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)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED DECISIONS ON AN ENERGY EFFICIENCY INCENTIVE MECHANISM FOR 2010-2012

Marcel Hawiger, Energy Attorney

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

December 10, 2012

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED DECISIONS ON AN ENERGY EFFICIENCY INCENTIVE MECHANISM FOR 2010-2012

On November 14, 2012 the Assigned Administrative Law Judge ("ALJ") released the "Decision Regarding Priorities for Prospective Energy Efficiency Incentive Reform" ("PD"), and the Assigned Commissioner released the "Decision Approving 2010-2012 Energy Efficiency Incentive Mechanism and Disbursing 2010 Incentive Awards" ("APD"). Pursuant to Rule 14.3 TURN provides these reply comments to comments on the PD and the APD.

The various comments were not lengthy, and did not identify many "errors." Much of the dispute concerns the fundamental policy question of whether providing *ex post* incentives for activities already performed is somehow necessary to signal this Commission's continuing strong support for energy efficiency. TURN responds briefly to two allegations of errors.

1 The Utilities Had Prior Notice That the Commission May Not Award Shareholder Incentives for 2010-2012

NRDC states that the utilities acted in 2010-2012 with a reasonable expectation of obtaining incentives for their performance during that time period, based primarily on text in Ordering Paragraph 1 of D.07-09-043, which implemented an incentive mechanism "until further Commission notice." NRDC argues that there was no specific subsequent 'notice.' NRDC concludes that language from D.11-12-036, the proceeding addressing separate applications for 2009 incentives, only specified that "the design of the incentive mechanism might change," not that it might be eliminated altogether.[1]

[1] NRDC Comments, p. 3.

SB_GT&S_0188704

Decision 11-12-036 made clear that the subject of post-2009 incentives was within the scope of Rulemaking 09-01-019. In that Rulemaking the Commission had already issued D.10-12-049, the 2006-2008 true up decision. That decision authorized final incentives for the 2006-08 period, provided explicit guidance on how the utilities should file for 2009 incentives, and then concluded in Ordering Paragraph 5:

> The Commission shall separately address in a subsequent proceeding *in this docket whether*, or subject to what conditions incentive payments and/or penalties may be due in 2010, and beyond.[2]

NRDC's argument ignores the fact that the utilities were thus already on notice by December of 2010 that the issue of "whether" there might be incentives for activities in 2010 and beyond was an open issue. A Proposed Decision adopting an incentive mechanism for 2010-2012 was issued on November 15, 2010, and was subsequently withdrawn. And in the first Ruling issued after this withdrawal, the Assigned Commissioner requested that parties "also address the broader policy justifications relevant to the continuation of an EE incentive earnings mechanism," and cogently explained why a RRIM for 2010-2012 may not be appropriate:

> 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. Instead of inspiring greater innovation in program design or implementation to realize more aggressive goals and reap the rewards, the RRIM has instead channeled resources largely into procedural disputes over process and measurement protocols. These activities seem to have often overshadowed and distracted efforts to effectively adapt programs to changing markets and new information. The RRIM has fostered unproductive behavior such as intensive preoccupation with disputing Energy Measurement and Verification

[2] D.10-12-049, OP 5, p. 78 (emphasis added).

SB_GT&S_0188705

> (EM&V) results and defending what some parties have characterized as high-end *ex ante* estimates. The RRIM has incented shifting resources away from longer-term savings towards shorter-term savings measures that directly produce RRIM earnings.[3]

There can be little doubt that at least by the middle of 2011 the utilities should have had no valid "expectation" of incentives for energy efficiency activities in 2010-2012.

The NRDC aptly argues from a policy perspective that if a parent promises to pay a child money for cleaning their room, it would be a breach of fairness and trust to refuse payment simply because the child complies in advance. But by the same token, however, if a child's normal responsibilities include cleaning one's room without any "promise" of payment, paying the child a bonus for performing their chores may likewise not be the wisest parenting tactic. While neither analogy is terribly apt, as parenting children is not exactly analogous to regulating complex business enterprises, it is relevant in this case to note that each utility is *statutorily mandated* to demonstrate in its procurement plan that it "shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible,"[4] so that one might well consider the deployment of energy efficiency to be one of the core responsibilities of the regulated utility.

2 The National Average of Efficiency Incentives For States that Use a Management Fee Model is About 7%

The NRDC criticizes the *level* of profits awarded by the APD and claims that:

> [T]he Alternate PD relies solely on TURN's selective use of data on incentives in other states, and ignores the evidence NRDC provided in October 5, 2012 comments that the American Council for an Energy Efficient Economy's latest survey of efficiency

[3] R.09-01-019, "Assigned Commissioner's Ruling to Refresh the Record on Outstanding Issues," August 30, 2011, p. 4-5.

[4] PU Code § 454.5(b)(9)(C). The Commission is tasked with establishing efficiency targets for the utility to achieve pursuant to this requirement. § 454.55.

SB_GT&S_0188706

incentives in various states found that earnings caps range from 5% to 20% of program spending, and actual earnings average 10% to 11% of spending.[5]

The debate about the level of incentives in other states illustrates the inherent problem of relying on factual evidence without the benefit of evidentiary hearings to test the bases of parties' positions. The NRDC, as well as the ACEEE, continue to assert that the ACEEE Report of January 2011 demonstrates that other states cap incentives (when based on program expenditures) at an average of 12-13% of spending.[6] But TURN provided detailed analysis showing that these numbers are simply incorrect. In one case (New Hampshire), the numbers include a 12% cap, whereas the Report itself explains that the cap was reduced to 8% in 2010. In another case (Kentucky), the numbers include a 10% cap based on one utility, even though the state authorized a much lower cap of 5% for another utility. After correcting the numbers for two states, and eliminating the results from three states, TURN calculated a simple average of hard caps of 7.1% of spending.[7]

No party responded to TURN's analysis, though admittedly the Commission did not provide for formal reply comments after the August 20 workshop.[8] NRDC continues to repeat the 12-13% or 10-11% number, as if mere citation to an ACEEE Report makes it true. The Commission has specific analysis showing why the cap adopted in other states is more appropriately estimated at 7%. More importantly, while NRDC and ACEEE suggest that

---

[5] NRDC Comments, p. 9.

[6] NRDC, and ACEEE in its recent letter, allege that the incentive mechanisms in other states cap payments at an average of 12-13%. See, NRDC Comments, October 5, 2012, p. 6. In its comments on the PD and APD, NRDC notes that actual payments have averaged 10-11% of expenditures. NRDC Comments, p. 9.

[7] See, R.12-01-005, TURN Post-Workshop Comments, October 1, 2012, p. 5-6. Moreover, some of the 'caps' are actually more complicated and have performance conditions. See, for example, TURN Comments, July 16, 2012, p. 13-14 (Connecticut cap is 5% at 100% of goals, and 8% at 130% of goals. The 7.1% average incorporates 8% for CT.)

[8] The ACEEE Report was first mentioned at the Workshop. TURN does not believe any party has actually appended the Report into the record of this proceeding.

SB_GT&S_0188707

California should be paying higher incentives simply because we are a "national leader" in energy efficiency, the Commission could actually find that the gamut of supportive regulations in California (full revenue decoupling, separate balancing account cost recovery for energy efficiency) warrants a lower emphasis on additional shareholder profits for administering energy efficiency programs.

December 10, 2012

Respectfully submitted,

By: __________/s/______________

Marcel Hawiger, Staff Attorney

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

SB_GT&S_0188708