**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
REPLY COMMENTS ON PROPOSED DECISION AND ALTERNATE

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WOMEN'S ENERGY MATTERS
REPLY COMMENTS ON PROPOSED DECISION AND ALTERNATE

Women's Energy Matters (WEM) appreciates this opportunity to comment on the November 14, 2012 Proposed Decision ("PD") of ALJ Pulsifer and the Alternate Proposed Decision ("Alternate") of Commissioner Ferron.

Why is the RRIM an exclusive right of utilities?

The Alternate states:

> In this decision, we approve a management fee with performance bonuses as the shareholder incentive mechanism for utility implementation of the 2010-12 Energy Efficiency (EE) portfolios. A shareholder incentive mechanism is a core part of the state's strategy to successfully deploy Energy Efficiency.[1]

Pacific Gas & Electric (PG&E) states that it "supports the APD as a reasonable solution for all stakeholders for the 2010-2012 program cycle."[2] It's not clear who these "stakeholders" are, other than the investor-owned-utilities (IOUs) and NRDC.

Among other things, the Alternate failed to consider that utilities were no longer the exclusive implementers — or administrators — of the 2010-12 portfolios. For example, Local Government Partners (LGPs) and Third Party Programs (TPPs) were implemented by non-utilities. Where is their "management fee"?

Most importantly, in 2012 Marin Energy Authority (MEA) became the first administrator of EE funds pursuant to AB117, the Community Choice statute. MEA was awarded EE program funds for 2012 in Resolution E-4518, Certification of Marin Energy Authority's 2012 Energy Efficiency Program Administration Plan, pursuant to Public Utilities Code Sections 381.1(e) and (f).

The Alternate says nothing about management fees and bonuses for MEA, or excusing MEA ratepayers from these extra fees. This constitutes discrimination against MEA ratepayers, who would have to pay PG&E shareholders incentives although MEA administers part of the EE programs in that territory. It is prohibited by PU Code 453:

> 453. (a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage…

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[1] Alternate, p. 2, emphasis added.
[2] PG&E, p. 1.

(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

PU Code §728 also outlaws "discriminatory" and "preferential" rates:

Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.

Utilities fail to fully utilize EE "at the top of the Loading Order"

PG&E opposes the PD, claiming "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."[3]

The question of whether utilities ever did or ever could utilize EE resources in Local Capacity Areas was extensively explored in the current Long-Term Procurement Proceeding (LTPP). Excerpts from the hearings demonstrate that it hasn't happened yet:

> Q So have you used energy efficiency funding to reduce the needs for power in the emergency with SONGS out of service?
> A I am not aware of any incremental energy efficiency programs that the company has undertaken as a result of San Onofre being out of service.[4]

> The amount of systemwide uncommitted EE forecast that will actually materialize in the Western L.A. Basin is unclear. The effectiveness of this uncommitted EE compared to the supply side resources is also unclear. … <u>SCE is unaware of any reliable methods or databases that would allow the Commission to calculate potential and achievable incremental EE at the busbar level in a manner robust enough to plan for local area resource needs.</u>[5]

[3] PG&E, p. 1.

[4] WEM cross SCE witness Colin Cushnie Evidentiary Hearing Transcript Vol. 4, pp. 673-4 (R1203014). Mr. Cushnie is Director of the Energy Planning Division in Edison's Energy Supply and Management Department. He sponsored multiple sections of SCE testimony in R1203014 and R100506 (the LTPPs).

[5] WEM cross SCE witness Carl Silsbee, Evidentiary Hearing Transcript Vol. 4, pp. 1085 (R1203014) (emphasis added). Mr. Silsbee is Manager of Resource Policy and Economics in Edison's Market Strategy and Resource Planning Department. He sponsored the energy efficiency portions of SCE's testimony in R1203014 and R1005006.

> The models that we now use for planning purposes dor
> level of local resolution.
>
> Q Does Edison currently have any programs that target
> A No. We seek all cost effective demand response
> efficiency regardless of its location.
> Q Do you think it would be advisable for SCE to
> particular areas where there is a particular need like th
> A That's an awfully difficult program design question. First
> we're already pursuing all cost effective identified programs
> there's a question as to whether or not we would b
> more by going and focusing on particular areas.

Utilities' failure to view EE as a procurement resource in Local Capacity Areas leaves the door wide open for new power plants and transmission lines. These areas are where almost all new resources have been built in recent years.

These particular witnesses work for Southern California Edison, but it's the same story at PG&E and SDG&E. By contrast, Sacramento Municipal Utility District — a publicly owned utility (i.e with no shareholders and much less conflict of interest with clean resources) — regularly uses EE as the top of *it's* loading order of resources. SMUD became good at that back in 1989, when it began replacing its shuttered nuclear plant, Rancho Seco, with energy efficiency, solar and wind.

In fact, by denying IOU shareholders incentives for 2010-12, the PD is sending a message that California might finally be able to consider with how to make EE a real "state priority" rather than an undeserved gift to utility shareholders.

RRIM increases rather than decreases utilities conflicts of interest

DRA provides further evidence of the RRIM increasing utilities' self-serving rather than making EE a "state priority":

> The question has been raised by the Assigned Commissioners Ruling concerning whether the RRIM can realistically accomplish what it was designed to accomplish.[3] The 2006-2008 RRIM led to a focus of efforts on disputes over process and measurement protocols instead of focusing on greater innovation in program design as it was intended to do. Efforts to adapt programs to changing markets were dwarfed by an overriding focus on Evaluation Measurement &Verification (EM&V) disputes. The IOUs also shifted resources towards

[6] Ibid, pp. 1089-90.

[7] Ibid, pp. [illegible]

> shorter-term savings measures to attain higher RRIM earnings as opposed to longer-term savings measures and market transformation programs. DRA, p. 2 .

It was clear at the start of the cycle that a RRIM was not guaranteed

DRA refutes NRDC and utilities' claims that there was an expectation of a RRIM for 2010-12.[8] "Continued regulatory certainty" must end, when it's clearly a mistake. From its inception in 1990, driven by NRDC's "collaborative," energy efficiency shareholders incentives were never stable, never clear, never well-functioning, and always contentious.

TURN found examples of utilities' fraudulent use of EE funds and vehemently opposed the incentives throughout the early 1990s. The first major decision was issued in 1994, and just a few months later the utilities ditched their EE programs as soon as FERC allowed them to pull the plug on wind. The deregulation bill, AB1890, supported a competitive process to move towards independent energy efficiency administration. When this collapsed, incentives based on "milestones" were introduced — and widely mocked. From 2002-05 there was a respite from incentives, when independent entities were allowed to administer 20% of the program funds. Independent analysis showed that 49 out of 50 independents were more cost-effective than *all* utility programs. In spite of this, a new Commissioner reversed course, gave all the money back to utilities, and we started all over again. Thus, D0709043 was not the beginning — only the latest version of an idea that has failed over and over.

TURN says it advocated for the Commission to "adopt this type of management fee model" if it *must* offer EE incentives.[9] But it describes the Alternate's reasoning as *"lacking theoretical or factual basis*... In short, giving away $42 million as gravy for past performance is not just or reasonable."[10]

Are we done yet?

Even SCE notes that this process has become "exhausting and contentious." WEM is tired of it too. We welcomed the invitation to sit out the period of this proceeding that played around with different mechanisms, since we disagreed with developing *any* RRIM. But we could still see, as SCE notes, "Continued disagreement has

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[8] DRA, p. 3.
[9] TURN, p. 6.
[10] Ibid, p. 5.

unintentionally interfered with the policy objective of advancing energy efficiency."[11] And this isn't even a dispute about the EM&V. As Edison notes: "Ideally…an incentive mechanism would be based on quantifiable energy savings, rather than expenditures, to promote and reward cost-effectiveness, among other things."[12] But here, we're dispensing with even that figleaf.

Conclusion

SCE describes the PD as "a thoughtful critique… SCE recognizes the logic of the PD and its intention to conserve resources…"[13]

Let us close the book on the RRIM with these rare, kind, sensible words. Approve the ALJ's PD, and let us move forward into a time when energy efficiency, itself, becomes the highest value.

Dated: December 10, 2012

Respectfully Submitted,

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[11] SCE, p. 2.
[12] SCE, p. 3
[13] SCE, p. 4.