nuclear Generating Station (SONGS) (which was shut down Jan. 31, 2012, and still has not returned to service)— *none of them proposed to use energy efficiency tofill gaps or bolster reliability in summer 2012,* despite SCE having nearly $600 million EE funds on hand as of Feb. 1, 2012, and SDG&E having about $100 million— all of which was supposed to be used in 2012. Utility monthly reports are posted athttp://eega.cpuc.ca.gov

However, FOF 6 points out that there's no evidence in the record that IOU programs are successful:

> FOF 6. This record contains no evidence concerning ex post evaluations of IOU performance during the 2010-2012 cycle. Thus, there is no basis for findings as to how successful the IOUs may have been in meeting savings goals, or whether savings goals would have been met or exceeded differently assuming some sort of incentive mechanism had been in place, or assuming the IOUs expected some sort of incentive awards for 2010-2012. Alternate, p. 42, emphasis added.

Even though the PD and Alternate make no attempt to show whether or not utilities' 2010-12 EE programs are "successful" — or that the RRIM had anything to do with it — or that utilities are really using EE to "defer and displace" supply side resources — the Alternate still finds it necessary to "send the proper signal:"

> FOF 14. It is reasonable to continue to disburse shareholder incentives for energy efficiency, as it sends the proper signal to the market place and affirms the state's commitment to EE as a top priority resource. Alternate, p. 43, emphasis added.

The Alternate offers still another reason to put more money in shareholders pockets: a "management fee of the utility's annual programmatic expenditures…" Alternate, p. 44, FOF 19.

But there's a problem here — other parties have managed programs too, in the 2010-12 cycle. Where's their management fee? In multiple EE proceedings, WEM has protested the fact that local governments were managing independent programs with federal stimulus funds — but the utilities were credited with their earnings, whenever any ratepayer funds were rolled into these programs.

It's only the utilities that demand extra incentives, or fees, or bonuses:

> 8. Without an energy efficiency incentive, given the focus of investors and utility management on increasing shareholder value, utilities will on balance be more inclined to devote scarce resources to procurements on which they will earn a return, and not on meeting or exceeding the Commission's energy efficiency goals, or maximizing ratepayer net benefits in the process. Alternate, p. 42, FOF 8.

There's a name for this — *it's called a protection racket:*

> A **protection racket** is an extortion scheme whereby a criminal group or individual coerces a victim (usually a business) to pay money, supposedly for protection services against violence or property damage. Racketeers coerce

> reticent potential victims into buying "protection" by demonstrating what will happen if they don't—they damage the victims' property. In most cases, the racketeers do not actually protect their client from anything but the racketeers themselves, and their "protection" is merely extortion. However, if their victim is seriously threatened by a third party, sometimes gangsters will protect their source of revenue...
> The person who periodically visits the victim to collect protection payments is called a "bag man".
> From Wikipedia, the free encyclopedia.

Such schemes are illegal, for example under CA Penal Code 518, Extortion:

Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

They are also illegal under PU Code 451, just and reasonable rates:

> PU Code §451. All charges demanded or received by any public utility, or by any two or more public **utilities**, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be **just** and **reasonable**. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

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Respectfully Submitted,

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Revised Findings of Fact in the ALJ's PD:

> 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.~~
> 15. A forward-looking focus on devising effective incentive programs for the 2013-2014 period would thwart ~~will provide the greatest opportunity to advance~~ policy goals to maximize energy efficiency. ~~through the use of incentives.~~ Instead, we are ending the utility monopoly of energy efficiency in order to advance these policy goals.

Revised Conclusions of Law in the ALJ's PD:

> 1. Pursuant to relevant statute, and past Commission policy directives, energy efficiency programs should be prioritized as the first resource to meet California's energy demand. ~~Any directives regarding incentive policy should be consistent with California's commitment to making EE the highest energy resource priority.~~