



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U338E) for Approval of its 2009 Energy Efficiency Incentive and Funding Requests.	Application 11-06-027 (Filed June 27, 2011)
Application of Pacific Gas and Electric Company (U39E) for Approval of 2009 Energy Efficiency Incentives.	Application 11-06-028 (Filed June 27, 2011)
Application of San Diego Gas & Electric Company (U-902-M) for Approval of Electric and Natural Gas Energy Efficiency Shareholder Earnings for Program Year 2009.	Application 11-06-031 (Filed June 30, 2011)
Application Of Southern California Gas Company (U904G) For Approval Of Natural Gas Energy Efficiency Shareholder Earnings For Program Year 2009.	Application 11-06-032 (Filed June 30, 2011)

**AMENDMENT TO THE PROTEST  
OF THE DIVISION OF RATEPAYER ADVOCATES TO THE  
2009 ENERGY EFFICIENCY APPLICATIONS OF SOUTHERN CALIFORNIA  
EDISON COMPANY, PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS  
& ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY**

**DIANA L. LEE**  
Attorney for the Division of Ratepayer  
Advocates

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-4342  
Fax: (415) 703-2262  
E-mail: [diana.lee@cpuc.ca.gov](mailto:diana.lee@cpuc.ca.gov)

**MONISHA GANGOPADHYAY**  
Analyst for the Division of Ratepayer  
Advocates

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-1417  
Fax: (415) 703-2262  
E-mail: [monisha.gangopadhyay@cpuc.ca.gov](mailto:monisha.gangopadhyay@cpuc.ca.gov)

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**I. INTRODUCTION**

Pursuant to Rule 2.6 of the Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits the following protest to the consolidated applications of Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company<sup>1</sup> for energy efficiency (EE) incentives for the 2009 program year. The four separate applications were filed between June 27, 2011 and June 30, 2011 in response to D.10-12-049.<sup>2</sup> In this Decision regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008, the Commission determined the true-up incentive earnings for portfolio cycle 2006-2008 and directed utilities to file applications by June 30, 2011 for consideration of incentive rewards for the 2009 energy efficiency Bridge Funding year. On July 12, 2011 the Chief Administrative Law Judge’s Ruling Consolidating Dockets, Preliminarily Determining Category, Need For Hearings, and Assignment consolidated the four applications, recognizing that “the four applications raise similar issues.”

The Utilities used the Energy Division’s Evaluation Reporting Template tool and the risk reward spreadsheet template to determine their 2009 savings and incentive request amounts. The following were savings and incentives claimed by each utility in their application:

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<sup>1</sup> DRA’s response refer collectively to applicants Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) as “Utilities,” or alternately, “IOUs”.

<sup>2</sup> Notice of SDG&E and SoCalGas’s Applications first appeared in the Commission July 6, 2011 Calendar, so this protest, filed within 30 days of that notice, is timely. Commission’s Rules of Practice and Procedure 2.6 (a).

**Table 1: IOU-reported savings and incentive award requests<sup>3</sup>**

<b>IOU</b>	<b>Energy Savings (GWh)</b>	<b>Peak Savings (MW)</b>	<b>Gas Savings (MMTherms)</b>	<b>Percent of Goal Achieved</b>	<b>IOU 2009 BF RRIM Requested Reward</b>
PG&E	3840	843	60	118% - 158%	\$32,400,000
SCE	5258	952		104% - 123%	\$27,572,109
SDG&E	1336	259	11.3	88% - 160%	\$15,108,031
SoCal			92.7	110%	\$2,037,721

For the reasons discussed below, DRA recommends that the Commission deny each of the consolidated applications. In the alternative, the Assigned Commissioner should suspend these applications or hold them in abeyance pending a complete overhaul of the fundamentally flawed and seriously outdated energy efficiency incentives structure. If these applications are not denied or suspended and held in abeyance, DRA may conduct discovery as necessary to further develop its testimony and recommendations. DRA’s Protest may not identify all of the issues that DRA would examine in this proceeding if the Applications are not denied.

**II. DISCUSSION**

**A. Issues To Be Considered In Evaluating The Consolidated Applications**

DRA is currently reviewing the applications. While DRA may raise additional issues, based on its preliminary review, DRA recommends that the following issues be considered in addressing the Consolidated Applications:

- (1) The reasonableness and prudence of awarding incentives based on utility-reported savings that were not independently evaluated, measured, or verified.
- (2) The reasonableness and prudence of adding further ratepayer expenses on portfolios for which the true cost-effectiveness is unknown.
- (3) The applicability of energy efficiency assumptions derived from 2005 and 1990’s field studies to determine 2009 savings
- (4) The reasonableness and prudence of spending ratepayer dollars on a policy known to fail in function.
- (5) Whether stakeholder, Commission, and Commission staff should spend more time on a 2009, interim year issue within the Commission’s Energy Efficiency program.

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<sup>3</sup> This table was derived from the IOUs’ Applications for Approval of 2009 EE Incentive Requests.

DRA's position on issues (1) – (4) are expanded below.

**B. Providing Incentives On Savings That Were Not Independently Measured And Verified Is Not A Just Or Reasonable Ratepayer Expenditure**

Public Utilities Section Code 451 requires that “All charges demanded... by any public utility... for any service rendered shall be just and reasonable. Every unjust or unreasonable charged demanded or received for such a... service is unlawful.”

One of the major improvements to the administration of the energy efficiency program was the Commission's decision directing its own staff to independently evaluate, measure and verify utility-reported savings beginning with the 2006-2008 Energy Efficiency program cycle.<sup>4</sup> IOUs have an inherent interest in reporting high energy savings numbers. Indeed, this was proven in the Commission's first comprehensive evaluation report summarizing Energy Division's independent evaluation for the 2006-2008 cycle. This report demonstrated that there were large discrepancies between Utility-reported savings and measured and verified savings. For energy, peak and gas savings, Utility-reported savings were over 200% higher than independently verified savings<sup>5</sup>. Furthermore, verified savings demonstrated that Utilities fell far short of achieving the minimum performance standard of 80-85% of their goals in the 2006-2008 cycle. In fact, their performance ranged within the 37%-71% band.

In the 2009 Bridge Funding year, utility energy savings were not independently measured or verified. Given differences in utility-reported versus independently measured and evaluated savings, it is likely that (1) Utility-reported savings for the 2009 bridge funding year are overstated and that (2) true utility savings did not reach the minimum performance standard that would trigger incentive payments. Given the performance of the 2006-2008 programs and that the portfolios essentially stayed the same in the 2009 cycle, it is unlikely that utilities would have been able to compensate for 2006-2008 underperformance and surpass goals in 2009 if actual savings, as determined by independent evaluations, are considered. As the Commission stated in

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<sup>4</sup> D.05-01-055, p. 111 (“Independent EM&V ensures that ratepayers get the energy efficiency for which they pay. California needs an EM&V framework bold enough to prevent wasteful expenditures of ratepayer money on energy efficiency programs. Ratepayers should reap the benefits of the energy efficiency programs they fund.”)

<sup>5</sup> Total IOU-reported cumulative savings for the 2006-2008 portfolio cycle was 244% higher than evaluated savings. For peak savings IOU-reported savings were 217% higher. For gas savings, IOU-reported savings were 246% higher.

D.09-09-047, “Without a commitment that cumulative goals will be tracked and met, we cannot make the necessary assurances that fundamental benefits of energy efficiency are in fact being realized.”<sup>6</sup> It is unknown and unlikely that the Utilities achieved the minimum performance standard that would trigger an incentive payment. Spending ratepayer dollars on unknown performance is unjust and unreasonable.

**D. Providing Incentives On Savings That Were Not Independently Measured And Verified May Render The 2009 Bridge Year Portfolios Non-Cost-Effective**

Without verified savings and analysis, the true benefits of the energy efficiency programs for the 2009 cycle is unknown. What is known is that transferring yet another \$77 million (the Utility-requested incentive amount) from ratepayers to the Utilities for 2009 energy efficiency programs would increase the cost of those programs. In other words, the incentive would degrade what little, if any, cost-effectiveness these programs might have had, possibly rendering utility portfolios non-cost-effective.

Requiring ratepayers to pay incentives for programs that are not cost-effective would be inconsistent with the Commission’s recognition in D.09-09-047 that the Commission must approve energy efficiency portfolios that are cost-effective and likely to remain so over the cycle. Paying incentives for programs that deliver less than one dollar of benefits for every dollar invested disregards the requirement that the Commission approve cost-effective energy efficiency portfolios.<sup>7</sup> Although Public Utilities Code Section 454.5(b)(9)(c) speaks of the Commission’s prospective obligation to approve cost-effective portfolios, it makes little sense to require portfolios to be cost-effective at the outset, yet allow the award of incentives that are likely to render the portfolios not cost-effective.<sup>8</sup> As DRA stated in its Application for Rehearing on D.10-12-049, “[i]t is neither just nor reasonable to require [utility] ratepayers to pay shareholder incentives for energy efficiency portfolios with total costs that exceed their benefits.”

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<sup>6</sup> See page 41.

<sup>7</sup> Public Utilities’ Code 454.5(b)(9)(c).

<sup>8</sup> SoCalGas’s portfolio was not cost-effective even before the award of incentives, but SDG&E’s portfolio was cost-effective with a [spell out acronym] TRC of 1.02 prior to the award of interim incentives.

**E. The Utilities Used Outdated Assumptions To Determine Energy Saving That Would Result In Inaccurate Savings Calculations; Awarding Incentives On Inaccurate Savings Is Unjust And Unreasonable**

Although there were a number of updated energy savings parameters available when D.10-12-049 was issued, that decision chose not to include most of them.<sup>2</sup> For example, the Energy Division completed an “evaluation report” in January of this year that updated net-to-gross ratios and unit energy savings (UES) assumptions with values derived from 2006-2008 portfolio cycle field studies where appropriate. The report also updated measure assumptions for existing useful lives (EUL).<sup>10</sup> SCE made a number of changes to the net-to-gross and gross realization rates *ex ante* energy savings parameters during the 2006-2008 program cycle.<sup>11</sup> The Energy Division completed its 2006-2008 evaluations and developed updated EE savings assumptions (i.e.- *ex post* assumptions) in July 2010. D.10-12-049 required none of these updates for Utilities applications on the 2009 incentive claims.

In the 2009 Bridge Funding year, energy savings were not independently measured or verified. Instead, *ex ante* values that were in place when the 2006-2008 portfolios were planned would be applied to utility-reported savings.<sup>12</sup> The *ex ante* values are based on studies completed before 2005 or default values from studies completed in the 1990s.<sup>13</sup> Given the changes that have occurred in the market since then, it is likely that those *ex ante* estimates overstate the energy savings and the cost effectiveness of the 2009 portfolios.

**F. The Incentive Mechanism Represents A Failed Experiment**

From today’s vantage point, it is clear that despite years of various types of incentive mechanisms, there has been both overprocurement of resources and underachievement of energy savings.<sup>14</sup> The Utilities have both aggressively pursued supply-side resources on the one hand

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<sup>2</sup> The exception is the inclusion of updated installation rates.

<sup>10</sup> The Energy Efficiency Evaluation Report for the 2009 Bridge Funding Period can be found at: [http://www.cpuc.ca.gov/PUC/energy/Energy+Efficiency/EM+and+V/2009\\_Energy\\_Efficiency\\_Evaluation\\_Report.htm](http://www.cpuc.ca.gov/PUC/energy/Energy+Efficiency/EM+and+V/2009_Energy_Efficiency_Evaluation_Report.htm). Website accessed in August 2011.

<sup>11</sup> Southern California Edison, Comments on Commissioner Peevey Alternate Proposed Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008, pp. B-1, R.09-01-19.

<sup>12</sup> D.10-22-049, p. 3.

<sup>13</sup> DRA Application for Rehearing on D.10-12-49 in R.09-09-010, pp. 10.

<sup>14</sup> The CAISO 2010 Summer Loads and Resources Operations Preparedness Assessment, May 10, 2010 (pp. 4) shows that the Utilities’ service territory generation resources are 30-40% in excess of peak demand. This represents an excess of 13-25% of the require planning reserve margin. Despite this, the

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and challenged independent evaluations of their energy savings achievements, on the other.<sup>15</sup> For example, in this proceeding, PG&E requests incentive payments based on the Commission policy directing PG&E to make up 50% of the decayed savings from the 2006-2008 portfolio cycle. At the same time, in R.10-05-006, the Long-term Procurement Planning proceeding, PG&E excludes the 50% decay replacement that would reduce its load forecast. If the Commission adopts PG&E's proposed scenario for EE in the R.10-05-005, and at the same time awards PG&E the incentives it seeks in this proceeding, it would reward incentives for "savings" that were not counted in the procurement proceeding, meaning that ratepayers were forced to pay incentives on energy efficiency activities that do not in fact reduce the load forecast of supply-side resources.

Furthermore, there has been no correlation between energy savings and the incentive mechanism (See Attachment I). As DRA analysis has shown, from the period 1990-2006, years of high energy savings do not necessarily correspond to a high level of incentive payment and, conversely, years of low energy savings have occurred during years with high incentive payments. In the 2006-2008 period, despite the potential to receive unprecedented levels of incentive payments, ED's independent evaluation report found that utility savings fell far short of the Minimum Performance Standard (MPS) that would trigger incentive payments.

Commissioner Florio aptly notes in concurrence with D.11-07-030 that, "the Commission's recent attempts at using utility shareholder incentives to encourage better performance in the energy efficiency arena represent a failed experiment," and that "we should seriously consider eliminating or dramatically reforming the shareholder incentive mechanism and restructuring our regulatory framework for energy efficiency program delivery."

In light of this knowledge that history and experience offers to us, that the incentive mechanism is indeed a failed experiment, the Commission should ask whether it is reasonable or

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Commission approved PG&E's purchase of the Oakley Power Plant and the Marsh Landing procurement agreement in PG&E's service territory. This procurement would collectively generate an additional 1200 MW in PG&E's service territory. In DRA comments within the A.09-09-021 proceeding addressing these actions, DRA demonstrated there was no need for this additional procurement based on the Commission Long Term Procurement Plan Decision D.07-12-052 and California Energy Commission's (CEC's) demand forecast projections. At the same time, despite unprecedented expenditures on energy efficiency and an incentive mechanism awarded in an amount equivalent to early 2000's EE program budget, IOUs fell far short of achieving minimum performance standards in energy efficiency savings, according to Energy Division's July 2006-2208 Energy Efficiency Evaluation Report, pp. 100.

<sup>15</sup> *Ibid.*

prudent to commit ratepayer funds to a “failed experiment,” a mechanism that appears to serve no other purpose than to take millions of dollars from ratepayer pockets to fill the coffers of utilities?<sup>16</sup>

The Commission should take this opportunity to deny the 2009 incentive applications. Although D.10-12-049 authorized the Utilities to file applications for incentives for the 2009 bridge year, the changes to the 2006-2008 incentive true-up proposed decision to allow the Utilities to file applications for incentives in the 2009 bridge year were made in last minute revisions to the President Peevey’s Alternate Proposed Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008.<sup>17</sup>

The changes to the Alternate Proposed Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008 directly contradicted the recommendations of ALJ Pulsifer’s Proposed Decision Regarding Risk/Reward Incentive Mechanism Reforms issued November 15, 2010, in which ALJ Pulsifer determined that “no RRIM awards or penalties should be pursued for calendar year 2009 bridge funding programs.”<sup>18</sup>

Denying the applications for 2009 incentives would be entirely consistent with past Commission decisions in this proceeding in which the Commission revised the incentive mechanism based on evolving policy and changing information. For example, D.10-10-004 amended D.09-12-045, issued only four months earlier, by modifying requirements for verification of utility incremental measure costs in order to ensure that the schedule for evaluating utility earnings claims would not be adversely impacted.

### **III. PROPOSED CATEGORY, NEED FOR HEARINGS; AND PROPOSED SCHEDULE**

Chief Administrative Law Judge (ALJ) Clopton’s Ruling on the Consolidated Applications for 2009 RRIM indicated that these applications are ratesetting proceedings with

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<sup>16</sup> IOU Applications for 2009 incentive rewards total over \$77 million.

<sup>17</sup> President Peevey’s Alternate Proposed Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008 was issued November 16, 2010, and as originally drafted, stated that “The Commission shall separately address in a subsequent decision in this proceeding whether, or subject to what conditions incentive payments and/or penalties may be due for 2009, 2010, or for future years.” Revision 1 of President Peevey’s Alternate Decision, issued December 15, 2010, contained the revisions that allowed the Utilities to file 2009 incentive applications.

<sup>18</sup> Proposed Decision Regarding Risk/Reward Incentive Mechanism Reforms issued November 15, 2010 in R.09-01-019, Conclusion of Law 3, p. 61.

hearings necessary. DRA agrees with the categorization of the applications as rate setting. At this time, based on the information contained in the instant applications, DRA believes that hearings may not be fruitful given DRA's fundamental disagreement with awarding incentives for energy efficiency portfolios, especially based solely on utility-reported savings for portfolios whose true cost-effectiveness is unknown. DRA agrees with the general timeframes proposed by SoCalGas and SDG&E modified by a six-day delay to account for the ALJ Ruling setting August 5, 2011 as the initial protest deadline.

#### **IV. CONCLUSION**

As Commissioner Florio and Commission Ferron state in their concurrence to a recent Commission Decision D.11-07-030, California's energy efficiency program is in great need of overhauling. Thus, the Commission should not address these applications on their merits, treating them as business as usual, but should recognize the Risk Reward Incentive Mechanism is a contentious and failed experiment that creates a distraction that prevents stakeholders and IOUs from focusing on real improvements to the energy efficiency program.<sup>19</sup> The ALJ PD on RRIM for the current portfolio cycle agrees: "the process for submission, review, and approval of incentive earnings claims has not functioned as intended, but has proven highly contentious, consuming excessive time and resources."<sup>20</sup> IOU RRIM 2009 applications are stale and outdated in their approach. They do not incorporate the lessons learned from 2006-2008 nor the great amount of stakeholder input and effort contributed to these lessons. The Commission has indicated its desire for prudent, reasonable and timely action in energy efficiency. For this reason, DRA believes denying RRIM (or at least suspending these applications while the Commission overhauls its framework for the EE incentive mechanisms) for a bridge funding year that occurred two years ago is the first step on this course.

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<sup>19</sup> Commissioner Michael Florio and Michael Ferron each filed concurrences to D.11-07-030.

<sup>20</sup> Proposed Decision of ALJ Pulsifer, R.09-01-019, November 15, 2011. Findings of Fact 3, pp. 56.

Respectfully submitted,

/s/ DIANA L. LEE

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Diana L. Lee  
Staff Counsel

Attorney for the Division of Ratepayer  
Advocates

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-4342  
Fax: (415) 703-2262  
Email: [dil@cpuc.ca.gov](mailto:dil@cpuc.ca.gov)

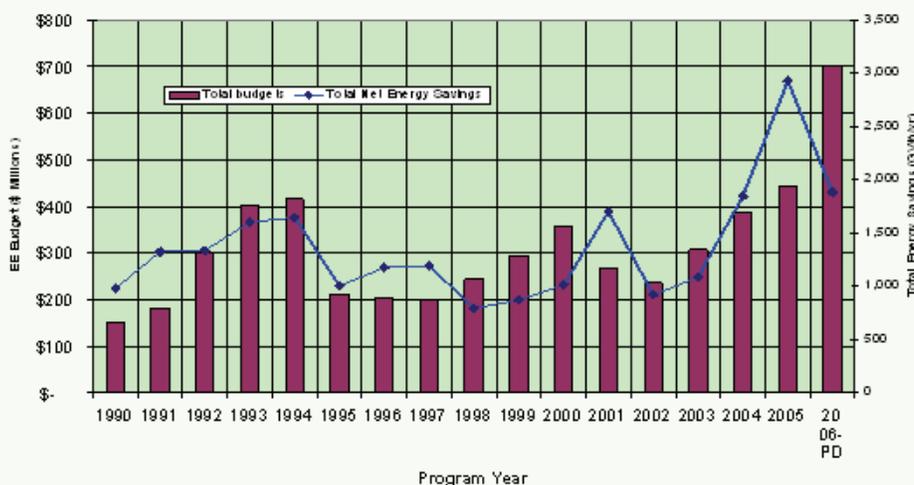
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# ATTACHMENT I

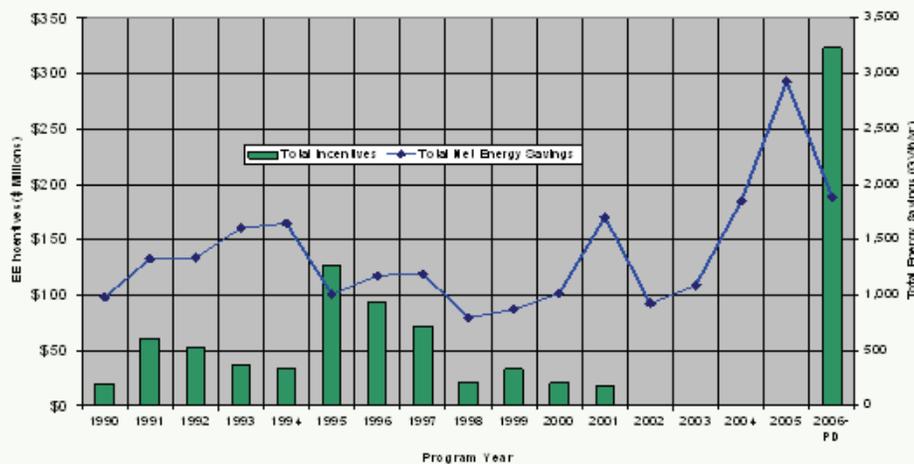
## Background Material on EE Incentives

- California has offered EE incentives since 1990. Historic data shows energy savings are correlated to EE budgets, but **not** to incentive payments:

Utility EE Budgets vs. Energy Savings



Utility EE Incentives vs. Energy Savings



- Since initiated in 1990, shared savings rates for EE programs have varied from 0% to 30%:
- Budgets for 2006-2008 EE programs were established **by the utilities** using the EE savings goals established by the CPUC in D.04-09-060
- The 2006-2008 budget of \$700 million per year (\$2.1 billion total) is approximately **double the 2004 budget** and more than 25% higher than the 2005 budget: