BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism. **U 39 M**	**R.09-01-019** **(Issued January 29, 2009)**

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) ON PROPOSED DECISION REGARDING THE RISK/REWARD INCENTIVE MECHANISM EARNINGS TRUE-UP FOR 2006-2008

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COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) ON PROPOSED DECISION REGARDING THE RISK/REWARD INCENTIVE MECHANISM EARNINGS TRUE-UP FOR 2006-2008

I. INTRODUCTION

In accordance with California Public Utilities Commission Rule of Practice and Procedure 14.3, Pacific Gas and Electric Company (PG&E) submits the following comments on the Proposed Decision Regarding The Risk/Reward Incentive Mechanism (RRIM) Earnings True-Up for 2006-2008 (PD). The Commission should not adopt the PD or its recommendation that no additional incentive earnings are appropriate in finalizing the 2006-1008 True-Up. Rather, the Commission should adopt the Alternative Proposed Decision as modified to conform to the Joint Utility Scenario[1/], which more closely represents Commission policy and results in an equitable resolution to the True-Up process.

II. EXECUTIVE SUMMARY

PG&E appreciates the opportunity to submit these comments on the PD. It is a testament to California's role as a leader in Energy Efficiency (EE) that all parties in this proceeding have invested

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1/ As presented in *Comments Of Pacific Gas And Electric Company (U 39 M), Southern California Edison Company(U 338-E), San Diego Gas & Electric Company (U 902) on Commissioner's Ruling On Process For Trueup Of Incentive Earnings*, filed April 20, 2010.

such tremendous time and energy in designing, implementing and now evaluating the 2006-2008 EE programs in furtherance of achieving California's ambitious EE goals. PG&E joins the Commission's acknowledgment of the unprecedented scope of this endeavor and specifically, its recognition of ED's management of two interim verification reports and one of the largest final impact evaluations in history.[2/] A notable achievement of the process was that ED significantly expanded its understanding of EE sectors and Investor-Owned Utility (IOU) programs and will apply that knowledge to future evaluations.[3/]

Notwithstanding the best efforts and intentions of the parties in developing the RRIM structure, the Commission acknowledged on numerous occasions that the process set forth in D.07-09-043 is flawed and has resulted in significant contention and protracted litigation among the parties.[4/] Specifically, much of the contention in the True-Up process is directly attributable to the ultimate disparity that resulted between *ex ante* savings assumptions (used at ED's direction) for planning the 2006-08 portfolios) compared to the *ex post* updated savings assumptions contained in the Final Verification Report and the corresponding debate as to whether application of updated values produces an accurate measure of portfolio achievements and an equitable resolution of the incentive True-Up.[5/] ED acknowledged precisely the same flaws in the process in the Final Verification Report where it concluded:

> the EM&V process, at least as it is currently designed and administered, cannot serve as a tool to simultaneously determine incentive awards or penalties and produce accurate

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2/ *See* California Public Utilities Commission's 2006-2008 Energy Efficiency Evaluation Report, July 2010 (Final Verification Report), Executive Summary, p. xii.

3/ *Id.*

4/ *See e.g.*, D. 09-12-045 at p. 4 ("We opened this proceeding, recognizing the contentious character of the predecessor proceeding in determining the applicable RRIM earnings. The Energy Division's First Verification Report, covering 2006 and 2007 activities, became controversial due both to delays and to disputes about the parameter values used in calculating incentive payments. These controversies illustrate that the RRIM methodologies are complex and not as easily or as timely resolved as had been originally contemplated;") *See Id.* at p. 4-5 ("We continue to believe that prospectively, reforms to the existing mechanism should be pursued that reasonably produce meaningful incentives to achieve the Commission's energy efficiency goals through simplified approaches designed to avoid the level of controversy over detailed technical methodologies that have characterized the RRIM process to date;) *see also* April 8, 2010 *Assigned Commissioner's Ruling On Process For True-Up Of Incentive Earnings,* issued by Commissioner Bohn, p. 2.

5/ PD at p. 33, FoF 8.

> estimates of energy savings without protracted disputes concerning the magnitude of specific values or the fairness of allowing those values to be updated and applied retroactively.[6/]

The most notable shortcoming of the PD is that despite its acknowledgment that there is much contention regarding the accuracy of the *ex post* values, that it is extremely difficult to estimate savings assumptions accurately, and that minor changes to savings assumptions can have significant effects in increasing or decreasing utility earnings, the PD fails to take action to address these issues. Rather, the PD applies the *ex post* assumptions notwithstanding their questionable accuracy, and claims that it is obliged to do so pursuant to Commission policy set forth in D. 07-09-043. This is an incorrect statement of Commission policy.

In recognition of the flaws in the process set forth in D.07-09-043, the Commission in D.09-12-045 and again in the April 8, 2010 Assigned Commissioner Ruling on Process for True Up of Incentive Earnings, explicitly directed the parties to consider processes and policies for the purpose of resolving the True-Up that differed from those set forth in D.07-09-043—and in particular, to explore those which did not rely solely on application of the Final Verification Report.[7/] The PD's position that Commission policy requires that it only apply *ex post* values contained in the Verification Report is not an accurate portrayal of the Commission's recent policy on this issue.

Another significant flaw in the PD is that it disregards other affirmative pronouncements of Commission policy such as directives in D.09-12-045 to apply a 12% shared savings rate for purposes of the True-Up and to exclude 2004-2005 savings and goals from the True-Up process. Further, the PD has provided no meaningful justification for declining to apply updated avoided cost estimates for Greenhouse Gas emission reductions in the True-Up. Finally, while the PD agrees that it is appropriate to apply 100% of Codes and Standards savings for the True-Up, it has not properly credited those savings.

6/ Final Verification Report, Recommendation 11; *see* also Recommendation 7 (discussing the inherent problems with retroactive application of updated *ex post* savings assumptions.)

7/ April 8, 2010 *Assigned Commissioner's Ruling On Process For True-Up Of Incentive Earnings,* issued by Commissioner Bohn, p. 2 (citing to D.09-12-045).

The PD's failure to properly incorporate these aspects of Commission policy constitutes error.

For these reasons, the findings of the PD are not in line with current Commission policy and ultimately, do not produce an equitable result that addresses the admitted shortcomings in the current RRIM process. The findings in the PD are based entirely on Final Verification Report and rely on the process set forth in D.07-09-043, which the Commission has already deemed a flawed approach. For these reasons, the Commission is not required to, nor should it adopt the PD or its recommendation that no additional incentive earnings are appropriate in finalizing the 2006-2008 True-Up. Rather, the Commission should adopt the Alternative Proposed Decision as modified to incorporate the principles in the Joint Utility Scenario, which more closely represent current Commission policy and which results in an equitable resolution to the True-Up process. Adoption of the Alternative Proposed Decision so modified results in PG&E earning $62.6 million in this true-up period.

III. THE JOINT UTILITY SCENARIO

The Joint Utility Scenario properly incorporates the following aspects of Commission policy. If the Commission chooses to adopt the PD, it should be modified to reflect those policies as follows:

- As directed by the Commission in D.09-12-045, the Commission should apply a 12% shared savings rate to RRIM calculations for the True-Up. Finding of Fact 18 in the PD, which finds it reasonable to apply a 0% shared savings rate, constitutes error.

- In accordance with D.09-12-045, the Commission should exclude 2004-2005 savings and goals from the RRIM scenarios for 2006-2008. Finding of Fact 20 in the PD, which finds it reasonable to include an arbitrary percentage of 2004-2005 savings and goals, constitutes error.

- In accordance with D.09-12-045 and D.10-04-029, the Commission should include 100% of Codes and Standards savings toward goals and net benefits. The PD constitutes factual error by not specifying that both pre-2006 and 2006-2008 Codes and Standards should count towards both savings goals and net benefits, and then by not applying the addition to Appendix A. Finding of Fact 22 in the PD should be modified accordingly.

- The PD fails to incorporate the Commission's update regarding the avoided cost of GHG emissions and therefore, undervalues net benefits to ratepayers. Finding of Fact 19 in the PD should be modified to include this update.

In addition, in accordance with the Commission's recent directives and statements of policy in D.09-12-045 and the April 8, 2010 ACR, which states the Commission's intention to consider assumptions and policies other than the flawed process set forth D.07-09-043, the Joint Utility

Scenario calls for application of a limited set of *ex ante* values for the True-Up and relies on the ED's Final Verification Report for all other data as follows:

- The Commission should apply *ex ante* values for Net-to-Gross, In Service Rates for Upstream Compact Fluorescent Lightbulbs, Expected Useful Lives, and Interactive Effects.

IV. THE PD IS NOT REPRESENTATIVE OF COMMISSION POLICY

A. THE PD'S FAILURE TO APPLY COMMISSION POLICY AS SET FORTH IN D.09-12-045 CONSTITUTES ERROR

1. The PD's Application of a 0% Shared Savings Rate Constitutes Error

The PD's Finding of Fact 18, which concludes that it is appropriate to apply a 0% shared savings rate based on *ex post* evaluation, ignores a clear Commission mandate to the contrary and is erroneous.

In Decision (D.) 09-12-045*, Decision Regarding RRIM Claim for the 2006-2008 Program Cycle* the Commission acknowledged that mid-cycle DEER updates differed from the *ex ante* assumptions used to set the 2006-08 program goals. Therefore, to ensure that program goals were aligned with measurement of utility accomplishments, the Commission stated that the Minimum Performance Standard (MPS) threshold should be determined using the *ex ante* values used to set the goals, as opposed to the updated assumptions included in the Verification Report data.

The PD now asserts that the Commission's directive in D.09-12-045 essentially has no effect at all and that the Commission did not necessarily intend to apply a 12% shared savings rate for the True-Up in that decision.[8/] Rather, the PD asserts that the Commission "merely stated that the goals should be evaluated for true-up based on the same assumptions used to develop the goals."[9/] From this, the PD concludes that the assumptions used to develop the goals referred to in the D.09-12-045 does not mean the *ex ante* planning assumptions, but rather refers to the "Commission's stated assumption underlying the 2006-2008 energy efficiency goals was that program implementation would *not* be static, but

8/ PD at p. 41.

9/ *Id.*

continually adjusted."[10] This interpretation of the Commission's directive is not supportable given the Commission's clear discussion of the issue in D.09-12-045.

Specifically, the Commission found it appropriate to "adjust the shared savings rate to 12% ***based on the use of the utilities' proposed ex ante assumptions in comparing the utilities' results with the Commission goals***."[11] The Commission also made it clear that the rationale for applying the 12% shared savings rate was equally applicable to the 2010 final true-up, stating:

> Comparing utility results that reflect updated estimates and assumptions with Commission goals that do not reflect those same updates and assumptions appears to be an apples to oranges comparison. Since the Commission has not revisited and reset the goals to reflect updated information and assumptions, it is reasonable, ***for purposes of both this interim claim and the 2010 final true-up***, to compare those goals with results that reflect the same underlying assumptions used in establishing those goals.[12]

Despite the Commission's clear direction to apply a 12% shared savings rate in the True-Up to ensure an apples-to-apples comparison between goals and proposed *ex ante* values upon which those goals were based, the PD argues that the directive has no effect whatsoever. This is not a reasonable or supportable interpretation given the Commission's clear rationale in D.09-12-045. The Commission has acknowledged that the 12% shared savings rate is applicable to PG&E based on application of *ex ante* parameters. As such, the PD's application of a 0% shared savings rate to PG&E's earnings calculation constitutes error.

2. The PD's Inclusion of 2004-05 Results And Goals Constitutes Error

The PD's Finding of Fact 20, which concludes that it is reasonable to include an arbitrary percentage of 2004-2005 savings and goals, is erroneous. In D.09-05-037, the Commission determined that the "2004-2005 data is not directly reconcilable with 2006-2008 data," and that "[t]he 2004 and 2005 data should not be used for cumulative savings purposes for this program cycle."[13] As a result, the

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10/ See *Id.* at pp. 41-42.
11/ D.09-12-045 at p.3 (emphasis added)
12/ I*d.* at p.68 (emphasis added)

13/ D.09-05-037, FOF 4, Conclusion of Law 1.

Commission concluded in D.09-12-045 that "[f]or the purposes of measuring interim incentive earnings for the 2006-2008 cycle, we agree that it is appropriate to exclude the effects of cumulative goals starting from 2004, as reflected in the Verification Report."[14/] In D.09-12-045, the Commission stated that "exclusion of the 2004-2005 goals in the calculation yields a more consistent metric for measuring incentive earnings."[15/]

The PD's assertion that it is appropriate to apply some measure of 2004-05 results and goals to the 2006-08 True-Up is erroneous. The Commission has pointed to nothing in rationale of D.09-12-045 to support its contention that it is appropriate or otherwise logical to exclude 2004-05 results and goals from the interim incentives calculations to promote a more consistent measuring metric, but then disregard this rationale and include those goals for the True-Up. In fact, the Commission' discussion in D.09-12-045 belies such a contention by stating that the rationale behind the exclusion applies to calculation of incentive earnings in general:

> We recognize that based on more recent analysis in D.09-05-037, 2004-2005 data should be excluded from cumulative goals on a prospective basis. While D.09-05-037 has applicability for measuring cumulative savings goals on a forward-looking basis, similar principles apply to the savings goals used in determining 2006-2008 RRIM incentive earnings.[16/]

B. THE PD SHOULD INCLUDE 100% OF CODES AND STANDARDS SAVINGS TOWARD SAVINGS AND NET BENEFITS

The PD rightly concludes that 100% of savings from pre-2006 Codes and Standards (C&S) activities should count toward the true-up consistent with D.10-04-029.[17/] The CPUC also previously also stated that 100% of Codes and Standards activity during the 2006-2008 cycle should count toward the savings goals and toward net benefits in the performance earnings calculations.[18/] The PD acknowledges that the "ERT [Evaluation Reporting Tool] assumptions utilized by ED, however, did not reflect any net

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14/ D.09-12-045 at p. 67.

15/ D.09-12-045, p. 67.

16/ *Id.*

17/ PD. p. 64.

18/ D.07-09-043, p. 143, citing D.05-09-043, pp. 132-33.

benefits associated with C&S activity initiated within in the 2006-2008 program cycle."[19/] Despite this acknowledgement and agreement with the consistency in counting with D.10-04-029, Appendix A does not reflect these outcomes and thus, contains an error.

In review of the values presented in Appendix A, the pre-2006 C&S savings are not included in the calculation of the savings achievements. Upon review of Scenario 7 of the Final Evaluation Report, the 2004-2005 EM&V Adjusted EE Portfolio Savings do not differ from 10% of the value of the 2004-2005 savings shown in Appendix A. This means that pre-2006 savings were not included in the calculation of savings. This is an error and needs to be corrected. This would result in 41.4 MW, 246.6 GWH, and 2.5 MMTherms in additional savings.

C. THE COMMISSION SHOULD UPDATE THE GREENHOUSE GAS (GHG) ADDER USING THE 2008 MARKET PRICE REFERENT (MPR) VALUE OF $30 PER TONNE.

The EM&V decision approved by the Commission on April 8, 2010 directed ED to update both the electric and gas avoided costs, which included a GHG emission factor of $30 per tonne, up almost three times from the last factor of $12 per tonne.[20/] In the APD, the Commission aptly recognizes that applying the $30 updated GHG adder to the 2006-2008 True-Up has a significant effect on the monetization of benefits to ratepayers delivered in the 2006-2008 programs.[21/] The PD provides no justification for declining to apply the more accurate, updated value, other than its conclusion that because it was not in effect during the 2006-08 program cycle it is not relevant to the True-Up. This represents a departure from the PD's stated principle that incentive methodologies should be applied in a conceptually consistent manner.[22/] Conceptually consistent application of the $30 per tonne value would

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19/ PD, p. 63.

20/ .10-04-029, Decision Determining Evaluation, Measurement and Verification Processes for 2010 Through 2012 Energy Efficiency Portfolios, Conclusion of Law 17.

21/ APD at p. 50.

22/ PD at p. 20. DRA claims it is inconsistent for the IOUs to request application of the updated GHG adder while arguing for application of *ex ante* values in other circumstances, but this is not the case. The Joint Utility Scenario accepts the vast majority of *ex post* values in the Final Verification Report. The Joint Utility Scenario questions application of certain *ex post* values where the methodologies supporting those updated values are

result in a PEB increase of $183 million and an incentive claim increase of $21.9 million.for the 2006-2008 cycle based on the analysis provided in response to the ALJ data request in September.

D. THE PD SHOULD APPLY *EX ANTE* VALUES FOR NET-TO-GROSS, IN SERVICE RATES FOR UPSTREAM COMPACT FLOURESCENT LIGHBULBS, EXPECTED USEFUL LIVES, AND INTERACTIVE EFFECTS.

Application of a limited number of *ex ante* planning values is consistent with current Commission policy and produces an equitable resolution to the True-Up process. Notably, the Commission has acknowledged that many of the core savings assumptions are in fact, very difficult to measure accurately and has recognized that their application is very sensitive in the RRIM analysis (i.e., that minor changes in the assumptions have significant effects on the perceived success of the portfolio).[23/] Applying such updates, which also differ so drastically from the assumptions upon which the entire portfolio was planned, essentially amounts to an unsupported "moving of the goalposts" upon which the IOUs are unable to make timely or meaningful adjustments to the portfolio.

The PD's assertions in Finding of Facts 11 and 12, that the IOUs, in fact, had ample time to incorporate such feedback are incorrect. They are contradicted by ED's Final Verification Report itself, which recommends that "[f]uture evaluation studies should be designed and implemented in coordination with program implementation to have greater influence on mid-course corrections and improving estimates along the way."[24/] In the Final Verification Report, ED goes on to "recognize[] that feedback provided at the conclusion of a program cycle is less than desirable, as it may limit timely adaptation of programs based on findings in the field."[25/]

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not transparent or are openly questionable, or where the IOUs were expected to adjust their program in response to updates that were not issued in a timely manner. Neither of those is the case with the GHG adder update. In fact, the updated value is based on ED's recommendation. (*See* D.10-04-029 at p.43) This update simply represents a more accurate monetization of the ratepayer benefits achieved in the 2006-08 programs.

23/ PD, FoF 3.

24/ Final Evaluation Report, Recommendation No. 7, p.134. As discussed in these comments, these FoFs are also contradicted by publication of certain Net-To-Gross (NTG) updates as late as December of 2008. The PD fails to address these in supporting its conclusions.

25/ *Id.*

In the interest of compromise, the IOUs have accepted many *ex post* values presented in the Final Verification Report.[26/] However, despite acknowledgment of significant issues surrounding the accuracy and timeliness of the *ex post* values, the PD proposes to take no action to address these issues, which ultimately call into question the reliability of the very *ex post* values the PD seeks to apply. In essence, retroactively applying updated assumptions whose accuracy the Commission acknowledges is questionable, simply because some parties deem them to be "independently verified"[27/] undermines the ultimate goal of D.07-09-043—to provide a "meaningful opportunity to earn for utility shareholders." The Joint Utility Scenario addresses this concern by applying *ex ante* values for those parameters whose updates are based on the most questionable methodologies and which values diverge most significantly from those *ex ante* values upon which the portfolios were planned.

1. The Commission Should Apply Ex Ante Assumptions Consistent With Commission Policy

Despite its acknowledgment of issues surrounding the accuracy and effect of retroactively applying the *ex post* values from the Final Verification Report, the PD ignores those issues and claims that "[f]ailure to incorporate updates to the *ex ante* parameters in evaluating performance relative to goals thus conflicts with the Commission's express assumption [referring to D.07-09-043] that the *ex ante* parameters were subject to *ex post* updating."[28/] This is an erroneous statement of current Commission policy, which ignores explicit Commission authorization to the contrary.

Specifically, the April 8, 2010 ACR and D.09-12-045 directly refute this contention. The April 8, 2010 ACR clearly acknowledges that while D.07-09-043 may have originally contemplated that the final true-up of incentive earnings for each three-year program cycle would be based on the ED Verification Report, that "the RRIM had a number of flaws in its design and implementation, resulting in the potential

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26/ PD at p. 18.

27/ PD at p. 35.

28/ PD at p. 35.

for protracted litigation, delay, and controversy with which no party was satisfied."[29] To address these flaws, the Commission restated the underlying goal of the True-Up process as "devis[ing] a process that upholds standards of integrity in measuring energy savings while providing more transparency and reducing the minutely detailed complexity involved in basing RRIM earnings solely upon the Energy Division "Final Verification and Performance Basis Report."[30] The Commission ruled that "[i]n order to achieve a more streamlined and transparent framework for determining RRIM earnings, the record will be developed based on a broader process that is not limited strictly to the Energy Division final report."[31] As such, the PD is incorrect in its assertion that application of any *ex ante* values in finalizing the True-Up would violate express Commission policy.

2. The PD's Application of E*x Post* Net-To-Gross Ratios is Unsupportable.

The PD's conclusion that it is reasonable to apply *ex post* NTG values in finalizing the True-Up is error and is not supported by the record. Flawed methodology and untimely application of updated NTG values amounts to an arbitrary reduction of the measure of the IOUs' respective program performance.

The PD concludes that it is bound to apply NTG updates because they reflect the "total savings actually attributable to the expenditure of program dollars."[32] Yet, the Commission acknowledges the NTG update is among the most contentious of the True-Up process[33], that "measuring NTG ratios is inherently difficult"[34] and concludes that "any measure of the NTG can be at best an approximation."[35]

In addition to the inherent difficulties in accurately measuring NTG values, the PD fails to address some very specific issues regarding the methodologies applied, which remain unanswered.

29/ April 8, 2010 ACR at p. 1-2.

30/ *Id.* at p. 2.

31/ *Id.* at p. 3.

32/ *Id.* at p. 50 (emphasis added).

33/ PD at pp. 47, 49.

34/ PD at p. 49.

35/ *Id.* at p. 47.

Notwithstanding the overarching concerns the PD references regarding the potential inaccuracies of the self-reporting methodology in general, the IOUs have raised questions about the impropriety of certain evaluation techniques, such as arbitrarily discarding the highest of multiple NTG scores without explanation, or otherwise scoring responses from individuals who either don't know or don't recall the supposed impetus behind an EE installation, not as an N/A, but rather as a zero score for the IOU program. These errors are blatant, significant, and have profound and material effects on the updated NTG values. Their existence further calls into question the accuracy of the NTG updates that the Commission has already acknowledged can be, at best, only an approximation. The PD acknowledges, but discards these issues surrounding the NTG updates and provides little support its Finding of Fact 10, which erroneously assumes that the updated values are "more accurate" than those *ex ante* values in place. As such, there is no valid reason to utilize the unreliable *ex post* NTG ratios in the Verification Report to calculate the final 2010 true-up claim.

With respect to the timing of publication of the updates, the PD concludes the IOUs were not constrained from making appropriate adjustments to their 2006-08 portfolios.[36/] The factual basis for these Findings of Fact is false. The PD states that the preliminary results of the *2004/2005 Statewide Residential Retrofit Single-Family Energy Efficiency Rebate Evaluation,* published in October 2007, were well known prior to publication, and concludes that the IOUs could have begun adjusting their portfolios to reflect updated NTG values.[37/] This is factually incorrect for two reasons. First, as acknowledged in the Proposed Alternate Decision of Commissioner Bohn, "the values specified by Energy Division for NTG in the final true-up differ significantly from those specified in October 2007, and were not available to the utilities until 2010, years after the programs were enacted."[38/] Second, the PD fails to address the untimely release of other NTG such as the Database for Energy Efficiency Resources (DEER) NTG

36/ PD, Findings of Fact 11 and 12.

37/ PD at p. 52.

38/ Proposed Alternate Decision of Commissioner Bohn, p. 38.

updates themselves, which were not issued until 2008, much too late for utilities to adjust their portfolios accordingly.[39/] The failure to produce supportable, accurate updates, in a timely manner such that program administrators can make meaningful mid-course corrections is an issue that ED acknowledged in its Final Verification Report. It illustrates the flaws in the RRIM structure set forth in D.07-09-043 and highlights the arbitrary "moving of the goalposts" with respect to evaluating the IOUs portfolios.

Finally, the PD criticizes the IOUs for not offering an alternative aside from application of previously vetted DEER values.[40/] This criticism is not entirely valid as the IOUs are precluded by Commission decisions, including D.05-01-055, D.10-04-029 and others, from independently researching alternative methodologies for NTG measurement as these are considered impact evaluations.

For these reasons, the PD's conclusion that is it reasonable to apply the updated NTG values is incorrect. Retroactive application of "approximations" derived from questionable methodologies represents exactly the sort of "minutely detailed complexity" that can result in huge swings in the performance of the portfolio, which the Commission seeks to avoid in calculating incentive earnings.[41/] The PD should be revised to apply *ex ante* NTG values for purposes of the 2006-2008 True-Up. For example, if the NTG in the Second Verification Report were changed to ex-ante values from the 2005 DEER for just upstream CFLs, the results would be an increase of 71.7 MW and 405 GWH, and a decrease of 7.7 MMTherms. This would result in an increase of $97.9 million in PEB and an increase of $11.8 in the shareholder incentive claim.

3. The PD's Conclusion That it is Reasonable to Apply Updated Expected Useful Life (EUL) Values is Incorrect.

The PD fails to address significant issues that call into question the accuracy of EUL updates.

39/ *See e.g.,* the *2004/2005 Statewide Express Efficiency and Upstream HVAC Program Impact Evaluation* (Itron) was published December 31, 2008 [NTG values for non-residential rebated measures], *2004-2005 Statewide Nonresidential Standard Performance Contract Program Measurement and Evaluation Study* (Itron) was published September 30, 2008 [NTG values for calculated agricultural, commercial, and industrial programs]; and The *Evaluation Study of the 2004-05 Statewide Residential Appliance Recycling Program* (ADM Associates) was published in April 2008 [NTG values for refrigerator recycling program efforts].

40/ PD at p. 48.

41/ *See* April 8, 2010 ACR at p. 2.

Specifically, the PD does not refute that the updated estimates were released in late 2008, giving the utilities no opportunity to modify their program design. Nor does the PD refute that ED did not rely upon EM&V studies or best practices, but instead developed brand new, un-vetted, and nontransparent engineering simulation models. Nor does the PD directly respond to the inherent issues with reducing the residential CFLs life from 9.4 to 6.6 years based on examination of 16 light bulbs, in the face of contradictory data contained in the same documentation. From a common-sense perspective, such methodologies can't survive any level of scrutiny and it is not surprising that the drastic changes to the measure of program success resulting from such methodologies have generated a great deal of contention. The PD's conclusion that these updated EUL values are superior to the 2005 DEER estimates is both unsupported and incorrect. The utility-reported ex ante EULs, based on vetted and accepted EM&V information, should be utilized for the True-Up. For example, if the EUL in the Second Verification Report were changed to ex-ante values from the 2005 DEER for just upstream CFLs, the results would be an increase of $57 million in PEB and an increase of $6.8 in shareholder incentive claim.

4. The PD's Conclusion that it is Reasonable to Apply Updated In-Service Rates (ISR) for Compact Fluorescent Lightbulbs is Incorrect.

The Final Verification Report ignores the construct of a three-year program cycle, and instead applies a first-year installation rate to upstream CFLs. The PD finds this approach reasonable and consistent with Commission policy even though, in essence, this approach gives utilities zero credit for any bulbs that were purchased in 2006 or 2007 but *were installed* in 2008. No consideration was given to deferred installation of stored bulbs after the bulbs in place had burned out. In addition to similar concerns raised by the IOUs and NRDC, the Proposed Alternate Decision of Commissioner Bohn acknowledges that such an approach, "may understate the benefits obtained by ratepayers from the 2006-2008 programs."[42/] Nevertheless, the PD fails to take any action to address this issue. Applying such values is directly at odds with at least two of the three objectives of the True-Up as stated in the PD. First the PD states that incentive methodologies should be applied in a fair, transparent and conceptually

42/ Alternate Proposed Decision of Commissioner Bohn at p. 42.

consistent manner. Here the PD is refusing to include a significant measure of known energy savings for purposes of the True-Up. Second, the PD states that ratepayers should pay only for real and verifiable savings. Here, real and verifiable savings are being excluded without justification. The PD's conclusion that applying updated ISRs for CFLs is reasonable, is not supportable.. For example, if the ISR in the Second Verification Report were changed to ex-ante values from the 2005 DEER for upstream CFLs, the results would be an increase of 87.3 MW and 508 GWH, and a decrease of 10.7 MMTherms. This would result in an increase of $124.6 million in PEB and an increase of $14.9 in the shareholder incentive claim.

V. CONCLUSION

PG&E respectfully requests that the Commission reject the recommendations of the Proposed Decision and adopt the Alternative Proposed Decision with modifications to incorporate the principles in the Joint Utility Scenario. This results in a reasonable and equitable resolution of the 2006-2008 True-Up process given the performance of PG&E's portfolio and the range of potential earnings scenarios advanced by the parties to this proceeding, in which PG&E earns $62.6 million in this true-up period. Should the Commission choose to adopt the PD, PG&E requests that the Commission also adopt the modifications to the Proposed Decision in Appendix A hereto.

Respectfully submitted,

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APPENDIX A

PROPOSED MODIFICATIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS IN PROPOSED DECISION

Reference in Proposed Decision	Proposed Revision to Language in Proposed Decision
Finding of Fact 9	9. ~~Even though~~ ~~t~~The estimating processes used by Energy Division to derive the ex post update of relevant parameters requires professional judgment~~, the resulting calculations of energy efficiency achievements represent a reasonable approximation of savings for purposes of assessing whether, or to what extent, an adjustment to previous interim awards of RRIM earnings is warranted.~~
Finding of Fact 11	11. The IOUs were ~~not~~ constrained from making appropriate adjustments in the administration of programs throughout the 2006-2008 cycle as a result of the timing of the Energy Division's finalization of updated NTG ratios.
Finding of Fact 12	12. ~~While~~ The Energy Division's ex post updates can be useful in planning the design of future energy efficiency portfolios.~~, the timing of the publication of Energy Division updates did not constrain utility management from making appropriate adjustments in program priorities or funding throughout the 2006-2008 cycle.~~
Finding of Fact 18	18. ~~Under the provisions of the RRIM formula, the IOU achievements equal less than 85% of goals, thereby resulting in application of a 0% shared savings rate.~~ Consistent with D.09-12-045, the Commission will apply a 12% shared savings rate to earnings calculations for purposes of the True-Up.
Finding of Fact 20	20. ~~Although in~~ In D.09-05-037 the Commission found that 2004-2005 data is not directly reconcilable with 2006-2008 results~~,~~. Therefore, it is ~~still~~ not reasonable to include ~~some~~ any amount of 2004-2005 cumulative savings for purposes of the earnings true-up. ~~, consistent with the Commission's policy of measuring cumulative goals.~~
Finding of Fact 22	22. In D.10-04-029, the Commission determined that it is appropriate to count 100% of ~~these~~ pre-2006 Codes and Standards savings toward achievement of the 2010-2012 cumulative goals. This determination was based on the finding that better technical data about savings is now available as

	compared to when the original 50% determination was made in D.05-09-043. That same determination supports the recognition of 100% of C&S advocacy savings for deriving the MPS for the 2006-2008 true-up. D.05-09-043 also states that 100% of C&S savings attributable to codes and standards work undertaken during 2006 and beyond should be counted in both cost-effectiveness and performance basis calculations on a going forward basis.
Addition of Finding of Fact to the Proposed Decision	In D.10-04-029 the Commission directed ED to update both the electric and gas avoided costs, which included updating the GHG emission factor from $12 per tonne to $30 per tonne. It is reasonable to apply the updated $30 GHG emission factor for purposes of the True-Up.
Finding of Fact 25	25. The incentive earnings calculations in ~~Appendix A~~ the Joint Utility Scenario provide a reasonable basis to determine whether any of the IOUs are due additional incentive payments for the 2006-2008 cycle, or whether penalties are owed.
Finding of Fact 26	~~26. Because the incentive earnings calculated for each IOU in Appendix A are less than the interim incentive amounts already awarded, the IOUs are not eligible for any additional incentive earnings for purposes of the 2006-2008 true-up.~~
Finding of Fact 27	~~27. Because each of the IOUs' achievements for each relevant metric is above 65% of adopted goals based on the earnings scenario in Appendix A, no penalties apply for purposes of the 2006-2008 true-up.~~
Finding of Fact 28	~~28. Because the IOUs are not required to refund interim incentive payments where no penalties apply pursuant to D.08-01-042, the interim incentive payments of $143.7 million constitute the IOUs' final incentive earnings compensation for the 2006-2008 cycle.~~
Conclusion of Law 1	1. The final true-up of incentive earnings for the 2006-2008 cycle should be evaluated based upon the assumptions and resulting calculations of incentive earnings set forth in ~~Appendix A~~ the Joint Utility Scenario.
Conclusion of Law 2	2~~. Adopted Commission policy~~ While D.07-09-043 calls for finalizing the true-up of 2006-2008 incentive earnings based upon consideration of *ex post* updates of relevant parameter measures as evaluated by the Energy Division and its consultants~~.~~ Commission policy also supports consideration of

	simplified assumptions or metrics not necessarily tied to the detailed and minute level of calculations embodied in the Final Performance Basis Report for the 2006-2008 cycle.
Conclusion of Law 3	~~3. The reliance on the *ex ante* assumptions for finalizing the calculation of net energy savings subject to the incentive calculation would not be consistent with express Commission policies that call for *ex post* updates to be applied in the true-up of incentive savings.~~
Conclusion of Law 6	6. Based on a reasonable approximation of IOU savings accomplishments for the 2006-2008 cycle, as set forth in ~~Appendix A~~ the Joint Utility Scenario, consideration of the uncertainties and embedded errors in the approximations and consideration of Commission goals and policies, the IOUs are eligible for additional incentive payments for the 2006-2008 ~~equal to the hold back amounts specified in Decision 09-12-045.~~ as stated in the Joint Utility Scenario.
Conclusion of Law 7	~~7. The incentive earnings calculated based on the assumptions set forth in Appendix A balance the goals of fostering energy efficiency achievements while protecting ratepayers from paying for incentives that have not been earned.~~
Ordering Paragraph 1	1. The true-up of Risk/Reward Incentive Mechanism Savings for the 2006-2008 program cycle is hereby concluded. ~~The~~ In addition to the previously awarded interim incentive earnings awarded in Decision (D.) 08-12-059 and D.09-12-045 ~~constitute the final and complete resolution of payments due~~ the Commission orders the following final true-up payments to be made for the 2006-2008 cycle: Pacific Gas and Electric Company - $62.6 million, San Diego Gas & Electric Company – $4.3 million, Southern California Edison Company - $39.9 million, Southern California Gas Company- $5.5 million ~~for the 2006-2008 cycle No additional earnings and no penalties shall be authorized for the 2006-2008 cycle.~~

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

On October 18, 2010, I served a true copy of:

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) ON PROPOSED DECISION REGARDING THE RISK/REWARD INCENTIVE MECHANISM EARNINGS TRUE-UP FOR 2006-2008 – R. 09-01-019

[**XX**] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R. 09-01-019 with an e-mail address.

[**XX**] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for R. 09-01-019 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 18th day of October, 2010, at San Francisco, California.

/s/

PAMELA J. DAWSON-SMITH

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