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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, 2005)

**ASSIGNED COMMISSIONER'S SCOPING MEMO
AND PROCEDURAL RULING**

Introduction

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this ruling provides the Scoping Memo setting the scope of issues, the schedule, and the category for this proceeding, pursuant to the prehearing conference (PHC) held on March 21, 2012 at 2:00 p.m.

Scope of Issues

The scope of this proceeding involves the review and development of incentives designed to encourage and promote the achievement of the Commission's energy efficiency goals. We will consider two important sets of issues separately but in parallel sequence as discussed more fully below. Currently the Commission periodically approves and authorizes funding for portfolios of energy efficiency programs as administered by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company (collectively, "the utilities"). This rulemaking may adopt, repeal, or amend rules, regulations, and guidelines for these electric and gas utilities pursuant to Rule 6.1.

The Commission adopted an Energy Efficiency Risk/Reward Incentive Mechanism (RRIM) in Decision 07-09-043, designed to apply initially to the 2006-2008 program cycle. The intent of the RRIM was to provide a meaningful level of shareholder earnings as well as a return on ratepayers' investment in energy efficiency as the utilities reach towards – and attempt to exceed – adopted energy savings goals.

The implementation of the 2006-2008 RRIM earnings claims proved to be much more controversial, complex, and problematic than originally anticipated. Accordingly, in January 2009, the Commission opened Rulemaking (R.) 09-01-019 to develop a more transparent, more streamlined, and less controversial incentive mechanism, while protecting ratepayers' interests so that incentive earnings recovered in retail rates are just and reasonable.

This rulemaking continues consideration of incentive reforms as the successor to R.09-01-019. This successor proceeding will consider reforms to modify and streamline the design of incentives applied to energy efficiency activities for program activities, to promote achievement of the Commission's energy efficiency goals, while protecting ratepayers' interests through appropriate accountability. 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.

In terms of the schedule sequence, this proceeding will consider incentive issues in relation to corresponding energy efficiency program budget cycles. The prior proceeding focused on incentive issues applicable to energy efficiency program activities for the 2006-2008 budget cycle, extended to include the 2009 bridge period. At the present time, we are in the final year of the

2010-2012 energy efficiency program cycle. The Commission is also currently determining the design of portfolio programs for the 2013-2014 period.

This proceeding will consider as its top priority the design of incentives, if any, in coordination with the guidance and design for the upcoming 2013-2014 program portfolio. We consider this to be our top priority because in order for an incentive mechanism to actually impact utility behavior, the incentive mechanism should be known at the start of a cycle. At the same time, the Commission has not yet considered whether, or how, an incentive mechanism may apply for the 2010-2012 program period. Because the Commission has awarded annual RRIM payments since 2008, we also need to promptly resolve issues regarding the RRIM for 2010-2012, including if there should be a RRIM payment awarded this year. Thus, a threshold issue for this proceeding will be how to prioritize and sequence the schedule in resolving incentive design issues applicable to the 2010-2012 cycle versus the 2013-2014 period. Because the 2013-2014 energy efficiency portfolios must be developed and approved within the next few months, this rulemaking must consider how incentives may need to be designed and applied differently in distinguishing 2010-2012 and 2013-2014 program changes. Because there are obvious overlapping issues, we plan to handle these two cycles in separate but parallel sequences. We next detail the relevant issues for both the 2010-2012 cycle and the 2013-2014 cycle and then discuss how we will sequence the rulemaking to accommodate the competing interests.

Incentive Issues for the 2010-2012 Program Cycle

In this proceeding, the Commission must determine whether (and if so, how) to apply an incentive earnings mechanism for the 2010-2012 program cycle. The Commission has affirmatively authorized a RRIM for program activity

applicable only through 2009, but has issued no affirmative policy direction as to whether, or in what manner, an incentive mechanism may be authorized for the 2010-2012 program cycle.

Therefore, this proceeding will determine whether to authorize the utilities to apply for incentive earnings for the 2010-2012 cycle. At this point in time, however, authorizing an incentive mechanism for the 2010-2012 cycle would be too late to have any effect on increasing savings that have already occurred in implementing and prioritizing 2010-2012 programs. If the Commission decides *not* to authorize a 2010-2012 RRIM, no further resources would be required to review and process 2010-2012 claims, and the Commission and parties could then focus priority on designing and timely implementing incentive mechanisms for 2013-2014 and subsequent periods.

On the other hand, the Commission has previously concluded that regularity and continuity in the provision of energy efficiency incentive earnings is important in motivating the utility to treat energy efficiency as a core part of the utility's business. Providing for some level of incentive earnings to be awarded during calendar year 2012 (based on 2010-2012 efficiency savings amounts) would preserve the continuity of regular annual earnings from incentives.

To preserve the option of awarding some form of energy efficiency incentive earnings for calendar year 2012 (for either just 2010 or for 2010-2011 activities), the Commission must provide affirmative policy direction to have incentives disbursed, and under what framework that disbursement should occur. This direction needs to occur early enough to accommodate the workload entailed in review and processing such incentive claims.

Accordingly, it is anticipated that this proceeding will issue a proposed decision providing guidance no later than the third quarter of 2012 concerning

(a) whether and (b) if so, how an incentive mechanism will apply for the 2010-2012 cycle, allowing for some opportunity for awards of incentive earnings possibly by year-end 2012. In any event, we emphasize that the 2013-2014 incentive program also remains a priority in the schedule.

Assuming that the Commission concludes that some form of shareholder incentive mechanism for the 2010-2012 cycle is appropriate, the proposed decision will concurrently determine what incentive formulas to apply. This determination will be based on the existing record of comments and recommendations regarding 2010-2012 RRIM issues. Certain parties have suggested continuation of the general approach used for 2009 claims (described as a “shared-savings” approach) to expedite and simplify further proceedings. At the PHC, there was some discussion of whether further record is needed regarding how savings attributable to codes and standards advocacy may be treated in the incentive calculations. At least for purposes of any 2010-2012 RRIM, no further comments on this issue are necessary to the extent that any adopted mechanism would apply a similar approach as previously used for the 2009 RRIM. However, as the Commission is considering wholesale changes to the design to the RRIM for 2013-2014 (see next section), we may wish to apply that framework onto the 2010-2012 period. In that instance, we may wish to solicit additional comments from parties.

We anticipate that any decision adopting a 2010-2012 RRIM should be of sufficient clarity and detail so that review and processing of incentive claims can proceed with minimum delay or controversy. Nonetheless, Commission and party resources would still need to be coordinated between (1) review and processing of 2010-2012 incentive claims and (2) designing and adopting prospective incentive mechanisms for 2013-2014 in this proceeding.

Given the anticipated limited interval between Commission adoption of a decision addressing a 2010-2012 incentive mechanism and the end of calendar year 2012, among other options, the Commission may consider authorizing only a limited interim incentive award by year-end 2012, subject to hold back of some specified percentage of an incentive claim. The held-back portion could then be further reviewed and finalized in a follow-up proceeding during calendar year 2013.

Incentive Issues for the 2013-2014 Period

In R.09-11-014, the Commission is considering how energy efficiency programs should be changed for the 2013-2014 program cycle. Accordingly, this track of the rulemaking will consider potential incentive reforms for the 2013-2014 time horizon consistent with the adopted program goals and policies.

At this point, we define the scope of potential incentive reforms for 2013-2014 quite broadly. Any new incentive mechanism may require significant changes relative to the RRIM used for 2006-2008, and for 2009, or wholesale adoption of a new mechanism. Any new or revised RRIM should incorporate the lessons learned from prior RRIM cycles providing incentives for utilities to offer the maximum verifiable and socially-desirable level of energy efficiency programs and services, while protecting ratepayers through necessary cost containment mechanisms.

In the 2013-2014 timeframe, we anticipate a greater emphasis on programs designed for deeper savings, measures with higher up-front costs and longer design lives, and market transformation efforts (with correspondingly increased challenges associated with program participation levels and achieving program cost-savings objectives). We do not anticipate these program to accomplish the same volume of savings as programs that are easier to accomplish, that produce

shorter-term savings, or that are more “resource acquisition” in nature. As a result, incentives may need to be calibrated to the different types of programs in the portfolio, with programs addressing harder-to-achieve savings rewarded at a different incentive rate (or subject to different performance metrics) than programs with easier-to-achieve savings. Parties may wish to suggest different shared-saving rates for resource acquisition versus market transformation programs – or entirely different incentive designs or performance benchmarks.

The Commission developed a preliminary record on RRIM reform issues in R.09-01-019, which was incorporated into this proceeding. Parties have already submitted preliminary comments on 2013-2014 RRIM issues in opening and reply comments in response to the opening of R.12-01-005 and in their subsequent prehearing conference statements. These comments offer a starting point for further record development on 2013-2014 issues. This track of the proceeding will provide for further comments and follow up workshops to consider new and innovative incentive approaches for the 2013-2014 cycle, consistent with the goals outlined above, particularly in providing meaningful incentives for energy efficiencies provided by non-resource programs.

As outlined in the adopted schedule below, our priority goal is to issue a proposed decision during the fourth quarter of 2012 for a new 2013-2014 incentive framework, to be in place with the beginning of program implementation. A subsequent proposed decision will be issued during the first quarter of 2013 to provide policy guidance on the design of meaningful incentives to encourage greater efficiency savings through market transformation and other sorts of non-resource programs.

RRIM Design for Programs Subsequent to 2013-2014

Depending on the progress subsequently made in developing a new incentive design for 2013-2014 and depending on how prospective energy efficiency program design evolves, we expect to be better equipped to develop a more detailed procedural plan for addressing incentive design applicable to the post-2014 period. At this time, we defer setting a detailed schedule for the post-2014 RRIM issues, but articulate the broad goal of seeking to adopt a forward-looking incentive design that will accommodate the future direction of energy efficiency program development consistent with our previously noted goals. A more detailed plan for addressing post-2014 issues will be covered in a subsequent and amended scoping memo.

Adopted Schedule

The following procedural schedule as set forth below is adopted. The schedule is set to resolve this proceeding in a timely fashion so as to provide clear guidance regarding incentive policies and related implementation. However, the tracks of this proceeding should be resolved within 18 months from the date of this scoping memo, pursuant to the requirements of Public Utilities Code Section 1701.5.

For purposes of this scoping memo, the schedule is set in terms of quarterly time periods. More specific direction on scheduled dates for workshops and filing of comments, etc. will be provided by subsequent rulings as necessary. At this point, the schedule calls for written comments and participation in a workshop. No hearings are scheduled. Depending on further review of issues, subsequent hearings may be scheduled on limited factual issues. The assigned Commissioner or Administrative Law Judge (ALJ) may modify the schedule accordingly, and will provide for more detailed guidance relating to certain elements of the schedule as deemed necessary.

Schedule

Date	Event
2012 Q2	Written proposals on how RRIM for 2013-2014 should be designed, with particular emphasis on how modifications could be made to the existing RRIM. Proposals shall also detail how the incentive mechanism could be adjusted to incent programs that emphasize market transformation versus resource acquisition. Parties should also state their preference whether the existing shared savings mechanism should be applied or what other metrics and/or framework should determine incentive earnings.
2012 Q3	Proposed Decision issued on 2010-2012 RRIM framework, including whether to authorize any mechanism at all for this cycle, and if so, what framework shall apply for determining award amounts, and for submission, review, and approval of potential earnings awards.
2012 Q3	Reply comments on written proposals addressing how RRIM should be applied for the 2013-2014 cycle, assuming (a) continued use of some version of the existing shared-savings mechanism or (b) other alternative approaches. Workshops to address possible new incentive design for resource programs to replace the existing shared-savings mechanism.
2012 Q3 (or as soon as data is available for the 2013-2014 period)	Comments and Reply comments on how updated data on 2013-14 portfolio should be applied in determining the RRIM framework. PD on the 2013-2014 RRIM, Comments and Reply Comments thereto.
2012 Q4	Final Decision on the 2013-2014 RRIM. Workshops and post-workshop comments on the non-resource-acquisition incentive mechanism.
2013 Q1	PD on non-resource incentive mechanism.
2013 Q2	Comments and Reply Comments on more significant changes to RRIM for 2015 and beyond.

Categorization of Proceeding and Need for Hearings

In opening this rulemaking, the Commission preliminarily categorized the proceeding as ratesetting, as defined in Rule 1.3(e) of the Commission's Rules of Practice and Procedure. No party disagrees with this categorization. The categorization as "ratesetting" is confirmed. It is determined that no hearings are needed to resolve incentive issues for the 2010-2012 program cycle. Limited hearings may be needed to resolve incentive issues for 2013-2014. This determination may be revised later subject to further development of the record for 2013-2014 through written comments and workshops.

Schedule for Filing Notices of Intent to Claim Intervenor Compensation

As previously stated in the Order Instituting Rulemaking (OIR) for this proceeding, a party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent (NOI) to claim intervenor compensation in accordance with Rule 17.1. Because no PHC was set at the time the Commission instituted this rulemaking, the Order Instituting Rulemaking (OIR) directed that the NOI should have been filed within 30 days of the date this OIR is mailed. A PHC was subsequently held on March 21, 2012. In accordance with Rule 17.1(a)(1) and Public Utilities Code Section 1804(a)(1), where a PHC is held, the NOI may be filed within 30 days of the date of the PHC. Accordingly, based on the PHC date of March 21, 2012, the NOI was to be filed within 30 days thereafter, or April 20, 2012.

Ex Parte Communication and Reporting Rules

The Commission's *ex parte* communication and reporting rules set forth in Article 8, Rule 8.2, and 8.3(c) shall apply in this proceeding. The category of individuals subject to our *ex parte* rules is defined in Pub. Util. Code § 1701.1(c)(4).

Assignment of Presiding Officer

ALJ Pulsifer is designated as the presiding officer for this proceeding.

IT IS RULED that:

1. The scoping memo in this ruling is hereby adopted.
2. This proceeding is categorized as “ratesetting,” as defined in Rule 1.3(e) of the Commission’s Rules of Practice and Procedure.
3. The Commission’s *ex parte* communication and reporting rules set forth in Rule 8.2 and 8.3(c) shall apply in this proceeding. The category of individuals subject to our *ex parte* rules is defined in Pub. Util. Code § 1701.1(c)(4).
4. No hearings are needed to resolve energy efficiency incentive issues for the 2010-2012 cycle. A determination of the need for hearings on 2013-2014 incentive issues will be determined later pending the results of comments, workshops, and further review thereof.
5. The schedule for this proceeding, as set forth above, is adopted.
6. More specific direction on scheduled due dates and production of comments, etc. relating to this proceeding will be provided by subsequent rulings as necessary. The assigned Commissioner or Administrative Law Judge (ALJ) may modify the schedule, and will provide for more detailed guidance relating to certain elements of the schedule as deemed necessary.
7. The presiding officer for this proceeding is ALJ Thomas Pulsifer.

8. In accordance with Rule 17.1(a) (1) and Public Utilities Code Section 1804(a)(1), where a PHC is held, the NOI may be filed within 30 days of the date of the PHC. Accordingly, based on the PHC date of March 21, 2012, the NOI was to be filed within 30 days thereafter, or April 20, 2012.

Dated May 16, 2012, at San Francisco, California.

/s/ MARK J. FERRON

Mark J. Ferron
Assigned Commissioner