

Decision **PROPOSED DECISION OF ALJ GAMSON** (Mailed 11/16/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of its 2009-2011 Energy Efficiency Program Plans and Associated Public Goods Charge (PGC) and Procurement Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And Related Matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031

**DECISION ADDRESSING PETITION FOR MODIFICATION OF
DECISION 09-09-047**

1. Summary

This decision adopts modifications to Decision (D.) 09-09-047 regarding energy efficiency portfolios for 2010-2012. The adopted modifications are:

- Freeze *ex ante* values based on 2008 DEER version 2.05.
- ~~Adopt the Energy Division process for approval of non-DEER workpapers and customized projects. Provides a formal process to finalize all non-DEER *ex ante* values.~~
- Clarify that co-branding requirements with the Engage 360 brand apply to all energy efficiency programs provided through energy efficiency funds, but not provided solely through other funds. Also, clarify the timing for the start of the co-branding efforts.
- Reduce annual energy savings goals per home for the statewide Prescriptive Whole House Retrofit Program (PHWRP) from 20% ~~statewide to 15% for Pacific Gas and Electric Company and~~ in utility service territories to 10% , while retaining the annual energy savings goals per home for the ~~other~~ utilities Whole House

Performance Programs (WHPP) at 20%. We clarify that these are average annual savings goals per home; the annual savings at individual participant homes will fall below and above these levels.

- For the California Advanced Home Program, provide that the required \$1,000 performance bonus applies only to single family units. Provide that a lower \$200 bonus or a territory-specific incentive (e.g., marketing dollars, customized engineering reports, etc.) apply for each applicable multi-family unit.
- Add language to provide a State Action Doctrine defense for utilities engaging in certain joint energy efficiency activities which are consistent with state policy and supervised by the Commission.

This decision all defers other issues in the Petition to a subsequent decision in this docket.

2. Background

In Decision (D).09-09-047, the Commission adopted energy efficiency portfolios for 2010 through 2012 for Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) (collectively, Joint Utilities or Joint Investor-Owned Utilities (IOUs)). A subsequent Ruling on November 18, 2010 clarified a number of issues regarding evaluation, measurement and verification (EM&V) for the 2010-2012 portfolios. For example, the Ruling involved Energy Division review of *ex ante* value workpapers for energy efficiency measures after utility submission of these workpapers to Energy Division. D.10-04-029 required the IOUs to cooperate and collaborate with Energy Division in the development of these workpapers, consistent with the November 18, 2009 Ruling.

On September 17, 2010, Joint Utilities filed a Petition for Modification of D.09-09-047, seeking 28 separate changes to the Decision, in eight subject areas.

Specific proposed modification language was included in the Petition. Joint Utilities requests are summarized as follows:

- Amend the Decision to remove ambiguity around *ex ante* assumptions and ensure its directives to freeze data are implemented.
- Modify IOU benchmarking requirements to exclusively promote the Energy Star Portfolio Manager (ESPM) tool for all IOU benchmarking activities; target larger facilities first; and remove the requirement to benchmark all facilities now specified in the Decision.
- Modify co-branding requirements for the new statewide brand to allow the Joint IOUs appropriate flexibility in using the brand.
- Modify requirements of the Prescriptive Whole House Retrofit Program (PWHRP) and Whole House Performance Program (WHPP) to ensure an appropriate aspirational energy savings and market penetration target.
- Adopt a reporting process for limited statewide program variations among IOUs to allow flexibility for appropriate regional and IOU differences.
- Clarify that sponsorships for energy efficiency events or activities that directly promote programs or partnerships (as opposed to solely providing company specific recognition) are considered allowable costs.
- Clarify that the \$1,000 performance bonus mandated by the Decision for the California Advanced Homes Program (CAHP) applies only to single family units or that a more proportional incentive be offered for multifamily units.
- Clarify the specific collaboration that the Commission intends the Joint IOUs to undertake for energy efficiency activities so that the Joint IOUs will have the benefit of the State Action Doctrine as a defense against anti-competitive challenges.

Comments were jointly filed on October 18, 2010 by the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN), and

comments were separately filed by EnerNOC, Inc. A Prehearing Conference (PHC) was held on October 22, 2010. A major theme of both the Petition and the PHC involved Energy Division implementation of provisions of D.09-09-047, as that decision gave Energy Division the responsibility to work with the utilities to implement the decision.

At the PHC, it became clear that the utilities and Energy Division had been unable to reach agreement on determination of *ex ante* values and other matters during the past year. Because D.09-09-047 provided that Energy Division would have a number of significant tasks in implementing the decision, the assigned Administrative Law Judge (ALJ) determined that certain information concerning Energy Division's efforts should be placed on the record in order to provide perspective on the Petition. Energy Division staff provided insights into their process and implementation recommendations at the PHC, and parties were able to question Energy Division staff on the record. In a Ruling dated October 29, 2010, parties were given the opportunity to comment upon specific written Energy Division implementation recommendations concerning *ex ante* values discussed at the PHC (discussed below). Comments were filed by EnerNOC and DRA/TURN on November 5, 2010.

3. *Ex Ante* Values

The Commission and utilities use *ex ante* values for energy efficiency measures to determine whether a utility's forecasted energy efficiency portfolio is cost-effective. These values are also used to determine the *ex ante* savings from verified installed energy efficiency measures, and may be used as part of determining the level of rewards utilities can receive for successful energy efficiency efforts.

DEER¹ values are typical energy efficiency measures' net-to-gross ratios, effective useful life, unit energy savings, and load shapes values. These values are part of the input parameters used to calculate program/portfolio savings and cost-effectiveness. When a measure is not in the DEER dataset, it is called a non-DEER measure. A utility provides a non-DEER measure workpaper to estimate and justify the net-to-gross ratios, effective useful life, unit energy savings, and load shapes values.

D.09-09-047 stated (pp.42-44):

We agree with SCE's and PG&E's comments that measure ex ante values established for use in planning and reporting accomplishments for 2010-2012 should be frozen. However, we do not agree with PG&E or SCE that those ex ante measure values should be frozen using the values found in the E3 calculators submitted with their July 2, 2009 applications. We agree with TURN's comment that frozen values must be based upon the best available information at the time the 2010-2012 activity is starting and that delaying the date of that freeze until early 2010 is a reasonable approach to better ensure that the maximum amount of updates is captured before the freeze takes effect.

The utilities' portfolio measure mix contains both DEER measures and non-DEER measures. As discussed in this decision (e.g., Sections 4.2 and 4.5), the Utilities have not always properly utilized current DEER measure values and assumptions in their submitted cost-effectiveness calculations. We note that the Utilities have commented that the documentation on the use of DEER is insufficient and that the Commission should be more specific about the version of DEER to be utilized. We clarify that the DEER 2008 values referred to by this decision are the complete set of data

¹ DEER stands for Database for Energy Efficient Resources.

denoted as 2008 DEER version 2008.2.05, dated December 16, 2008, as currently posted at the DEER website (<http://www.deeresources.com>) maintained by Energy Division.

Energy Division must provide the utilities with further detail and clarifications on the proper application of DEER so that the utilities are able to correct these problems. Additionally, as of this decision, Energy Division has not performed a review and approval of non-DEER measure ex ante estimates provided by the utilities. Energy Division must complete that review in a timely manner before those measure assumptions are frozen. It is therefore essential that the utilities work with Energy Division in its review and approval of their non-DEER measures ex ante values so that this activity can be completed as soon as possible. However, Energy Division must implement a review and approval process that balances the need for measure review with the utilities need to rapidly implement the portfolios approved by this Decision. We also recognize that the Energy Division or utilities may identify new measures appropriate for inclusion in the 2010-2012 portfolios that are not yet included in current DEER measure datasets. We also recognize that errors may be identified in frozen measure ex ante values. Energy Division, in consultation with the utilities, should develop a process by which new measures values can be added to the frozen measure datasets and mutually agreed errors in the frozen values can be corrected.

Therefore, in measuring portfolio performance against goals over the program cycle, we will freeze both DEER and non-DEER ex ante measure values as the 2010-2012 portfolio implementation begins. We concur with NRDC's comments that the use of these frozen ex ante values is only for this portfolio planning proceeding and implementation management. These frozen ex ante values may or may not be used for purposes of the incentive mechanism that is subject of another proceeding. Furthermore, the decision here to hold constant measure ex ante values for the purpose of measuring performance against goals, does not imply that we will cease from updating DEER and non-DEER measures for other purposes, and in particular for striving for the best estimates of actual load impacts resulting from the program cycle. Our EM&V activity will continue

to develop ex post verified measure, program and portfolio impacts to inform future energy efficiency and procurement planning activities. The frequency and scope of DEER updates going forward is discussed further in the EM&V section below. As for non-DEER ex ante measure review and approval, we direct Energy Division to develop that review and approval process within 30 days from the date of this decision, to be issued in an ALJ ruling.

3.1. DEER Values

Joint Utilities contend that in March 2010 Energy Division informed the utilities of its intent to modify 2008 DEER version 2.05 as frozen by the Commission. Joint Utilities claim they agreed to correct certain errors identified by the Energy Division, but did not agree to implement other proposed updates that Joint Utilities considered as methodological changes.

Joint Utilities seek to modify D.09-09-047 to adopt 2008 DEER version 2.05, with corrections for the significant errors that were mutually agreed upon by the Energy Division and the utilities. Joint Utilities would limit corrections to the following:

- Correct the large office lighting schedule for linear fluorescent technologies;
- Account for HVAC package unit updates for 2008 Title 24/ 2010 Title 20; and
- Correct for general 2008 Title 24 updates (primarily HVAC).

DRA/TURN would not limit updates to 2008 DEER version 2.05 solely to mutually agreed upon errors, but would allow Energy Division to follow the language on pp. 42-43 of D.09-09-047, which directed Energy Division to consult with the utilities to “develop a process by which new measures are added to the frozen measure database” along with correcting mutually agreed upon errors. Thus, DRA/TURN would have Energy Division take the lead in the process based on best available information, and not grant “veto power” to the utilities.

Energy Division has not implemented the changes it suggested to the utilities in March 2010. At the October 22, 2010 PHC, Energy Division staff member Peter Lai described a process where staff discovered “some errors or bugs” in the DEER version 2.05 data. RT 252-253. He also described a variety of other specific changes to the database, including in the area of fluorescent lighting schedules, which Energy Division has considered updating to the 2008 DEER version 2.05. RT 253. Mr. Lai stated that the utilities did not agree to make certain changes recommended by Energy Division, because it would be very resource intensive to do so. RT 271-272. According to Mr. Lai, Energy Division now considers the DEER version 2.05 ex ante values to be frozen. RT 251. Thus, Energy Division recommends not to make any specific changes to 2008 DEER version 2.05, and to leave it as-is for this program cycle. RT 253, 270.

Our expectation in D.09-09-047 was that Energy Division would use the best available information to update 2008 DEER version 2.05, including consulting with the utilities on possible updates (including errors). The decision did not contemplate giving the utilities veto power over Energy Division updates. The language Joint Utilities cite concerning “mutually agreed upon errors” is found in the dicta of D.09-09-047, but not in any Conclusion of Law or Ordering Paragraph.

At the same time, there was no specified method (e.g., Ruling, Decision, Resolution, informal document posting) for Energy Division to finalize modifications to 2008 DEER version 2.05. Thus, what might be considered a “stalemate” is now in effect. To resolve this impasse, Energy Division does not now support making the changes Joint Utilities recommend in their Petition (casting doubt on the applicability of the term “mutually agreed upon errors” in

this circumstance) but instead recommends simply freezing 2008 DEER version 2.05 in its current state.

We will deny the Joint Utilities' Petition on this point; instead, we will freeze *ex ante* values as they exist in 2008 DEER version 2.05.² We would have preferred to use the best available information to improve the database, as anticipated by D.09-09-047. However, while there is no doubt that the current DEER values are imperfect, there is a need to move on so as to provide certainty to utilities and their customers. While correction of errors is an appropriate part of determining the best available information, it would be inappropriate to take Joint Utilities' recommendation to make these changes, and not the many others which Energy Division appropriately identified as needing updates.³ Further, we accept Energy Division's suggestion that only correcting certain errors without correcting the bugs in the underlying model would not effectively and substantially improve the database.

It is our expectation that DEER values be updated and set using the best available information for the next energy efficiency portfolio cycle (starting in 2013), and that these values be determined and frozen before the upcoming cycle begins.

² In November 15, 2010 reply comments, SCE stated that the Joint Utilities are amenable to this option as a solution to freezing the DEER data for the 2010-2012 program cycle and note the criticality of ensuring the DEER data is in fact frozen immediately, and remains frozen through the end of the program cycle.

³ Because Energy Division formally recommended freezing DEER values at the 2008 DEER version 2.05 levels, Energy Division's specific recommendations for other DEER updates were not sent out for comment in the October 27, 2010 Ruling.

3.2. Non-DEER Values (except Custom Projects)

D.09-09-047 at 43 allowed the Energy Division to conduct a non-DEER workpaper review process in order to finalize the non-DEER *ex ante* estimates, stating: “Energy Division must implement a review and approval process that balances the need for measure review with the utilities’ need to rapidly implement the portfolios approved by this Decision.”

A November 18, 2009 ALJ Ruling (Ruling) established a deadline of March 31, 2010 as the date by which the entire spectrum of *ex ante* estimates for 2010-2012 must be frozen.⁴ According to the process established by the Ruling and subsequent Energy Division direction, the utilities submitted all required non-DEER measure workpapers in advance of the March 31, 2010 deadline. Energy Division rejected or required major changes to all reviewed workpapers. At this time, there is not yet a final set of frozen *ex ante* measure values.

Joint IOUs urge the Commission to clarify that the non-DEER workpapers that have been submitted, and for which Energy Division has not concluded its review, will be dealt with in the following manner:

- (a) The *ex ante* values in IOU workpapers submitted by March 31, 2010 would be frozen for the duration of the program cycle.
- (b) Those workpapers which are impacted by the corrections to DEER accepted by the Joint Utilities would be updated accordingly immediately after the release of the corrected DEER data. The workpapers would then be frozen for the duration of the program cycle.

⁴ Administrative Law Judge’s Ruling Regarding Non-DEER Measure *Ex Ante* Values, dated November 18, 2009, p.4.

- (c) Corrections of errors would be made to workpapers during the program cycle if they are mutually agreed upon by the Energy Division and the IOUs.

During the course of a program cycle, Joint IOUs expect they will implement new measures and/or modify existing program strategies that will require additional workpapers beyond the frozen DEER or non-DEER datasets. The November 18, 2009 Ruling outlines a process that gives Energy Division a 15-day review period in which to provide comments on these additional workpapers. Joint IOUs submitted workpapers pursuant to this process since the post-March 31, 2010, deadline, but claim they did not receive a response from Energy Division. Joint IOUs request that the Commission modify the Decision to clarify the process for new workpapers the utilities have submitted post-March 31, 2010 for which no response has been received, as well as for new workpapers that will be submitted on a going forward basis.

Joint IOUs propose the following:

- The *ex ante* values in IOU workpapers submitted after March 31, 2010, and before the Commission rules on this Petition will be frozen for the duration of the program cycle.
- During the program cycle, Energy Division can make recommendations to the Joint IOUs to correct any significant errors in these workpapers.
- Only new measures that utilize different technologies and calculation approaches not already reviewed would require a workpaper submission as a new measure.
- The Joint IOUs will provide Energy Division a copy of newly developed or significantly modified workpapers for their review. As set forth in the Ruling, Energy Division will have 15 days to review and provide comments. If the Energy Division does not provide any comments within 15 days, the *ex ante* values as set forth in the workpapers will be frozen, pending any changes that the IOUs agree to revise.

DRA/TURN oppose the Joint Utilities' request because freezing *ex ante* values strictly based on what the utilities filed on March 31, 2010 would eliminate the meaningful review role for Energy Division as envisioned by D.09-09-047. The result of this would be to ignore the concerns expressed in D.09-09-047 about utility data, and simply adopt whatever the utilities proposed without regard to the quality of the underlying data.

At the October 22, 2010 PHC, Peter Lai of Energy Division described its process of review for the Joint Utilities non-DEER workpapers submitted March 31, 2010. He described separate processes for review of high-impact measure (HIM)⁵ workpapers and non-high-impact measure (non-HIM) workpapers. For non-HIM workpapers, Mr. Lai stated that Energy Division and the utilities agreed that these workpapers would be frozen for the 2010-2012 program cycle without review. RT 283-284. However, if any non-HIM measures became an HIM measure during the program cycle, then it would be subject to the HIM Phase 2 Retrospective Review process for the submission, review, and acceptance/approval of new non-DEER measures workpapers, which was outlined in the November 18, 2009 Ruling. Therefore, for non-HIM workpapers, Energy Division and Joint Utilities are in agreement.

For HIM workpapers, Mr. Lai described an interactive process of Energy Division and utility discussion and review of the March 31, 2010 utility submission which lasted until July 12, 2010. RT 284-285. On July 12, 2010, Energy Division mailed to the utilities its position on which workpapers would

⁵ High-impact measures are defined as those which contribute to more than 1 percent of portfolio energy efficiency savings.

be approved, which would be approved with recommendations, and which would not be approved. RT 285. The utilities' response to the Energy Division position is the Petition we consider here.

In the October 29, 2010 Ruling, Attachment 1 summarized Energy Division's proposed disposition of non-DEER HIM workpaper review. Attachment 2 provided a detailed listing of the non-DEER workpapers reviewed by Energy Division and Energy Division's proposed disposition of the specific workpapers. Attachment 2 lists the non-DEER workpapers reviewed by Energy Division and its proposed disposition of those workpapers, into the following three categories:

- Approved – Energy Division recommends approval of workpapers at this time.
- No Approval at this time – Energy Division recommends that the measure or group of measures workpapers not be approved at this time and provides documentation supporting its finding. This means the workpaper is not acceptable, and thus measure *ex ante* value cannot be frozen. The workpaper would need to be corrected per Energy Division's recommendation and resubmitted for review.
- Approval Upon Inclusion of Revisions – Energy Division recommends approval of measure workpapers after the revisions listed are incorporated into the workpaper and provides documentation supporting its finding. This means the workpaper is in general acceptable to Energy Division except for some minor issues. Once these issues are revised per Energy Division's suggestion, the workpaper will be completely acceptable and the *ex ante* value can be frozen.

In comments filed November 5, 2010, DRA/TURN recommend considering two general points in our review of the Petition and the related Energy Division materials. First, DRA/TURN contend D.09-09-047 was very clear that *ex ante* values for 2010-2012 should be frozen, based upon the best

available information at the time the 2010-2012 activity is starting. Second, DRA/TURN note that when D.09-09-047 was issued, the 2006-08 evaluation, measurement and verification (EM&V) process was approaching its conclusion, with the final results likely to be available in late 2009 or early 2010. Therefore, DRA/TURN contend that all parties should have understood that the 2006-08 EM&V process would have substantial impacts on the ex ante values for use in planning and reporting accomplishments.

In November 15, 2010 reply comments, SCE stated that the Joint Utilities agree with some of the Energy Division's recommended non-DEER HIM revisions. However, SCE contends the Joint Utilities were unclear how to respond to some of Energy Division's recommendations, as SCE claims many of the requests were contradictory to previous Commission directives, or were otherwise unclear. For example, SCE contends that many of the requests contained direction to implement changes when fundamental disagreements still existed between Energy Division and the IOUs, or provided unclear recommendations that were based on review of one IOU's workpapers, but implied changes to all IOU workpapers for the measure.

D.09-09-047 at 22 stated: "As for non-DEER ex ante measure review and approval, we direct Energy Division to develop that review and approval process within 30 days from the date of this decision, to be issued in an ALJ ruling." Energy Division did begin its review within the anticipated timeframe. There has been a dialogue on non-DEER HIM workpapers between the utilities and Energy Division, which has not been resolved to date. Put another way, the utilities do not accept the outcomes determined by Energy Division.

~~As with the DEER dataset, the guiding principle from D.09-09-047 is the use of best available information, as long as this is consistent with finality and certainty. In D.09-09-047, the Commission rejected utility proposals to freeze ex ante values at other levels using older data, in favor of an approach that increased the opportunity to adopt a freeze level that reflected the 2006-2008 results.~~

~~The utilities currently maintain their own workpapers for non-DEER measures. Energy Division was given the task of determining updated non-DEER values using best available information. This information includes the workpapers provided to Energy Division by the utilities on March 31, 2010. Energy Division has performed an independent review of these workpapers, as we directed them to do. Energy Division has done its work in a timely manner, and Joint Utilities have provided no basis for second-guessing its judgment. Because Energy Division's recommendations include both utility recommendations and its own independent review, the principle of best available information is achieved using the Energy Division process. The Energy Division process also achieves finality in most cases. We will adopt the Energy Division non-DEER HIM workpaper determinations. These are included as Attachment 1 to this decision. However, in order to reach finality on non-DEER HIM workpaper determinations, we must add certain elements above and beyond the Energy Division process.~~

~~With the process of "No Approval at this time," Energy Division has already provided the utilities with specific recommended changes on approximately 24 workpapers (out of approximately 50 HIM workpapers), as shown in Attachment 2 of the October 29, 2010 Ruling. As presently set up, if the utilities do not agree to the Energy Division specific recommendations, there will~~

~~be a Phase 2 Retrospective Review process for the submission, review, and acceptance/approval of non-DEER measures workpapers, as outlined in the November 18, 2009 Ruling. This process does not lead to finality unless the utilities and Energy Division ultimately agree.~~

~~We will require the utilities to incorporate the revisions recommended by Energy Division in Attachment 2 of the October 29, 2010 Ruling. Joint Utilities shall file a Motion in R.09-11-014 within 30 days of the date of this decision asking to incorporate such revisions. The ALJ and/or assigned Commissioner in R.09-11-014 shall issue a Ruling adopting frozen ex ante values for non-DEER HIM measures in the “No Approval at this time” category.~~

~~The process of “Approval Upon Inclusion of Revisions” as proposed would reach finality only if the utilities agree to the Energy Division revisions, which are generally fairly minor. As we have seen since March 2010 (and in previous years), there are circumstances whereby the utilities do not agree to Energy Division recommendations. A formal process is needed to reach finality as a backstop, to prevent an impasse. Therefore, we will allow the assigned ALJ or Assigned Commissioner in R.09-11-014 to issue a Ruling approving final non-DEER HIM workpapers if Energy Division and the utilities cannot agree after Energy Division revisions are set forth.⁶~~

~~For new measures and/or modification of existing program strategies that will require additional workpapers beyond the frozen DEER or non-DEER datasets, the process will continue to be the Phase 2 Retrospective Review~~

~~⁶ Energy Division and the utilities should attempt to work out any differences before any Ruling is issued.~~

~~process for the submission, review, and acceptance/approval of new non-DEER measures workpapers, which was outlined in the November 18, 2009 Ruling.~~

At this time, we will defer making a determination on this issue to allow an opportunity for further consideration. This issue will be addressed in a forthcoming decision on the Petition.

3.3. Custom Projects

Customized projects, by their nature, require unique calculations for each project, as they do not rely on fixed DEER or workpaper values. While the values themselves cannot be “frozen,” Joint IOUs believe it is reasonable and consistent with Commission policy to freeze the approach (or methodology) to calculating customized projects for the 2010-2012 program cycle. Further, Joint IOUs propose that the values determined at the time of installation of a customized project be frozen for purposes of determining whether the utilities have met their goals. They claim this enables the same predictable and consistent process for customized projects.

Joint IOUs claim Energy Division has greatly expanded data requirements related to customized projects. For example, they claim Energy Division has asked the utilities to aggregate savings in real time from all measures from all programs at a given customer site during a three-year period and notify Energy Division within one business day when the project savings reaches a certain trigger level. Energy Division has also asked the utilities to provide a detailed archive and non-industry standard analysis of engineering tools that Joint IOUs claim they may not be legally able to perform and that would also require numerous project specific details that may not be universally applicable.

In order to ensure a fixed process for customized projects and to avoid significant additional administrative and systems-related expenses, the Joint

IOUs request the Commission adopt a customized project approach (outlined detail in Appendix C of their Petition). This approach includes:

- Custom measure/project calculation methodologies based upon DEER methodologies as frozen for 2008 DEER version 2.05 when possible or practical.
- The utilities would provide Energy Division with a list of the common preferred engineering tools used for customized projects on a quarterly basis. The list will indicate the source of the tool, source of the documentation (where available), and the general applications of the tool.
- The utilities would keep an electronic archive of the customized Project application data that will be available for subsequent Energy Division data requests.
- For applications that meet or exceed specified trigger points, the utilities would provide custom project applications and ex ante and incentive estimate supporting documentation in electronic format to Energy Division.

Joint Utilities claim this approach to customized projects strikes an appropriate balance between the Energy Division's oversight role and the Commission's intent to reduce the regulatory administrative burden on the utilities and ensure a predictable process.

DRA/TURN sought to have Energy Division's input on the customized energy efficiency project review process placed in the record. This was done at the October 22, 2010 PHC and through the October 29, 2010 Ruling. At the PHC, Energy Division staff Peter Lai discussed Energy Division's interactions with the utilities, including the production of a document outlining Energy Division's approach to reviewing customized projects. RT 309-312. This document was included as Attachment 3 of the October 29, 2010 Ruling. Further, Energy Division has also provided its proposed revisions to the Joint IOU proposal in

the Petition. This document was included as Attachment 4 of the October 29, 2010 Ruling.

EnerNOC is interested in resolution of ambiguity in determination of values for customized projects, so that it can move forward in working with the utilities to provide customized energy efficiency services to commercial, institutional and industrial customers. To this end, EnerNOC seeks clarity in the working relationship between the utilities and Energy Division. EnerNOC also seeks certainty about what the trigger point should be to review non-DEER customized projects, with the objective of eliminating delay to customer implementation and payments.

In its comments on the Ruling, EnerNOC states that it reviewed Attachment 4 to the Ruling concerning Energy Division's review process for customized projects. EnerNOC recommends that, before approving any process for reviewing "customized projects," the Commission should:

- Direct the utilities and/or Energy Division to explain how the determination was made that Customized Projects that meet or exceed certain trigger points require additional Energy Division review;
- Determine that it is necessary and important to review Non-DEER Customized Projects above a certain trigger point;
- Direct the utilities to modify the Joint IOUs' Petition to include timelines for the Non-DEER Customized Project review, with the objective of eliminating delay to customer implementation and payments; and
- Adopt a process for communicating the impacts of any new review process to customers and program implementers.

In comments on the Ruling, DRA/TURN generally support the process proposed by the Energy Division.

D.09-09-047 did not speak directly to *ex ante* values for customized projects, rather including this issue under the overall non-DEER discussion. As with DEER values and non-DEER HIM workpapers, D.09-09-047 called for making determinations based on best available information. Energy Division has proposed a detailed custom measure and project review process that we believe ensures that the *ex ante* values for a full range of types and sizes of custom measures and projects will be reviewed. Energy Division plans that this review will take place based upon utility submitted customer, measure and site specific data along with the utility proposed calculation methodology as submitted. In particular Energy Division has proposed to review the customer specific data, the measure and site specific data, and the calculation methodology, including how codes and standards or industry standard practice baselines are utilized in the calculation process. ~~We believe that the Energy Division's process will adequately ensure, as directed by D.09-09-047, that customized measure and project *ex ante* values will be frozen in a timely manner as they are made available for review by the utilities, and also ensure that those *ex ante* values will be frozen using the latest and best available information.~~

~~We appreciate the concerns raised by the IOUs, EnerNOC and NAESCO regarding the potential burdens on customers of the Energy Division's proposed process. It is not our intent or interest to unduly burden customers, to cause unnecessary delay, or to add additional duties to Energy Division. We do not believe that Energy Division's proposal will result in such problems. However, we will direct Energy Division to assess its process as it is implemented. To this end, the assigned ALJ and/or Commissioner in R.09-11-014 may issue a Ruling to revise the trigger levels upward or otherwise limit any undue burden on~~

~~customers, utilities and staff from Energy Division review of non-DEER customized projects.~~

At this time, we will defer making a determination on this issue to allow an opportunity for further consideration. This issue will be addressed in a forthcoming decision on the Petition.

4. Benchmarking

This issue will be addressed in a forthcoming decision on the Petition.

5. Co-Branding

In 2009, under the direction and guidance of the Commission staff, the utilities assessed the Statewide Marketing Education & Outreach (SW ME&O) program brand known as Flex Your Power (FYP). The assessment resulted in the creation of a new statewide “smart energy living” brand, called Engage 360, encompassing energy efficiency, demand response, and the flexibility to possibly include other demand side management options at a later date. D.09-09-047, Ordering Paragraph 34 (sixth bullet point), directed the utilities to “use the brand alone or in a co-branded capacity across all energy efficiency marketing efforts for all programs.”

While Joint IOUs state that they fully support the use of the new Engage 360 brand, Joint IOUs seek to modify D.09-09-047 regarding co-branding in order to minimize confusion in the marketplace regarding whom a given communication is from. Joint IOUs argue that the decision requires an IOU to develop marketing collateral for any Energy Efficiency program with an IOU logo alongside the new statewide brand, but this requirement is not always appropriate.

There are several instances that Joint IOUs request modification of the co-branding requirements:

- Joint IOUs seek flexibility to approve any co-branded material prior to its publication. For example, in any instance where an IOU does not approve the use of its logo in co-branded material, the statewide ME&O Program should use only the new ME&O brand.
- For all other statewide programs, Joint IOUs request the opportunity to approve the use of their brand in any co-branding material prior to its publication. In the event that an IOU does not approve, only the utility logo should be used.
- Joint IOUs propose several exceptions to the co-branding requirement where they propose only an IOU logo should be used:
 - Any program not funded by energy efficiency funds;
 - Campaigns and collateral that bundle energy efficiency and non-energy efficiency programs;
 - Advertising solely funded by IOU shareholder funding and used at discretion of IOU; and
 - Energy efficiency local and third-party program-specific marketing funded by energy efficiency funds.

Finally, in order to support the introduction and evolution of the new brand, Joint IOUs propose that co-branding of Engage 360 with IOU brands begin in conjunction with the launch of the mass media phase of the ME&O campaign and after awareness of the new Engage 360 brand is established. These co-branding efforts should begin at the determined threshold according to above guidelines and should preserve IOU ownership of the use of their respective corporate brands.

DRA/TURN urge the Commission to reject the request for “unfettered unilateral discretion” to determine when to use the Engage 360 brand. They argue that such discretion would be inconsistent with the Commission’s intent that the new brand be used as directed by D.09-09-047 in Ordering Paragraph 34.

DRA/TURN contend that allowing the IOUs to decide when to use (or not to use) the brand would undermine the goal of providing clear, consistent information about energy efficiency and ways that Californians can reduce their energy use and greenhouse gas emissions.

At the October 22, 2010 PHC, Mr. Cope representing Joint Utilities stated that the IOUs did not seek the flexibility to unilaterally say when they would and would not use the Engage 360 brand, but instead to have some discretion as to when to use it on local programs. For example, Mr. Cope cited the current local governmental energy efficiency partnership pilot program with the City of Palm Desert as a situation where there could be confusion between Engage 360 and a local brand. On all statewide programs, he stated that Engage 360 would be used. RT 288-290.

The intent of D.09-09-047 regarding co-branding is clear: the utilities are to “use the brand alone or in a co-branded capacity across all energy efficiency marketing efforts for all programs.” The context of this requirement is stated as follows in D.09-09-047 at 236 (footnotes not in original):

We agree with the parties’ comments to have the brand scope include all IDSM⁷⁶ (including low-income) and renewable self generation options. However, we will use the market research studies to determine the most effective pragmatic approach to launch and evolve the scope of the brand beyond energy efficiency/conservation.

We direct the utilities, working under the direction of Energy Division, to complete the brand assessment studies and to implement the recommendations of that study in compliance with

⁷⁶ IDSM stands for integrated demand side management.

the direction provided herein and consistent with the Strategic Plan.⁸⁷

The utilities state that they intend to use the Engage 360 brand on all statewide energy efficiency programs, as intended by D.09-09-047. There is no need to modify the decision on this point to allow utility pre-approval or veto. Joint Utilities provide little justification for exceptions to D.09-09-047 for other programs funded by energy efficiency funds, other than vague assertions of potential confusion. As there is no evidence of actual or likely confusion, we will not grant this request.

We will deny the Joint Utilities' Petition on this topic on all but one point. We will modify D.09-09-047 in one respect. There may be some IOU energy efficiency programs not funded by energy efficiency funds in 2010-2012 (although no specifics were given by Joint Utilities). In such cases, the requirements of D.09-09-047 are not binding. We will modify D.09-09-047 to make this clarification.

On a related issue regarding co-branding, the Joint Utilities claim it is essential to introduce co-branding in a phased approach that aligns with the marketing plan for the brand. The marketing plan was developed by DraftFCB, as shown in Attachment A to the Joint Utilities' November 15, 2010 filing (filed by SCE).

A key component of DraftFCB's strategic approach for brand implementation is to introduce this brand through a "grassroots movement".

⁸⁷ The completed brand assessment study can be found at: http://www.cpuc.ca.gov/NR/rdonlyres/93CB5008-7AED-4BB3-A940-138B84824FA9/0/SWMEO_Brand_Assessment_Report.pdf.

rather than initially launching it via a more traditional mass media campaign. In the initial phases of the groundswell movement that DraftFCB will build, Engage 360 will rely on Ambassadors and Leaders to personally carry its message. Later phases planned for the first quarter of 2012 will focus on transmitting the message through traditional mass media, after brand recognition and understanding of the brand have been established. As such, DraftFCB has recommended that co-branding with the IOUs be delayed until this time.

This request is reasonable and will be approved.

6. Whole House Programs

D.09-09-047, Ordering Paragraph 21(a) states: “Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall include a Prescriptive Whole House Retrofit Program (PWHRP) in their statewide residential program, consistent with guidance provided in this decision.” The new statewide PWHRP was to be in addition to the utilities’ respective local Whole House Prescriptive program (WHPP). These programs are collectively referred to as “Whole House Programs” and are designed to comprehensively address the potential for energy savings in residential buildings.

Since the issuance of D.09-09-047, Joint IOUs state that they have worked closely with Energy Division to further develop the Whole House Program designs. A program implementation plan was filed via Advice Letter on January 29, 2010 seeking Commission approval of the Whole House Program.⁹⁸ The

⁹⁸ PG&E 3087-G/3608-E, SCE Advice 2430-E, SDG&E Advice 2144-E/1926-G, SCG Advice 4070. PG&E’s advice letter was supplemented by PG&E Advice 3087-G-A et al on March 5, 2010.

Commission issued final approval of the Whole House Program on March 29, 2010. In collaboration with Energy Division, the Joint IOUs are currently continuing analysis on this program to determine the technical potential for energy savings, program cost effectiveness, and other parameters.

Joint IOUs state that they, along with Energy Division, have determined it is technically infeasible for the PHWRP to achieve an average of 20% annual energy savings by the end of 2012. Joint IOUs request the Commission modify the requirement to reach an average of 20% annual energy savings for the Whole House Programs by the end of the cycle, to an average of 10%⁴⁰⁹ for the Prescriptive (PWRHP or "Basic" Program) strategy ~~(the first performance tier of the proposed Whole House program)~~ by the end of the cycle. The Joint IOUs do not request a lowering of the annual savings target for the WHPP (average savings per home), which would therefore remain at 20% Joint IOUs state they will also continue to evaluate an appropriate ~~performance~~average savings per home threshold for the ~~WHPP program; however, the IOUs~~PHRWP program.

For the Advanced Home Program Portion of their respective local WHPPs, Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) request a minimum 10% energy savings per treated home/unit for the Advanced Home Program portion in their respective local WHPP. PG&E requests ~~the a~~15% minimum energy savings for its customers.

⁴⁰⁹ PG&E requests the CPUC's approval to measure savings for a subset of Prescriptive homes/units to properly characterize baseline energy consumption and modeled savings improvements. After properly measuring and determining appropriate savings estimates for Prescriptive homes, PG&E will work with Energy Division to properly set the Prescriptive Deemed Savings.

Additionally, the Joint IOUs' Whole House Program implementation plan acknowledges the importance of the low income, middle income, and multifamily customers and commits to seeking to expand the program offering during the 2010-2012 program cycle to potentially include multifamily housing units.⁴⁴¹⁰ However, currently there is no identified process for approval of such a plan. Thus, Joint IOUs propose a modification to clearly require the Joint IOUs to file a supplemental Advice Letter outlining program plans for such an expansion if the utilities deem such an expansion is appropriate and feasible.

Lastly, Joint IOUs request the language be modified to clarify the decision's guidance for the IOUs to "aim at reducing the annual energy consumption of 130,000 homes over three years by 20% through comprehensive retrofits." D.09-09-047 at 9. Joint IOUs request a modification to clearly state that these market penetration and energy savings figures represent an aspirational goal and are for the entire state, not specific to the IOUs.

DRA/TURN agree that the requirements for the Statewide Whole House Program should be modified, but not to the extent that the Joint Utilities request. DRA/TURN do not oppose the reduction of the savings goal for the PWHRP, but recommend denial of the request to lower the goals for the Advanced Home Program. DRA/TURN reasons that the higher incentives and additional expenditures authorized for the WHPP should produce a higher level of savings than achieved under the Basic Program. DRA/TURN claim that there is insufficient information to support the Joint Utilities' request on this point.

⁴⁴¹⁰ Advice 3087-G et al, Attachment 1, p. 13.

We will adopt the uncontested proposed modifications to the Statewide Whole House Program for the PWHRP. We agree that the annual savings goals for this program, while reasonable at the time adopted, may be technically infeasible at this time. ~~However, we delete proposed references to “aspirational” goals; this term is too vague and could be misinterpreted as undercutting the importance of our goals. For the WHPP, we agree with DRA/TURN that~~ For the WHPP, as noted above, the Joint Utilities ~~have~~did not ~~supported their request with sufficient information to cause us to change D.09-09-047 on this point.~~ request to lower the annual savings goals for this program from the current 20% (average per home); therefore, as stated in D. 09-09-047, the WHPP’s should continue to “seek to drive the market to retrofit at least 1% of California homes in the utility service areas to at least 20% annual savings by the end of the program cycle.” We note the Joint Utilities intent to lower the threshold for the WHPP to 10% for SCE, SDG&E and SoCalGas and for PG&E, to 15% annual energy savings. These lower incentive thresholds are consistent with an annual average goal of 20% energy savings per home and thus do not require explicit approval herein.

7. Statewide Reporting Requirements

This issue will be addressed in a forthcoming decision on the Petition.

8. Sponsorship Costs

This issue will be addressed in a forthcoming decision on the Petition.

9. California Advanced Homes Program

The California Advanced Home Program (CAHP) is described in D.09-09-047 at 160-161 as follows:

CAHP encourages single and multi-family builders of all production volumes to construct homes that exceed California’s 2008 Title 24 energy efficiency standards by a minimum of 15 %. In this program, multi-family,

single-family, and low-income projects are approached identically. CAHP is proposed as a redesigned program continuation from 2006-2008 and attempts to address some key barriers identified by internal program evaluations. Specifically, the CAHP program proposes to improve the demand for high efficiency homes by assisting builders with marketing efforts and leveraging consumer awareness of “green” products rather than re-educate in terms of efficiency. Further, the CAHP aligns its participant entry point (15% above code) with that of the New Solar Homes Program (NSHP), administered by the California Energy Commission.

D.09-09-047, Ordering Paragraphs 24(a) and (b) state:

- (a) Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall adjust the per-unit (kilowatt-hour, kilowatt, therm) incentive levels within their proposed incentive structure such that the CAHP program provides participants an average of 50% of the incremental measure cost at 20% above Title 24;
- (b) For the CAHP program, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall offer a \$1,000 performance bonus per unit that is built at or above Title 24 by 30% and participates in the NSHP at the Tier 2 level;

Joint IOUs contend it is unclear whether the Decision is meant to apply only to single family units, or to multifamily units as well. Joint IOUs claim that while multifamily units have been eligible for solar electric incentives through NSHP since it was established (July 2007 Standards), the \$2,000 per unit NSHP Tier 2 energy efficiency bonus has only been available to single family homes.

Joint IOUs argue that offering the same level of incentive for both single family and multifamily homes introduces considerable free-ridership concerns. The average typical incentive for multifamily homes is much lower than for single family homes, and thus a \$1,000 bonus for multifamily homes is disproportionately high. For example, a typical single family home in climate

zone (CZ) 10 would earn an incentive of \$1,500, or 63% of the incremental measure cost (IMC) at \$2,370. A typical multi-family unit in CZ 10 would earn an incentive of \$600 or 69% of IMC at \$864. Therefore, while adding \$1,000 per unit is a bonus of 66% per single-family unit, adding \$1,000 per multi-family unit is 166% per multi-family unit or 185% of IMC.

Joint IOUs request that D.09-09-047 be modified to clarify that the \$1,000 bonus is to be offered to single family units only. If the Commission adopts a performance bonus for multifamily units, Joint IOUs suggest granting the utilities the latitude to offer a more proportional \$200 incentive for multifamily units, or a territory-specific incentive, such as marketing dollars, or customized engineering reports, to more appropriately address this market segment.

DRA/TURN agree that a \$1,000 performance bonus for multifamily units appears excessive. DRA/TURN recommend that the performance bonus applies only to single family units, and that the Energy Division work with the utilities to evaluate how to effectively increase the adoption of the CAHP within the multifamily market.

We agree with the parties that D.09-09-047 should be clarified to state that the \$1,000 performance bonus applies only to single family units. For multifamily units, we agree with the Joint Utilities' proposal to offer a lower, more proportional, incentive.

10. Joint Contracting

In D.09-09-047 and in other decisions and directions, the Commission has ordered the utilities to collaborate to further the implementation of a number of statewide Energy Efficiency programs. While the overarching directive to coordinate is clear, Joint Utilities argue that it is not apparent which specific activities the Commission is authorizing the utilities to engage in to further this

directive. Joint IOUs request further Commission direction to address a legal issue regarding joint-utility cooperation posed by the antitrust laws that Joint IOUs contend could impede their ability to comply with these directions unless the Commission specifically grants the Joint IOUs state action immunity for such cooperation.

Specifically, Joint IOUs argue that agreements between competitors such as the utilities concerning core elements of the competitive process, including agreements on price and output, could be viewed as unlawful under the antitrust laws under certain circumstances,⁴²¹¹ thus subjecting the ratepayers or shareholders to the significant costs of defending an antitrust lawsuit and the potential of treble damages if the lawsuit is successful. Joint IOUs therefore have concerns regarding coordinating their activities or otherwise working cooperatively in order to contract with third parties, absent direct and explicit Commission authorization to do so, as well as continued supervision by the Commission over such activities. To mitigate against these potential risks and to promote implementation of statewide energy efficiency programs, and consistent with the decision reached in D.10-06-009 (modifying D.09-12-024),⁴³¹² Joint IOUs

⁴²¹¹ The IOUs believe there are important pro-competitive reasons why joint negotiations about energy efficiency programs and contracts would be deemed lawful. While the absence of state action immunity does not mean that an antitrust violation has occurred, the significant legal risks that the IOUs would face without such immunity are too great.

⁴³¹² Petition to Modify Decision (D.) 09-12-014, which approved SCE's request to co-fund and participate in a feasibility study to determine the technical feasibility and commercial reasonableness of an integrated gasification combined cycle ("IGCC") facility with carbon capture for use in enhanced oil recovery ("EOR") with sequestration. The facility is commonly referred to as Hydrogen Energy California

Footnote continued on next page

request that the Commission address the issue in this Petition and make certain explicit findings.

A State Action Doctrine defense to an antitrust action exists where: (a) the challenged conduct is a result of directions clearly articulated and affirmatively expressed as state policy; and (b) there is continued active supervision of the utilities' activities in this regard.⁴⁴¹³ Here, Joint IOUs ask the Commission to explicitly state, that implementation of the statewide energy efficiency programs as called for in D.09-09-047 represents a state policy goal and that the Commission intends the utilities to work collaboratively to achieve this goal.

In particular, Joint IOUs ask the Commission for a finding that explicitly authorizes the utilities to engage in certain specific activities which they feel will be necessary to collaboratively implement the energy efficiency statewide programs as ordered by the Commission. These activities include:

- (a) Joint and cooperative consultations between and among the Joint IOUs and energy efficiency contractors to assist with determination of the contract requirements of their jointly administered and jointly funded energy efficiency programs;
- (b) Joint cooperative process among the Joint IOUs for the sourcing and negotiation (including program requirements, performance, price, quantity and specifications) of joint contracts for energy efficiency to be managed and run by one lead IOU, subject to approval and review by the other IOUs;

("HECA"). SCE is participating in the study with Hydrogen Energy International LLC ("HEI").

⁴⁴¹³ See D.10-06-009, p. 8, citing *Nugget Hydroelectric, Inc. v. Pacific Gas & Electric Co.*, 981 F.2d 429, 434 (9th Cir. 1992).

- (c). Joint submission to the Commission for its approval of proposed energy efficiency contracts pertaining to implementation of statewide programs; and
- (d). Other joint and collaborative activities pertaining to the collaboration and joint contracting for statewide energy efficiency programs as the Joint IOUs may determine is necessary for implementation of the statewide programs, subject to the Commission's oversight.

Finally, the Joint IOUs ask the Commission for an explicit finding that the Commission intends to actively supervise and is supervising the Joint IOUs in this regard. For instance D.10-04-029, Attachment 2 describes in detail Energy Division's ongoing oversight of the IOU process for planning IOU-managed studies and selection of contractors. Furthermore, Energy Division has been actively working and providing feedback to the utilities through statewide working groups for each of the twelve statewide programs. An example is Energy Division staff's regular monthly meetings with IOU staffs regarding the implementation of the Integrated Demand Side Management (IDSMS) cost effectiveness project and the development of the integrated audit tool.

The Joint IOUs believe it is important for the Commission to make these explicit findings to mitigate the risk of potential allegations of antitrust violations resulting from their adherence to Commission-ordered collaboration, and ultimately, to further the effective implementation of the energy efficiency statewide programs.

Courts have articulated the State Action Doctrine to determine whether a state's legislative and regulatory actions remove certain private commercial conduct from scrutiny under the federal antitrust laws:

"Private party conduct is immune from antitrust liability only if the party claiming immunity shows that its conduct satisfies two requirements. First, it must be 'clearly articulated and affirmatively expressed as state policy.' [*California Retail Liquor Dealers Ass'n v.*

Midcal Aluminum, 445 U.S. 97, 105, 100 S.Ct. 937, 63 L.Ed.2d 233 (1980)(*Midcal*) (internal quotation marks omitted.) This may be satisfied if the conduct is a ‘foreseeable result’ of the state’s policy. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38-39, 42, 105 S.Ct. 1713, 1716-17, 1718, 85 L.Ed.2d 24 (1985). Second, the conduct must be ‘actively supervised by the State itself.’ *Midcal*, 445 U.S. at 105, 100 S.Ct. at 943 (internal quotation marks omitted). This is satisfied only if ‘state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.’ (remaining citations omitted.)” *Nugget Hydroelectric, Inc. v. Pacific Gas & Electric Co.*, 981 F.2d 429, 434 (9th Cir. 1992).

For the first prong of the test for state action immunity, it is sufficient for general state statutory or state constitutional authority to authorize a state agency, such as the Commission, to then specifically address the anticompetitive conduct.⁴⁵¹⁴ Article XII, section 6 of the California Constitution and numerous sections of the California Public Utilities Code (e.g., §§ 451, *et seq.*) clearly reflect such general authorization for state regulation of the rates of electric utilities. In addition, in Assembly Bill 32 (Stats. 2006, ch. 488),⁴⁶¹⁵ and Senate Bill 1368 (Stats. 2006, ch. 598),⁴⁷¹⁶ the Legislature has also made clear by statutory provisions the importance of the Commission’s efforts to reduce greenhouse gas emissions.

We agree with Joint Utilities that we should provide a State Action Doctrine defense against potential allegations of antitrust violations resulting

⁴⁵¹⁴ See, *Trigen-Oklahoma City Energy Corp. v. Oklahoma Gas & Electric Co.* (10th Cir. 2001) 244 F.3d 1220, 1226-1227 (State does not have to point to a specific, detailed legislative authorization for the challenged conduct. The State’s Constitution or statute may merely manifest the State’s intent to displace competition with regulation of electric utilities.)

⁴⁶¹⁵ See, Cal. Health and Safety Code §§ 38501(g) and 38592.

⁴⁷¹⁶ See, Cal. Pub. Util. Code §§ 8340 and 8341.

from their collaboration on the Commission-ordered energy efficiency efforts they have identified. Our energy efficiency program is a public interest program intended for the benefit of all of California. The Energy Action Plan places energy efficiency at the top of the loading order. The California Energy Efficiency Strategic Plan, adopted in D.08-09-040, makes clear that our energy efficiency program is intended as a part of a larger statewide policy effort to reduce greenhouse gases, as well as to promote cost-effective energy efficiency as a substitute for traditional energy procurement. We have specifically provided that the utilities should coordinate their activities or otherwise work cooperatively in order to contract with third parties. Coordination and collaboration among utilities and with our Energy Division is critical and required in order to ensure the full realization of the benefits of our program.

Our modifications concerning active state supervision, the second prong of the test for State Action immunity, require, among other things, that the IOUs make regular progress reports on the progress and status of the IOU activities in support of energy efficiency activities. In D.09-09-047, we have provided for multiple reports from the IOUs on a number of aspects of the adopted 2010-2012 energy efficiency portfolios, and Energy Division oversight of many areas of the portfolios.⁴⁸¹⁷ Additionally, we make clear that parties who actively participated in all phases of the underlying matter which led to D.09-09-047, shall also have access to any confidential reports and other appropriate documents pursuant to

⁴⁸¹⁷ O.P. 8, O.P. 11, O.P. 12, O.P. 15, O.P. 20, O.P. 22, O.P. 24, O.P. 29, O.P. 33, O.P. 36, O.P. 39, O.P. 43, and O.P. 46 provide for utilities to provide reports or file Advice Letters to implement portions of D.09-09-047. O.P. 14, O.P. 27, O.P. 34, O.P. 39, O.P. 50 and O.P. 59 provide for Energy Division oversight of utility energy efficiency efforts.

the confidentiality restrictions of Public Utilities Code Section 583 (for DRA) or the non-disclosure agreements provided in the Procurement Review Group process (for TURN). Thus, DRA and other parties will have access to confidential information regarding this process and can also monitor it.

In light of the requirements necessary to demonstrate immunity under the State Action Doctrine, we believe it is prudent to modify D.09-09-047 to clarify that the cooperative activities the Commission expects among the IOUs related to certain energy efficiency activities shall be deemed to be undertaken at the express direction and under the supervision of the Commission in furtherance of an expressly articulated state policy. We therefore modify D.09-09-047 as set forth below in the Ordering Paragraphs.

11. Comments on Proposed Decision

The Proposed Decision of ALJ Gamson was mailed to the parties on November 16, 2010, in accordance with Section 311 of the Public Utilities Code.

[Comments were filed by DRA/TURN, SCE, PG&E, County of Los Angeles, EnerNOC, the National Association of Energy Service Companies \(NAESCO\), and the California Building Performance Contractors Association. We make several changes in response to comments.](#)

[Several parties \(including NAESCO, which had not previously participated in this part of the proceeding\) commented on the Proposed Decision's treatment of non-DEER *ex ante* values, for both custom and non-custom projects. Sections 3.2 and 3.3 of the Proposed Decision are modified to allow further consideration of these matters. Certain Findings of Fact, Conclusions of Law and Ordering Paragraphs of the Proposed Decision are deleted.](#)

In Section 5 we discuss the Joint Utilities' request in their Petition to allow a phased-in timing for co-branding, and approve this request by adding a new Finding of Fact, Conclusion of Law and Ordering Paragraphs.

Section 6 and associated Findings of Fact, Conclusions of Law and Ordering Paragraphs of the Proposed Decision are modified to clarify that a 10% annual energy savings goal per home for the PWRHP and a 20% annual energy savings goal per home for the WHPP are reasonable and consistent with D.09-09-047, and are understood to signify average savings expected per home, not minimum thresholds.

12. Assignment of Proceeding

This proceeding is assigned to Commissioner Dian M. Grueneich and ALJ David M. Gamson. ALJ Gamson is the Presiding Officer.

Findings of Fact

1. D.09-09-047 adopted energy efficiency portfolios for 2010 through 2012 for Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company. That decision established, among other things, that DEER and non-DEER *ex ante* values should be frozen using best available information.

2. The utilities and the Energy Division have not been able to agree on how to freeze many DEER *ex ante* values and non-DEER *ex ante* workpapers, which were to have been frozen based on best available information per D.09-09-047.

3. It is important to establish clear frozen *ex ante* values in order to ensure the utilities can fully implement the energy efficiency measures approved in D.09-09-047.

~~4. The utilities and Energy Division agree on an approach for freezing *ex ante* values for non-DEER non-high impact measures.~~

~~5. The Energy Division proposal for determining non-DEER high impact measures incorporates both the most recent utility provided information and Energy Division's independent analysis.~~

~~6. The Joint Utilities' proposal for determining non-DEER high impact measures would not take into account Energy Division's independent analysis.~~

~~7. Energy Division's processes for non-DEER high impact measures workpaper review involving "No Approval at this time" and "Approval Upon Inclusion of Revisions" reaches finality only if the utilities agree to the Energy Division revisions. There are circumstances whereby the utilities may not agree to Energy Division recommendations.~~

~~8. Establishing non-DEER *ex ante* values for all customized energy efficiency projects is difficult because of the individualized nature of the projects.~~

~~9. It is necessary and important to review non-DEER customized projects above a certain trigger point.~~

~~10. Energy Division's process for reviewing customized measure and project *ex ante* values will adequately ensure that these *ex ante* values will be frozen in a timely manner as they are made available for Energy Division review by the utilities, and also ensure that those *ex ante* values will be frozen using the latest and best available information.~~

4. ~~11.~~ Branding or co-branding utility energy efficiency-funded projects with the Engage 360 brand is a crucial part of the marketing, education and outreach effort envisioned by D.09-09-047.

5. The Engage 360 brand is expected to focus in the first quarter of 2012 on transmitting its message through traditional mass media, after brand recognition and understanding of the brand have been established.

~~6. 12.~~ It is technically infeasible at this time to attain a 20% annual energy savings goal for the Prescriptive Whole House Retrofit Program by the end of 2012.

7. [The Joint Utilities have not requested to modify 20% annual energy savings goals associated with the Whole House Prescriptive Program.](#)

~~8. 13.~~ D.09-09-047 was not clear whether the \$1,000 performance bonus for the CAHP applies only to single family units, or to multifamily units as well.

~~9. 14.~~ The utilities' energy efficiency portfolios are important to California's ability to meet its clean energy goals and to provide a cost-effective alternative to energy procurement.

~~10. 15.~~ The utilities' energy efficiency portfolio is actively supervised by the Commission.

Conclusions of Law

1. Freezing 2008 DEER version 2.05 values at their current levels is consistent with the dual goals of using best available information and achieving finality.

2. It is reasonable to freeze 2008 DEER version 2.05 values at their current levels.

~~3.—The Energy Division process for determining non-DEER high impact measure workpapers uses the best available information.~~

~~4.—It is not reasonable to use the Joint Utilities' proposed process for non-DEER high impact measure workpapers, as this process achieves finality without using the best available information.~~

~~5.—A formal process is needed to reach finality for non-DEER HIM workpapers under Energy Division's "No Approval at this time" and "Approval Upon Inclusion of Revisions" processes.~~

~~6.—Energy Division’s process for reviewing customized measure and project ex ante values should be adopted.~~

3. ~~7.~~The Engage 360 brand should not be required to be used alone or as co-branding for programs which use no energy efficiency funds.

~~8.—The Joint Utilities have not supported their request to modify language associated with the Whole House Prescriptive Program with sufficient information to require a modification of D.09-09-047 on this point.~~

4. Since D. 09-09-047 did not specify minimum energy savings goals per home for the WHPP, it is not necessary to modify that decision to reflect the Joint IOUs preference for 10% or 15% minimum energy savings per treated home for this program.

5. A 10% annual energy savings goal per home for the PWRHP and a 20% annual energy savings goal per home for the WHPP is reasonable and consistent with D. 09-09-047, and is understood to signify average savings expected per home, not minimum thresholds.

6. ~~9.~~D.09-09-047 should be clarified to state that the \$1,000 performance bonus for the CAHP applies only to single family units.

7. ~~10.~~It is reasonable to allow a lower performance bonus for the CAHP that applies to multifamily units.

8. ~~11.~~D.09-09-047 should be modified to include specific language addressing the State Action Doctrine as set forth in the Ordering Paragraphs below.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 48 of Decision 09-09-047 is modified to read: “Both DEER 2008 and non-DEER measure ex ante values established for use in

planning and reporting accomplishments for 2010-2012 energy efficiency programs shall be frozen. ~~based upon the best available information at the time the 2010-2012 activity is starting.~~ The frozen version of DEER shall be 2008 DEER version 2.05, dated December 16, 2008, as currently posted at the DEER website (<http://www.deeresources.com>) maintained by Energy Division."

~~2. The Energy Division process for approval of non-DEER high impact measure workpapers is adopted, as set forth in Attachment 1.~~

~~3. Joint Utilities shall file a Motion in Rulemaking 09-11-014 within 30 days of the date of this decision asking to incorporate revisions recommended by Energy Division in Attachment 2 of the October 29, 2010 Administrative Law Judge Ruling in this proceeding. The Administrative Law Judge and/or assigned Commissioner in Rulemaking 09-11-014 shall subsequently issue a Ruling adopting frozen ex-ante values for non-DEER high impact measures in the "No Approval at this time" category.~~

~~4. The assigned Administrative Law Judge or Assigned Commissioner in Rulemaking 09-11-014 may issue a Ruling approving final non-DEER high impact measure workpapers if Energy Division and the utilities cannot agree on finalizing Energy Division proposed revisions in the "Approval Upon Inclusion of Revisions" portion of the process in Attachment 1.~~

~~5. The Energy Division process for approval of customized project ex ante values is adopted, as set forth in Attachment 2.~~

~~6. The assigned Administrative Law Judge and/or Commissioner in Rulemaking 09-11-014 may issue a Ruling to revise the trigger levels for Energy Division review of energy efficiency customized projects not listed in the Database for Energy Efficient Resources upward or otherwise limit any undue burden on customers, utilities and staff resulting from Energy Division review of such customized projects.~~

2. ~~7.~~ Conclusion of Law 26 of Decision 09-09-047 is modified to read:

“Measure *ex ante* values established for use in planning and reporting accomplishments for 2010-2012 ~~should~~ shall be frozen based upon the best available information at the time the 2010-2012 activity is starting. The frozen version of DEER should be 2008 DEER version 2008.2.05, dated December 16, 2008, as currently posted at the DEER website (<http://www.deeresources.com>) maintained by Energy Division.”

3. ~~8.~~ Ordering Paragraph 21(b) of Decision 09-09-047 is modified to read:

“Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall file a program implementation plan for the Prescriptive Whole House Retrofit Program referenced in subsection (a) of this Ordering Paragraph by Advice Letter by December 15, 2009; If Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company determine it feasible to expand this program offering to multifamily customers during the 2010-2012 program cycle, they shall jointly seek approval for this component through an Advice Letter.”

4. ~~9.~~ The text of Decision 09-09-047 on page 120 is modified to read as follows:

“The Utility’s Whole House Home Performance Programs shall seek to drive the market to retrofit at least 1% of California homes in the utility service ~~areas to at least~~ 20% annual ~~before~~ savings by the end

of this program cycle (i.e., December 2012). ~~Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall work in coordination with the Energy Division to establish an appropriate energy savings goal for the Whole House Programs, and will include a minimum Prescriptive (“Basic”) and Performance (“Advanced”) energy savings target of 10% for Basic and 20% for Advanced. Pacific Gas and Electric Company shall work in coordination with the Energy Division to establish an appropriate energy savings goal for the Whole House Programs, and will include a minimum Basic and Advanced energy savings target of 15% for Basic and 20% for Advanced.~~ The Prescriptive Whole House Program (Basic Program) will contribute to this goal by driving participating homes in the utility service territories to an average of 10% annual savings, while the local Whole House performance Programs (Advanced Program) will contribute to this goal by driving participating homes in the utility service territories to an average of 20% annual savings.”

5. ~~10.~~ Ordering Paragraph 34 of Decision 09-09-047 (sixth bullet point) is modified to read:

“use the brand alone or in a co-branded capacity across all energy efficiency marketing efforts for all programs which use energy efficiency funds, all or in part. [Co-branding with Investor-Owned Utility brands shall begin in conjunction with the launch of the mass media phase of the Marketing Education and Outreach campaign and after awareness of the new statewide brand is established.](#)”

6. ~~11.~~ Ordering Paragraph 24(b) of Decision 09-09-047 is modified to read:

“For the CAHP program Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company shall offer a \$1,000 performance bonus per single family unit and a \$200 bonus or a territory-specific incentive (e.g., marketing dollars, customized engineering reports, etc.) per for each multi-family unit that is built at or above Title 24 by 30% and participates in the NSHP at the Tier 2 level.”

7. ~~12.~~ Ordering Paragraph 61 is added to Decision 09-09-047 as follows:

“In recognition of the need for affirmative steps to provide effective and efficient joint investor-owned utility management of the California utilities' statewide energy efficiency programs, so they can better meet the state's energy efficiency goals, the Commission authorizes Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company to engage in the following activities:

- (a) Joint and cooperative consultations between and among these utilities and energy efficiency contractors to assist with determination of the contract requirements of their jointly administered and jointly funded energy efficiency programs;

- (b) Joint cooperative process among the four utilities for the sourcing and negotiation (including program requirements, performance, price, quantity and specifications) of joint contracts for energy efficiency to be managed and run by one lead utility, subject to approval and review by the other utilities;
- (c) joint submission to the Commission for its approval of proposed energy efficiency contracts pertaining to implementation of statewide programs; and
- (d) other joint and collaborative activities pertaining to the collaboration and joint contracting for statewide energy efficiency programs as the four utilities may determine is necessary for implementation of the statewide programs, subject to the Commission's oversight."

8. ~~13.~~ Conclusion of Law 104 is added to Decision 09-09-047 as follows:

"In further recognition of the importance of the state's investor-owned utilities' energy efficiency programs to California's ability to meet its clean energy goals, the Commission hereby determines that Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company should jointly implement certain energy efficiency programs and that their exchange of confidential and/or competitively-sensitive information related to such implementation shall be deemed to have been undertaken at the express direction and under the supervision of the Commission in furtherance of an expressly-articulated state policy."

9. ~~14. Applications~~ Application (A.) 08-07-021, A.08-07-022, A.08-07-023, and A.08-07-031 ~~are closed~~ remain open.

This order is effective today.

Dated _____, at San Francisco, California.

~~ATTACHMENTS 1 & 2~~ ATTACHMENT 1

~~Energy Division Direction to Utilities on Disposition of Non-DEER HIM Workpaper Review~~

~~The Energy Division DMQC Review Team (Review Team) reviewed the utilities' non-DEER workpapers for high impact measures (HIMs) identified by 1) the utilities' E3-compliance filings, or 2) lists of "consensus non-DEER HIMs" provided by the utilities.~~

~~The disposition below represents the Review Team's recommendation to Energy Division based on the information provided by the utilities during the workpapers review process. There are three possible dispositions:~~

- ~~• *Approved:* Review Team recommends approval of workpaper at this time.~~
- ~~• *No Approval at This Time:* Review Team recommends that the measure or group of measures workpaper not be approved at this time. For these measures, the Review Team provided documentation intended to support this recommendation.~~
- ~~• *Approval Upon Inclusion of Revisions:* Review Team recommends approving the measure workpaper after the revisions listed are incorporated into the workpaper.~~

~~Based on the Review Team's recommendations on the non-DEER HIM workpapers, Energy Division directs the utilities as follow:~~

- ~~• For workpapers that the Review Team recommended 'Approval', the measure ex ante values are frozen. The utilities **shall** use the measure workpaper ex ante values for their accomplishment reporting towards 2010-2012 goals.~~

- ~~For workpapers that the Review Team recommended 'No Approval at This time', the measure ex ante values contained in those workpapers are not frozen. The utilities **are not** to use those measure workpaper ex ante values for their accomplishment reporting towards goals; but may resubmit the revised workpaper per the Review Team's recommendations under Phase 2 workpaper review process as attached in the November 18, 2009 Administrative Law Judge's Ruling Regarding Non-Deer Measure Ex Ante Values.~~
- ~~For workpapers that the Review Team recommended 'Approval Upon Inclusion of Revisions', Energy Division expects the utilities to incorporate the Review Team's recommendations, and upload the revised workpapers to the <https://energydivision.basecampHQ.com/> website. The utilities shall clearly identify the revised measure workpapers uploaded, and clearly identify that the Review Team's revisions as listed are addressed. Upon uploading the revised workpapers, the utilities **shall** use the measure workpaper ex ante values for their accomplishment reporting towards 2010-2012 goals. Energy Division may review and verify these revised workpapers for accuracy at its discretion anytime during the program cycle. Should a utility not agree with the Review Team's workpaper review recommendations, the workpaper values will not be considered frozen ex ante values, and may be subject to ED's ex post EM&V for purposes of utility goal attainment and ED reporting.~~

~~(END OF ATTACHMENT 1)~~

~~ATTACHMENT 2~~

~~Requirements and Procedures for IOU Non-DEER Custom Measure Ex Ante Value Review and Approval by CPUC Energy Division~~

~~Introduction~~

~~This document addresses how Energy Division will fulfill its mandated role in reviewing ex ante values to be used for custom measure/project claims prior to those values being frozen.~~

~~This document provides Energy Division direction to the Utilities for the submission of proposed custom measure ex ante values, including workpapers that contain the supporting documentation of assumptions and methods used to develop those values, for Energy Division review and approval. This document also provides the Utilities with guidelines as to the information to be included when reporting ex ante claims for custom measures/projects.~~

~~Additional objectives of the process documented here are for Energy Division to review the utilities ex ante custom project estimates early so as to provide real time feedback to the utilities and also to allow Energy Division to collect project pre-implementation data to improve the accuracy of program impact evaluations, without interrupting the program application process or project implementation activity.~~

~~This detailed review process document is intended to be a living document that will be updated as the custom applications review protocol is refined. The general approach to the review process described here is meant to be frozen, although specific details will be added/modified as appropriate to allow Energy Division to perform the required review without disrupting normal program implementation process.~~

Background

~~The Utilities expressed to Energy Division that it is not possible to provide Energy Division ex ante estimates for custom calculated measures or projects until a customer submits an application for a specific measure or project. Energy Division understands that due to their very nature there is a wide and somewhat unpredictable variation of custom measures and projects that will be encountered during the 2010-2012 programs cycle. For each of these custom measures or projects the energy savings impacts, net to gross values, effective useful lives, and participant and incentive dollar values are not known until a customer program application is approved by the utility. In many cases the Utilities are unable to finalize their ex ante estimates for these custom measures until after the measure installation is completed. Thus for many custom measures the process for developing and finalizing the ex ante values is a process that evolves over stages from initial project planning, through project implementation and concludes with the utility finalization of payment after the project is completed. The Utilities have provided Energy Division with a forecast of their target total custom measure/project participation and have also~~

~~provided a list of calculation methods they expect will primarily be used to produce ex ante energy savings claims. However, both the measure or project mix and the specific calculations methods used on each will vary as implementation proceeds.~~

~~For these reasons, while the intent of “freezing” ex ante values of customer measures and projects is the same as that for deemed measures and projects, the implementation of the freeze must be different. Some calculation approaches/methods can be approved and “frozen;” however, the input values used in those calculation methods to produce ex ante values may vary by project for these custom measures and projects and hence need a different process for reporting by the Utilities and review by Energy Division. That process must allow an opportunity for Energy Division review and provide feedback to the Utilities. Additionally, it is expected that there will be a need to alter existing methods or add new methods when specific custom projects are encountered that are not adequately addressed by the available methods known at the time of the ex ante “freeze.” Therefore, the “process” outlined below will be the procedure by which the Utilities will provide information/data to Energy Division for review of customized projects for the 2010-2012 program cycle.~~

Review and Approval Process Steps

- ~~1. Custom measure/project calculation methodologies shall be based upon DEER methodologies as frozen for 2008 DEER version 2008.2.05 when possible or practical.~~

~~Basing custom measure calculations upon DEER methods means that if a measure or project utilizes technologies or is subject to use patterns or interactive effects considerations that are either the same or similar to DEER measures the calculations must be consistent with methods or values taken from DEER.~~

~~This requirement is not intended to restrict the Utilities’ ability to add new custom measures or restrict the custom measure calculation procedures for measures not within DEER. It is intended to ensure that custom measures that are variants of a DEER measure utilize methodologies derived from DEER to ensure the ex ante estimates for similar deemed and custom measures are comparable.~~

~~This is not intended to require the Utilities to utilize out-of-date codes or standards in their custom measure baseline calculations. It is expected that the IOU calculation methods will utilize DEER methods but incorporate code requirements or minimum standards in effect at the time a custom measure project is implemented. It is expected that requirements of codes and standards changes will need to be considered during the planning and permitting stages of long lead time projects and thus will become new baselines for custom measure ex ante values during the course of portfolio implementation activities. The 2008 DEER 2.05 methods and values development may pre-date the codes or standards changes that are in effect at the time of implementation, and thus, do not incorporate the current applicable codes or standards.~~

~~Custom measure ex ante value estimation tools must be updated to reflect code and standard updates regardless of the frozen DEER methods and values not yet reflecting those updates.~~

~~Energy Division will instruct the DEER team to maintain an up-to-date posting of all DEER analysis tools, models and documentation on changes to parameters or methodologies on the DEERResource.com website. The DEER team will also be instructed to provide assistance to IOU staff and their contractors to understand DEER methodologies and how to utilize the DEER tools in support of their development of workpapers and additional tools for their ex ante estimates.~~

~~2. For all custom calculations the Utilities shall provide the Energy Division a complete list and archive of all calculation tools.~~

~~Tools, in the context of this document, means software, spreadsheets, “hand” calculation methods with procedure manuals, or any automated methods used for estimating ex ante values for custom measures or projects.⁴⁹~~

~~Each IOU shall maintain an archive of all tools. The archive shall contain all current and previously utilized versions of all tools used in the development of ex ante values for custom measures or projects claimed during the current program cycle.~~

~~Tools that are freely available to the public via website download, or that cannot be legally re-distributed, will be referenced on the Utility submitted list by providing links to the download website so any versions referenced may be downloaded. However, the Utilities must ensure that all such previously used tools are archived in the event public availability is discontinued for any reason. In that event the Utilities shall furnish Energy Division with those tools.~~

~~Tools that are created by the Utilities or their contractors must be supplied to Energy Division along with any available documentation by making them available on the IOU website described in Step 3 below. The Utilities must arrange access to any proprietary tools and software used in the development of ex ante values so that Energy Division can perform the review described in this document.~~

⁴⁹By March 31, 2010, the Utilities were to have submitted to Energy Division a list of all tools expected at that time to be used for estimating ex ante values for custom projects. However, some tool information and documentation listed in this subsection was not completed by the end of March. In such cases the Utilities shall make their best effort to submit more complete information and documentation on those tools at the earliest time and shall provide timely support to the Energy Division’s reviewers on use of the tools until complete documentation becomes available. Lack of adequate documentation on tools, or inadequate explanation of tool calculation methods may prevent required Energy Division review of ex ante values and thus prevent the freeze of ex ante values.

~~The submitted list of tools, tool weblinks, and the tool archive shall be updated by the Utilities on an ongoing basis during the 2010-2012 implementation activity. The contents of the archive shall ensure that Energy Division can acquire all tools used in the production of ex ante estimates for all submittals to Energy Division including those described under Step 4 below.~~

~~The tool archive shall include:~~

- ~~a. All manuals and user instructions, where applicable. If the calculation tool is simply a spreadsheet, then all cell formulas and documentation shall be readily accessible from the tool;~~
- ~~b. A list of technologies, measures or projects for which custom calculations are performed using the tool;~~
- ~~c. If several tools are allowed to be used to perform calculations for the same measure, a clear description of when one tool or another may be used;~~
- ~~d. The Utilities shall provide the best available list of key input parameters (default or site-specific) for each tool and for each technology covered by a tool and the utility guidance or review criteria for those inputs²⁰;~~
- ~~e. The key user input parameters must include both baseline and installation-specific values;~~
- ~~f. Concise documentation of the guidelines or procedures used by each tool for qualification for early replacement (pre-existing equipment) as the baseline versus normal retrofit or replace-on-burnout (minimum equipment allowed by applicable codes or standards or standard industry practice or CPUC policy, if no codes or standards apply to the equipment or project.) These guidelines must be consistent with Energy Division requirements as outlined in Appendix I.~~

²⁰~~This is not intended to be site-specific parameter values, but rather a list of the names (and definitions) of required parameters for a particular tool to be able to perform a calculation.~~

~~Energy Division, at its discretion, will review tools as well as inputs to the tools for selected projects as part of its ex ante values review and freezing role. This review will encompass all aspects of custom project ex ante measure value development by the Utilities including that the input values and methodologies are reasonable and consistent with common engineering practices. This review will take place as the Utilities submit projects during the implementation period.~~

~~Energy Division, as time permits during the review cycle, may choose to provide the Utilities with comments on one or more of the tools, or require more information or documentation on a tool. After review of a tool Energy Division may require changes to the tool or removal of the tool from future use if that review shows that the tool produces erroneous results or is not in conformance with DEER methods for technologies covered by DEER. Energy Division shall provide the Utilities with a reasonable opportunity to cure any tool deficiency prior to removal from the list of acceptable tools.~~

~~IOU estimation tool initial submissions, update submissions or ED review or re-review of tools may be made at any time. Energy Division tool review dispositions shall be those as identified for custom project reviews in Step 4 below. However, Energy Division tool reviews are done on a prospective basis and do not have retroactive effect. Previously "frozen" project ex ante values arrived at using a tool that is subsequently reviewed and disapproved shall remain "frozen".~~

- ~~3. The Utilities shall keep a complete up-to-date electronic project archive of all custom measures or projects for which applications are either approved or claims are made.~~

~~Each IOU shall maintain a complete and up-to-date custom measure and project archive. The archive shall contain entries for all approved or committed projects as well as entries for all projects in the approval process.~~

~~The Utilities shall provide ED an updated summary of the archive on a weekly basis. The summary will identify project savings by program broken down by end use for each custom project.~~

~~The archive entry for each custom measure or project shall contain all documentation, information on tools used, tool input files or parameters used in the measure or project savings estimates, and a description of the source of the tool input parameters. These IOU archives will provide Energy Division with the same documentation to which the IOUs' own reviewers had access to during its internal review for application approval. Energy Division and its consultants should be able to reproduce savings estimates and review ex ante savings estimates for selected projects or claims from the archived documentation. All cost effectiveness parameters shall be included in the project files, along with the source of those parameters (including estimated incentive and participant cost, EUL, NTG for each measure included in the custom project.) It is understood that not all of the cost effectiveness parameters, such as EUL and NTG, may be developed specifically for each project, however, the values of all parameters shall be included even if they are not developed on a site specific basis.~~

~~Although the specific types of documents and parameters required to be in the supporting documentation will vary based on the type of project, *examples* of the expected data elements are listed below. Not all these items are applicable to all project types.~~

- ~~● Baseline information including Baseline assignment (Code or Standard requirement, Early Retirement, Retrofit, Replace On Burnout, industry standard practice, CPUC policy, etc), schematic diagram or any research or baseline study per Appendix I guidance~~
- ~~● Existing system controls and operating status description~~
- ~~● Existing system output capacities—current output and maximum/design capacity~~
- ~~● Pre installation inspection report~~
- ~~● Post installation inspection report~~
- ~~● Proposed modifications with schematic as applicable~~
- ~~● Preliminary savings calculations and supporting data with documentation to ensure replicability~~
- ~~● Manufacturer's cut sheets when used to estimate ex ante savings or when needed to ensure replicability~~
- ~~● Fuel switching considerations and any required analysis per CPUC policy regarding fuel switching projects (see EE Policy Manual)~~
- ~~● Other fuel savings and/or load increases resulting from the project~~

- ~~HVAC interactive effects values and methods used to develop those values, when measures cause a change in HVAC system loads~~
- ~~Interactions between multiple measures that act to increase or decrease savings relative to a measure stand-alone savings estimate~~
- ~~Pre/post production output data when used in savings calculations and the source of such records~~
- ~~Billing history—one year pre installation, with interval data required when available; when ex ante estimated values rely upon a per unit production established based on multi-year production data, corresponding billing histories are required~~
- ~~IOU or implementer program manual (a single archive of these documents should be referenced rather than including the documents in each project archive)~~
- ~~M&V plans, reports and raw data archives, where applicable~~
- ~~EUL/RUL value, analysis or source~~

~~On an ongoing basis each IOU will maintain its internal archive current for all applications that have been approved. It is understood that the contents of the archive for a project may be augmented as the project moves from an initial submission status to a final reported claim status. These additions are required to reflect the changes in a project from the planning stage to final installation and operation. Each utility claim or tracking data submission will include a reference for each custom measure or project to the archive entry for that item and the claim or tracking submission shall include an extraction of the archive for all measures or projects contained within that tracking submission claim.~~

~~As set forth at the beginning of this step, each Utility shall maintain a list or directory of all custom measure or project applications. This list shall include the project or measure classification information (an ED established measure naming and classification system is to be used), site and customer information (location, contacts, unique customer, project and unique site identifiers²⁴, etc), preliminary, approved and claimed (as~~

~~²⁴ Each IOU shall develop, in consultation with Energy Division, a unique customer identifier system and shall assign an identifier that remains unique to each customer/participant from year to year. Each IOU shall develop, in consultation with Energy Division, a unique project identifier system for customer projects. Projects that are reported using multiple tracking records shall include the unique project identifier~~

Footnote continued on next page

~~available) savings estimates, site inspection dates and status, and IOU and IOU implementation contractor contact information. Utilities will develop an agreed upon project identification system that will be used to uniquely indentify the detailed project files which are maintained. This identifier shall not be re-used or re-assigned to a later project. Each list entry shall contain an item that is the date of the most recent change to any information in that entry. This list shall also contain a link to the detailed project file archive entry for this measure or project entry as well as the last date there was a change to the project detail file archive data. The project list shall be updated weekly with all projects entering preliminary review for approval if the estimated savings on the application or cumulative for the customer site exceeds the trigger values found in Step 4 below. This weekly update shall also apply to projects under approval review if their preliminary savings estimates are altered such that the new estimates exceed any step 4 trigger values. This list is to be updated monthly to include all approved or committed applications.~~

~~Prior to a claim submission, the detailed project archive files need only contain a project application for those projects not subject to the requirements of Step 4 below. That is projects with current savings estimates that meet all of these criteria: 1) fall below all Step 4 trigger values; 2) have not been approved; and 3) are not expected to be included in as a savings claim in the current reporting period. The detailed project archive shall be maintained as complete as possible for those projects that~~

~~such that all records related to a single project can be easily located. Additionally each IOU shall develop, in consultation with Energy Division, unique site identifier system and shall assign an identifier to each site that remains unique to each site from year to year. Both these unique identifiers shall be used to identify all projects and measures, of any type (either custom or deemed), claimed by any IOU core program, any IOU 3rd party or any government partners. No customer or site shall have more than one identifier under the systems developed. A customer and site definition shall be developed that meets the Energy Division intent to aggregate projects and measure savings estimates for the purposes of the defined trigger values. These unique identifies shall be used to aggregate cumulative site or customer measure and project savings for use as the trigger values in step 4 of this document process.~~

~~meet any Step 4 trigger values. However, the detailed project file must be completed for any projects included in a quarterly accomplishment claim.~~

~~ED will host an internet accessible website that meets reasonable security and legal requirements. The Utilities shall upload to the website entries in the approval process for all those measures or projects whose estimated savings exceed any of the trigger values listed in Step 4 below. The Utilities shall upload to this site project data for any projects that Energy Division requests from the weekly summary list described above. The Utilities, Energy Division and Energy Division's specifically designated consultants who have executed non-disclosure agreements shall be given ongoing access to this site.~~

~~4. The Utilities will provide custom project applications that meet or exceed the trigger points defined below in electronic format to Energy Division along with supporting documentation for their ex ante and incentive estimates.~~

~~As described in Step 3, the IOU custom measure and project archive will have special requirements for projects having current or expected savings estimates that exceed any trigger values defined later in this step. These special requirements are triggered at any time once the project savings estimates exceed any trigger value listed later in this section, including initial application submittal or any time during the application review, approval or post approval process. Those special requirements include: 1) immediate addition of all supporting documentation to be sent to Energy Division and its approved consultants via the approved ED web site; 2) notification to Energy Division (and/or its designated consultants) of the scheduling of any site visits (either pre inspection, ongoing inspection or M&V, or post inspection). This notice must provide Energy Division consultants with reasonable opportunity to participate in the activity either as inspection observers or M&V participants at the discretion of Energy Division.~~

~~Energy Division expects that the project archive contents for these projects will be the same applications along with the complete supporting documentation for the application ex ante impacts, incentive and cost-effectiveness calculation parameter values estimates that are undergoing the utility internal review prior to the application approval. Energy~~

~~Division further expects that the project archive contents will be updated on an ongoing basis with supplemental information and inspections data received and utilized by the IOU during the measure or project implementation and payment approval process. The archive will contain any plans or data related to site M&V performed. The applications and supporting documentation, in electronic format, shall be maintained on the IOU project archive site.~~

~~On a weekly basis each IOU shall submit a list of measure or project applications (at any point in the Utility internal reservation or submittal process) that have reached the trigger threshold since the prior list submission. This submission shall be made to Energy Division at the website URL <https://energydivision.basecampHQ.com>. The submitted list shall be of the same format as the IOU complete project list/directory file described in step 3, but shall contain only projects that newly meet the trigger criteria listed below. The submitted list shall include a link or other identifier for the project that allows ED to easily identify either locate or request the detail IOU project archive containing the complete project application and all currently available supporting documentation.~~

~~The Utilities normally schedule site visits during the pre-inspection period. The Utilities will provide notification to ED within 1 business day of scheduling the site visit if the scheduled site visit date is more than 5 days away, or notification within that same day if the site visit is scheduled for less than 5 days from the scheduling date. ED will notify the Utilities prior to the inspection date if they plan to send a representative to the site. The submission is intended to allow Energy Division to review the application in parallel with the utility and allow Energy Division to coordinate any pre-installation inspections, customer interviews and pre-installation M&V or spot measurements with the utility's similar activities.~~

~~It should be noted that at the time of this inspection notification, the Utilities may not have performed a complete project review. For this reason it is required that applications that meet this trigger be submitted as early as possible to facilitate this coordinated activity. Energy Division will supply the Utilities with the results of their reviews and any M&V activities on an ongoing basis. Energy Division reviewers will interact with and provide feedback to IOU review staffs on an ongoing basis such that IOU reviewer are aware as early as possible of any important issues.~~

~~Formal review of any specific custom measure project ex ante value(s) estimation shall have one of the following dispositions:~~

- ~~• *Approved:* Review Team recommends approval of the measure/project ex ante values at this time.~~
- ~~• *No Approval at This Time:* Review Team recommends that the measure/project ex ante values not be approved at this time. For these measures/projects, the Review Team shall provide documentation intended to support this recommendation and such documentation shall include the specific values and/or methods that are required to be changed. Ex ante values left in this status shall not be considered, by Energy Division, to be frozen for the purpose of counting toward goals but rather to be subject to Energy Division ex post evaluation for that purpose.~~
- ~~• *Approval Upon Inclusion of Revisions:* Review Team recommends approving the measure/project ex ante values after the revisions listed are incorporated into the workpaper. For these measures/projects, the Review Team shall provide documentation intended to support this recommendation and such documentation shall include the specific revisions that are required for the status to be changed to approved. Ex ante values left in this status shall not be considered, by Energy Division, to be frozen for the purpose of counting toward goals but rather to be subject to Energy Division ex post evaluation for that purpose.~~

~~With respect to the Review Team's recommendations on the non-DEER HIM workpapers, relative to the Utilities' submission of proposed ex ante values for measures/projects, Energy Division directs the utilities as follow:~~

- ~~• For measures/projects as to which the Review Team recommended 'Approval', the measure ex ante values are frozen. The measure/project ex ante values may be utilized for accomplishment reporting towards 2010-2012 goals.~~
- ~~• For measures/projects that the Review Team recommended 'No Approval at This time', the measure/project ex ante values are not frozen. The Utilities are not to use those ex ante values for their~~

~~accomplishment reporting towards goals; but may resubmit a revised measure/project workpaper per the Review Team's recommendations for a re-review process.~~

- ~~• For measures/projects that the Review Team recommended 'Approval Upon Inclusion of Revisions', Energy Division expects the Utilities to incorporate the Review Team's recommendations, update the measure/project archive with the revised workpapers, and utilize those revised values in their accomplishment reporting towards 2010-2012 goals. Upon Energy Division confirmation that the review team recommendations have been fully and adequately addressed for a measure or project in this state, the disposition will be considered "Approved" and the ex ante values frozen.~~

~~The Utilities are expected to consider the Energy Division review information in future applications review and approval activities as well as future ex ante saving claims. However there is no requirement for any specific action in response to information provided to the Utilities from the Energy Division's ongoing review process on measures or projects claimed in any previous reporting period. In other words, the Energy Division custom measure review process is a prospective review of proposed ex ante values and the most recent reporting period claims and not intended as a retrospective (or revisit) of previous reporting period claims.~~

~~The Energy Division custom measure review period, for a group of projects, shall commence upon the IOU submittal of a quarterly reporting period claim containing those projects, and end at the later of ninety days after that submission or the subsequent IOU quarterly submission. Submitted projects which are not chosen to be reviewed by Energy Division during the review period shall have their values frozen for counting towards goals just as if they had been reviewed and approved. All new or altered custom measure projects and ex ante values for projects that are contained in an IOU quarterly submission are subject to Energy Division review regardless of their prior Energy Division review status. Thus a changed ex ante value in a subsequent reporting period shall have the action of un-freezing the entire project ex ante estimate for that review period.~~

~~The trigger values will be determined at the aggregated site level, not for each application pertaining to that site. For example, some projects may be divided into multiple measures and submitted as multiple applications that can be a combination of deemed and custom measures. All applications for a single customer site during the 2010-2012 cycle participating in any program shall be aggregated for comparison with the trigger values and once any trigger level is hit all current and subsequent applications for that customer site shall be submitted. The trigger values shall be ex ante site-level savings:~~

- ~~a. 250,000 kWh~~
- ~~b. 200 kW (per DEER definition)~~
- ~~c. 10,000 therms~~

~~If Energy Division determines that a higher or lower trigger value is appropriate to meet the review intent these values may be revised. However, such a revision shall not take effect until the second review period after the one during which the Utilities are notified of the change by Energy Division unless the Utilities agree to an earlier effective date.~~

~~These trigger values are intended to serve two objectives: first, to capture approximately 10-20% of the largest projects where the majority of the project savings are custom measures; second, to capture a sample that represents the range of custom measures so that the review activities encompass most estimation tools as well as measure and project types. These projects may represent 50-70% of the total custom measure ex ante savings. This submission will be an on-line submission to Energy Division and will be initiated as previously indicated. This submission will be done at or before the time of utility application approval. Although this trigger will require a utility electronic submission to Energy Division, the implementation may proceed once the submission is complete. If deemed necessary an Energy Division M&V contractor will coordinate with the utility to perform any combination of:~~

- ~~a. reviewing project savings estimate calculations including either parameter values or tool estimate methods;~~
- ~~b. coordinated pre-/post-site inspections;~~
- ~~c. coordinated pre-/post-M&V for the project.~~

~~Energy Division will coordinate any M&V activities on these custom projects with the Utilities and may choose to utilize the Utilities' or its own contractors, at Energy Division expense, to perform site inspections or pre-installation M&V.~~

~~Not all projects submitted for early review as a result of the above trigger will be subject to an Energy Division M&V activity. However, those projects selected for review may be later included as sample points in Energy Division's impact evaluations. Energy Division acknowledges that applications submitted as a result of meeting the trigger thresholds defined above may have ex ante estimates updated prior to being included in a portfolio savings claim submission.~~

~~Subject to the disposition requirements of Energy Division reviews, as described above, the ex ante estimates made by a utility for custom measure/project claims will be frozen based on the utility's actual claim for that application. This claim may include any modifications made prior to final incentive payment such as those based upon utility ex ante "true-up" from post installation inspections, M&V or other adjustments as the utility deems necessary. However, if a claim measure or project was chosen for review by Energy Division, either upon submittal of the claim or prior to submittal during the application process, the ex ante claim value will only be frozen subject to the Energy Division Review Team disposition as described earlier in this step.~~

~~5. Energy Division Early Feedback To Utilities~~

~~During the custom measure review process described herein, Energy Division may develop information regarding specific projects, types of measures or general program performance that may be of high value to the Utilities and their implementers and reviewers. Energy Division will set up an informal procedure to allow direct feedback to the Utilities on a regular basis. Part of that procedure will be the Energy Division/IOU working group described below.~~

~~To facilitate future communication:~~

~~Energy Division and the IOUs will establish a working group to allow an ongoing dialog on issues and problems in any aspect of the custom measure~~

~~impact estimation process. This working group will provide a forum for all parties to exchange information on their current activities and future plan and to discuss and resolve problems and issues with the process outlined in this document. The working group will also provide a forum for Energy Division to inform the Utilities on issues arising in its impact evaluation activities that relates to the custom measure ex ante estimation process. These issues include items such as baseline definitions, net versus gross savings definitions and other items as any party deems necessary.~~

~~At any time during their development of ex ante estimates for a specific measure or project the Utilities may submit to Energy Division a request for an early Energy Division review or opinion on a specific issue. This process has been established by Energy Division issuance of the "Custom Measure Early Opinion Process" document posted as "Custom Measure Early ED Opinion Process v2.docx" on basecamp 9/30/2010 in the "Early Opinion Shared" project area. Energy Division shall respond to that request in as expeditious a manner as possible to provide the Utilities with guidance and to allow the Utilities to complete their ex ante estimates in a timely manner. However, this type of early guidance shall not limit or constrain any formal later Energy Division review of ex ante claims submitted by the Utilities.~~

~~Appendix I~~

~~Guidance for Determination of Baseline for Gross Savings~~

~~Notes to above flowchart~~

~~Pre-existing equipment²² baselines are only used in cases where there is clear evidence the program has induced the replacement rather than merely caused an increase in efficiency in a replacement that would have occurred in the absence of the program.~~

~~Pre-existing equipment baselines are only used for the portion of the remaining useful life (RUL) of the pre-existing equipment that was eliminated due to the program. These early or accelerated retirement cases may require the use of a “dual baseline” analysis that utilizes the pre-existing equipment baseline during an initial RUL period and a code requirement/industry standard practice baseline for the balance of the EUL of the new equipment.~~

- ~~• A pre-existing equipment baseline is used as the gross baseline only when there is compelling evidence that the pre-existing equipment has a remaining useful life and that the program activity induced or accelerated the equipment replacement. This baseline can only apply for the RUL of the pre-existing equipment.~~
- ~~• A code requirements or industry standard practice baseline is used for replace-on-burnout, natural turnover and new construction (including major rehabilitation projects) situations. This baseline applies for the entire EUL as well as the RUL+1 through EUL period of program induced early retirement of pre-existing equipment cases (the second period of the dual baseline case.)~~

~~CPUC policy rules and IOU program eligibility rules govern the baseline~~

~~A careful review of utility and third party program and CPUC policy rules must be undertaken and adjustments applied to gross savings in some cases. Adjustments are indicated for gross when there was clear evidence from program or policy rules that savings claims could not be made nor rebates paid for the baseline in question. Program rules come into play with respect to gross baseline requirements, for example, when those rules specify:~~

²² Here the term equipment is intended to cover all technology cases including envelope components, HVAC components and process equipment and may also include configuration and controls options.

- ~~a minimum required efficiency level;~~
- ~~a minimum percentage improvement above applicable minimum code requirement;~~
- ~~a minimum RUL of the existing equipment;~~
- ~~the type or range of retrofits that are allowed be included in a program. CPUC policy may as apply to establishing gross baseline when Policy Manual Rules, a CPUC Decision or a decision maker Ruling includes special requirements or consideration for the situation or technologies of a measure. For example, projects or sites that involve fuel switching, co-generation or renewable technologies are usually subject to special baseline considerations (or other considerations) that must be considered in the savings estimates.~~

~~Minimum production level or service requirements govern the baseline~~

~~In some situations, a measure for which savings might be claimed could be determined to be the only acceptable equipment for an application. In such cases, the baseline must be set at the minimum needed to meet the requirements, which may be the same as the equipment planned for installation. An example would be an industrial process where only a variable speed drive pumping system could meet the production requirements. For situations where the baseline conditions or requirements were changed (such as production level changes), the baseline equipment is defined as the minimum equipment needed to meet the revised conditions. If the pre-existing equipment is not capable of reliably meeting the new requirement (such as production change) for its remaining life, then a new equipment baseline must be established utilizing either minimum code requirement or industry standard practice equipment, whichever is applicable.~~

~~Industry standard practice baselines are established to reflect typical actions absent the program~~

~~Industry standard practice baselines establish typically adopted industry specific efficiency levels that would be expected to be utilized absent the program. Standard practice determination must be supported by recent studies or market research that reflects current market activity. Typically market studies should be less than five years old; however this guideline is dependent on the rate of change in the market of interest relative to the equipment in question. For example, the lighting markets may change significantly in the next two years~~

~~while larger process equipment markets might change more slowly. Regulatory changes might cause very rapid market practice shifts and must also be considered. For example, forthcoming changes in Federal Standards relating to linear fluorescent ballasts will result in rapid market shifts of equipment use.~~

~~**END OF APPENDIX I**~~

~~**(END OF ATTACHMENT 2)**~~

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Moved cell	
Split/Merged cell	
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