

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 SUPPORT OF THE PROPOSED DECISION REGARDING PRIORITIES FOR  
PROSPECTIVE ENERGY EFFICIENCY INCENTIVE REFORM AND IN  
OPPOSITION TO THE ALTERNATE PROPOSED DECISION APPROVING 2010-2012  
INCENTIVE MECHANISM AND DISBURSING 2010 INCENTIVE AWARDS**

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## I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits these reply comments in support of the Proposed Decision of ALJ Pulsifer titled *Decision Regarding Priorities for Prospective Energy Efficiency Incentive Reform* (PD) and in opposition to the Alternate Proposed Decision of Commissioner Ferron titled *Decision Approving 2010-2012 Energy Efficiency Incentive Mechanism and Disbursing 2010 Incentive Awards* (APD). The Commission should adopt the PD and reject the APD. The parties which support the APD do not provide adequate and compelling evidence to justify a rate increase that benefits only investor-owned utility (IOU) shareholders.

## II. DISCUSSION

### A. The utilities are not entitled to an incentive

Both Natural Resources Defense Council (NRDC) and Pacific Gas & Electric (PG&E) cite Decision (D.) 07-09-043 for the proposition that the utilities should rightfully expect an incentive award for 2010-2012 cycle.<sup>1</sup> San Diego Gas & Electric and Southern California Gas (Joint Utilities), along with NRDC, refer to attempts over the past four years to design a Risk/Reward Incentive Mechanism (RRIM) as a basis of its entitlement to a RRIM payment.<sup>2</sup>

These representations of past Commission actions to support a claim of entitled expectation are not accurate. First, after D.07-09-043, the Commission in D.11-12-036 decided not to adopt the then current RRIM for the 2010-2012 cycle and indicated that:

... subsequent RRIM design for the 2010-2012 program cycle or beyond has not been determined by the Commission. That topic is the subject in R.09-01-019 and our actions today should not be considered to extend beyond these applications.<sup>3</sup>

Second, in later rulings, the Commission raised the threshold question of whether there should be a RRIM at all. The Assigned Commissioner issued an Assigned Commissioner Ruling on August 30, 2011 which stated:

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<sup>1</sup> PG&E opening comments, p.4 and NRDC opening comments, pp. 2-3 quote from D.07-09-043:

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.

<sup>2</sup> Joint Utilities opening comments, p. 2.

<sup>3</sup> D.11-12-036, p. 10.

Questioning the justification for continuing the RRIM is especially appropriate given the track record during the now completed 2006-2008 RRIM cycle. The most recent revisions in the RRIM design were adopted for the 2006- 2008 RRIM true-up in D.10-12-049. Since the RRIM was originally instituted in D.07-09-043, and subsequently modified over succeeding years, serious questions have been raised concerning whether the mechanism can realistically do what it was originally designed to do.<sup>4</sup>

Later, the Commission issued the instant Rulemaking (R.) 12-01-005 which continued to raise the threshold question of whether there should be a RRIM at all. It stated:

Also, as part of this review, we consider whether to offer RRIM earnings, or other forms of incentives to the IOUs, at all. We consider whether there may be other, or better, ways to encourage maximum energy efficiency.<sup>5</sup>

Most recently, an Assigned Commissioner's Scoping Memo in this proceeding was issued on May 16, 2012 which again continued to raise the threshold question of whether or not there should be a RRIM at all.<sup>6</sup> It stated:

The procedural scope will include re-evaluation of the basic question of whether offering monetary earnings to utility shareholders can be an effective and appropriate incentive tool to encourage and promote energy efficiency goals.<sup>7</sup>

These rulings made it clear to the IOUs that a RRIM in 2010-2012 was not guaranteed. Ultimately, as no mechanism was in place, it would have been irresponsible for the IOUs to assume and relay to their shareholders that an incentive would be awarded for 2010-2012. As the PD states, "only Commission action should carry weight."<sup>8</sup> Thus, the PD is not 'denying' the IOUs an incentive because they were never promised one.

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<sup>4</sup> R.09-01-019, Assigned Commissioner Ruling to Refresh the Record on Outstanding Issues, August 30, 2011, p. 4.

<sup>5</sup> R.12-01-005, Order Instituting Rulemaking to Reform the Commission's Energy Efficiency Risk/Reward Incentive Mechanism, January 12, 2012, p. 2.

<sup>6</sup> It should be noted that both NRDC and DRA argued the Commission should address this threshold question before moving forward on a new RRIM. See, DRA's January 17, 2012 Comments in response to the ACR Soliciting Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, p. 2; and NRDC's February 16, 2012 Reply Comments to the OIR and ACR Soliciting Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, p. 2.

<sup>7</sup> R.12-01-005, Assigned Commissioner's Scoping Memo, May 16, 2012, p. 2.

<sup>8</sup> PD, p. 26.

PG&E and NRDC also point to the ‘success’ of the 2010 EE programs as a reason the IOUs deserve a 2010-2012 award. PG&E cites the Commission’s September 4, 2012 press release regarding its 2010-2011 EE Annual Progress Evaluation Report as an indication that the IOUs have met their energy savings targets and NRDC cites the California Energy Groupware Application (EEGA) for evidence the IOUs exceeded goals. However, the sources cited by both parties present energy savings that are unverified and *utility* reported. As these savings claims are not independently verified, they should not serve as a basis for a monetary award. The reported savings presented in the IOUs’ evaluation report indicate that 59% of electric savings are attributed to indoor lighting technologies that include basic CFLs, a reliance on short-term savings measures the Commission has repeatedly expressed it wants to move away from.<sup>2</sup>

Regardless, the purpose of the RRIM is to encourage the IOUs to be innovative to reach levels of energy savings beyond what they would otherwise. The PD observes that the Commission has “no basis to speculate whether savings goals would have been met or exceeded differently assuming some sort of incentive mechanism had been in place, at the start of the cycle.”<sup>10</sup>

**B. EE is a top priority in California and the absence of a 2010-2012 mechanism will not change that**

PG&E declares that “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.”<sup>11</sup> The Joint utilities state that, “[r]eversing course at this time undermines confidence in the State’s commitment to maximizing energy savings.”<sup>12</sup> NRDC states that the PD “could undermine the Commission’s credibility in making efficiency the top priority resource, jeopardizing continued aggressive pursuit of cost effective energy savings.”<sup>13</sup> None of these rash statements are justified. The PD stresses the importance of promoting Commission EE policy objectives in guiding its decision. The PD concludes that further resources and effort spent on a backward looking incentive for 2010-2012 would further divert

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<sup>2</sup> 2010-11 Energy Efficiency Annual Progress Evaluation Report September 4, 2012 Press Release, p. 13.

<sup>10</sup> PD, p. 27.

<sup>11</sup> PG&E opening comments, p. 1.

<sup>12</sup> Joint Utility’s opening comments, p. 1.

<sup>13</sup> NRDC opening comments, p. 3.

effort from devising a fully functioning and forward looking incentive mechanism for 2013-2014. By devoting full priority on the future, the PD can “provide the greatest opportunity to maximize energy efficiency goals by developing a meaningful incentive program.”<sup>14</sup>

The Commission recently approved a \$2 billion budget for the 2013-2014 IOU administered EE programs.<sup>15</sup> This is an enormous and continuing signal that energy efficiency is a state priority, and the absence of a RRIM for the 2010-2012 cycle will not compromise that. Recognition that the best action is looking forward in order to properly address energy efficiency goals is not undermining the state’s commitment to EE, it is prioritizing in order to meet the commitment.

**C. The proposed mechanism is not well vetted and could send the wrong signal for the future**

The APD’s backward-looking mechanism has strayed far from the original goals put forth in D.07-09-043. The proposed mechanism does not create a ‘win-win’ as ratepayer benefits are not evident. SCE states that the APD furthers the State’s Energy Action Plan. However, the updated Energy Action Plan (EAP II) would require that any RRIM be based on performance and contains both risk and rewards that ensure an alignment of interests between shareholders and ratepayers.<sup>16</sup> The mechanism put forth in the APD does not include a risk component nor does it align utility and consumer interest. It is even a stretch to say it is performance based as only 1% is attributed to a scorecard.

SCE also declares that the goals of an incentive mechanism are broader than influence on program design and implementation as the PD states. Instead, the goals are to align ratepayer and shareholder interest, to encourage the achievement of EE goals, and extend the state’s commitment to making EE a priority resource.<sup>17</sup> However, influence on program design and implementation is a necessity to further all of these broader goals, especially the desire to direct EE programs toward the achievement of transformed and self-sustaining markets that permanently lock-in long-term energy savings. In order to align ratepayer interest and achieve

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<sup>14</sup> PD, p. 24.

<sup>15</sup> D.12-11-015.

<sup>16</sup> California Energy Action Plan II; *Implementation Roadmap for Energy Policies*, October 2005. Action #12, p. 4.

<sup>17</sup> SCE opening comments, p. 4.

EE goals, programs must improve and savings and ratepayer benefits must be verified. The mechanism proposed in the APD cannot achieve these broader goals.

While the APD may reinforce the signal to the greater marketplace that California is serious about EE, it does so in the wrong manner. Even the supporters of the APD have expressed distaste with the design of the mechanism in their opening comments and comments to the September 25, 2012 Ruling. There is clearly no evidentiary support for a backward-looking mechanism and it can serve as a dangerous precedent for applying such an ill-advised mechanism in the future.

#### **D. The threshold question has yet to be properly addressed**

The Commission has yet to rule on the threshold question of whether a RRIM can successfully fulfill its expectations. DRA and NRDC requested that the Commission settle this threshold issue before continuing to solicit comments on further RRIM reform.<sup>18</sup> Unfortunately, neither the PD nor the APD explicitly address that threshold issue. An adequate discussion is not presented addressing the concerns surrounding the value of a RRIM at achieving EE goals. This threshold question should be addressed first before moving forward on establishing a new RRIM.

### **III. CONCLUSION**

Many parties and the APD use sweeping idealistic statements as rational for awarding the RIMM retroactively, however, they are ultimately unsupported by facts or analysis. The parties in favor of the APD focus only on a market signal and regulatory certainty and not on ratepayer wellbeing. When the Commission decides to use ratepayer funds for any investment, the return to ratepayers should be of top priority at best and quantifiable at the least.

Ultimately, the utilities are not entitled to an incentive, the design of the mechanism put forth in the APD lacks support, and the stated benefit of the proposed mechanism lacks analysis. The absence of a backward-looking RRIM for 2010-2012 will not jeopardize the success of EE programs. No party has given evidence otherwise. Instead, focus should be put on creating the framework and certainty needed for the 2013-2014 period and beyond. The Commission should adopt the PD and reject the APD.

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<sup>18</sup> DRA's January 17, 2012 Comments in response to the ACR Soliciting Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, p. 2; and NRDC's February 16, 2012 Reply Comments to the OIR and ACR Soliciting Comments and Production of Data Regarding Energy Efficiency Incentive Reforms, p. 2.

Respectfully submitted,

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