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| Application of Pacific Gas and Electric Company for Approval of 2013-2014 Energy Efficiency Programs and Budget (U39M). | Application 12-07-001 (Filed July 2, 2012) |
| Application of San Diego Gas & Electric Company (U902M) for Approval of Electric and Natural Gas Energy Efficiency Programs and Budgets for Years 2013 through 2014. | Application 12-07-002 (Filed July 2, 2012) |
| Application of Southern California Gas Company (U904G) for Approval of Natural Gas Energy Efficiency Programs and Budgets for Years 2013 through 2014. | Application 12-07-003 (Filed July 2, 2012) |
| Application of Southern California Edison Company (U338E) for Approval of Energy Efficiency and Demand Response Integrated Demand Side Management Programs and Budgets for 2013-2014. | Application 12-07-004 (Filed July 2, 2012) |

# THE DIVISION OF RATEPAYER ADVOCATES' COMMENTS IN REPLY TO THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE (ALJ) FITCH APPROVING 2013-2014 ENERGY EFFICIENCY (EE) PROGRAMS AND BUDGETS ISSUED OCTOBER 09, 2012


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The Division of Ratepayer Advocates (DRA) submits these comments in reply to the Proposed Decision of Administrative Law Judge (ALJ) Fitch Approving 2013-2014 Energy Efficiency (EE) Programs and Budgets issued October 09, 2012 in the above-referenced proceeding (PD).

## I. INTRODUCTION

Overall, the PD advances the Commission's continuing efforts toward improving EE programs. It enhances local governments' opportunity to demonstrate additional value in driving EE program performance through Regional Energy Networks, while exercising discipline in the use of ratepayer capital. The PD also authorizes the investor-owned utilities (IOUs) to jointly hire a consultant to design a market transformation plan for Energy Upgrade California that will be helpful in advancing the state's long-term goal to make existing residential buildings energy efficient. The PD targets a portion of these efforts towards California's hot climate zones. In addition to making factual corrections, these comments address a few areas where changes to the PD are necessary.

## II. DISCUSSION

### A. The PD's Direction On Unspent Funds Collected By IOUs Represents Responsible Treatment of Ratepayer Capital, But Could Go Further By Compelling A One-Time Bill Credit

Fiscal discipline should be restored in the EE programs to protect ratepayers from chronic over-collections in the administration of EE programs.[1] The PD directs the IOUs to apply the unspent collections from 1998-2009 to reduce the 2013 EE portfolio revenue requirement. Unspent collections from the current 2010-2012 cycle would then be applied to reduce the 2014 EE revenue requirement. Given the lengthy period of time (almost 15 years for part of the funds) over which unspent ratepayer funds have been "sit[ting] idle in [utility] balancing accounts",[2] the magnitude of the balance ($176 million not including 2010-2012 unspent balances)[3] and the number of balancing accounts associated with EE unspent ratepayer funds, the

[1] PD, p. 92.

[2] PD, p. 86.

[3] PD, p. 87.

PD should take a step further and direct the IOUs to return the entire unspent collections as a one-time bill credit.

There is precedent for one-time bill credits on balancing account overcollections. In Decision (D.)10-08-020, the Commission directed SDG&E to return $120 million of overcollected funds accumulated in SDG&E's Energy Resource Recovery Account (ERRA) as a result of an overcollection.[4] The one-time bill credit was to be returned on the first day of the following month. D.09-10-021 ordered the return of PG&E's overcollection of $424.4 million to ratepayers as a one-time bill credit.[5] Similarly, in D.09-09-042, SDG&E requested and was ordered to return an overcollection of $124 million as a one-time bill credit.[6] The reason the Commission gave for opting for a one-time credit over a 12-month amortization is so that SDG&E customers could "more quickly receive a return of their share of the overcollection" during "these difficult economic times."[7]

The same reasoning applies to EE over-collections. Ratepayers would more directly benefit by receiving this credit now, rather than receiving it amortized over the 24-month period as contemplated by the PD. Returning the funds as a one-time bill credit would not result in significant rate fluctuation because the amounts in the EE proceedings are less than those in the Decisions referenced above, i.e., $120 million for SDG&E in D.10-08-020, $424.4 million for PG&E in D.09-08-005, or $124 million for SDG&E in D.09-09-042. For these reasons, and, in particular, to provide some rate relief during these difficult economic times, DRA recommends that 1998-2009 utility unspent energy efficiency funds, including interest accrued over this period, be returned to ratepayers as a one-time bill credit before the upcoming holidays, if possible, and in any event by December 31, 2012. Unspent funds from the current 2010-2012 cycle, including interest, should be reported by February 1, 2013 via a compliance Advice Letter filing and returned as a one-time bill credit by March 1, 2013. The distribution of all balancing

[4] D.10-08-020, p. 1 and Finding of Fact (FoF) 2.

[5] D.09-10-021, "PG&E proposes to issue one-time bill credits", p. 3. And see, Conclusion of Law (CoL) 3 and Ordering Paragraph (OP) 2.

[6] "SDG&E proposes the one-time bill credit be calculated as a credit rate applied to a customer's aggregated 12 months of historic usage (August 2008 – July 2009)." D.09-09-042, p. 4; and see, p. 7 and CoL 2.

[7] D.09-09-042, pp. 1-2.

account returns should be proportionate to the distribution of ratepayer class contributions to the unspent EE funds.

The PD's method of treating unspent funds should be reserved for future cycles, *after* the numerous prior-cycle balancing accounts are netted out. In other words, in the future, any end-of-cycle unspent funds should be applied, in its entirety, to the first year of the next cycle so that no unspent funds of one cycle would remain beyond the term of the next cycle's first year.

## B. Codes and Standards

In spite of the downturn in the economy, the IOU applications and PD project that the C&S program will maintain a significant share of the energy savings projections during the 2013-2014 cycle, essentially more than 25% of combined electricity savings, annually.[8] It is essential that the C&S program budget:

a) allocate greater resources and focus for the compliance improvement sub-program; and,
b) allocate sufficient resources to improve and update energy savings calculations attributable to codes and standards in order to ensure its efficacy and reliability when incorporated into future program cycles and energy demand forecasting for integrated energy resource planning.[9] [10] [11]

Despite DRA's earlier comments and the significance of the C&S program to the IOUs' portfolios, the PD is silent on the C&S budget and program implementation. The PD should be amended to reflect this importance.

[8] PD, p. 54.

[9] If ongoing studies indicate changes in savings estimates for the 2013-2014 cycle, savings updates should be made available as well.

[10] DRAs' Protest of the Energy Efficiency Applications filed by the IOUs on July 2, 2012.

[11] The Division of Ratepayer Advocates' Comments in Response to Scoping Memo and Ruling of Administrative Law Judge and Assigned Commissioner, September 14, 2012.

### 1. Fifty Percent of the C&S Program Budget Should Be Allocated to Activities that Will Improve Compliance

Commission documents have identified the importance of strong code compliance to ensure energy savings from C&S, but IOU efforts have underperformed in this area.[12] [13] More resources in the C&S Program budget should be allocated to compliance activities in order to support improvements in compliance that the Commission seeks. To this end, the Compliance Improvement sub-program budget should be increased from 13 percent to 50 percent of the proposed C&S budget. Goals of the sub-program should be to establish:

- EE compliance rates for residential, non-residential, new and existing building stock;
- streamline the compliance process and systems for consumers and contractors;
- target training and new tools toward active, hard-to-reach market participants, such as contractors that do small jobs and those who could expand into advanced code work; and,
- improve documentation in the permitting process and data collection for all compliance sub-program activities.

### 2. IOU Compliance Activities Should Generate Meaningful Data that can be Used to Measure Improved Compliance

All IOU compliance programs, including training programs, should be designed to generate data that can be evaluated and compared to other programs in terms of compliance impacts, either future IOU programs or compliance efforts launched by the local governments. In addition to the IOU proposals, training should be directed to general and specialized inspectors, since these are the only people that have direct contact with the installation of a required or "Reach Code" measure.[14] The evaluation of training should be based on a clear link to improved compliance not only the number of trainings delivered. Stakeholders should be able to gauge the effectiveness of each Compliance Improvement activity.

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[12] California Public Utilities Commission, *California Long Term Energy Efficiency Strategic Plan*, September 2008, Goal 7.3 (2) on p.67 points out that dramatic improvement of compliance and enforcement of codes will result in fully realized energy savings.

[13] California Public Utilities Commission, *2010 – 2011 Energy Efficiency Annual Progress Evaluation Report*, September August 2012, p. 43.

[14] Pacific Gas and Electric Company, *2013-2014 Energy Efficiency Portfolio, Statewide Program Implementation Plan Codes and Standards*, July 2012, p. 17.

### 3. The HVAC Incentive Program Should be Closely Linked to the IOU's Compliance Incentive Tools Pilot Program and disbursement of rebates should be conditioned on proof of permit

The CEC and CPUC have recognized that potential energy efficiency savings have been lost due to a large number of air conditioning units that are not properly installed or maintained. The agencies relate poor system performance with low rates of code compliance and permitted installations.[15] [16] Market transformation is truly needed to vastly improve code compliance and realized energy savings from HVAC equipment. The PD orders both upstream and downstream actions to address these problems. To address low code compliance, the PD directs the IOUs to initiate an incentive program (Ordering Paragraph (OP) 6). DRA suggests that the IOUs make the HVAC incentive program the first focal point of the Incentive Tools Pilot Program that they propose to "explore" in the Statewide C&S PIP. [17] The IOUs should fully ***execute*** (not explore) a pilot that develops tools that make compliance more attractive to participants while documenting compliance activity: tools such as permit streamlining and online compliance capacity, with the goal of taking them to scale in 2015.[18] Linking the HVAC incentive program and the Incentive Tools Pilot would:

1. Leverage administration and resources between two IOU Compliance Improvement programs;
2. Give an immediate focus to the Incentive Tools Pilot;
3. Provide a jump-start for meeting new HVAC Title 24 compliance requirements; and,
4. Lay a foundation for code compliance tool development and data collection, for HVAC and subsequent measures.

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[15] California Public Utilities Commission, *California Long Term Energy Efficiency Strategic Plan*, September 2008: "Less than 10 percent of HVAC systems obtain legally required pre-installation local building permits and 30-50 percent of new central air conditioning systems are not being properly installed," p. 58.

[16] California Energy Commission, *Strategic Plan to Reduce the Energy Impact of Air Conditioners*, June 2008, pp. 1-3.

[17] Pacific Gas and Electric Company, "2013-2014 Energy Efficiency Portfolio, Statewide Program Implementation Plan Codes and Standards," "Explore a pilot project designed to improve compliance by providing incentives to local governments, contractors, or other key market actors..." July 2012, p. 18

[18] New HVAC compliance verification requirements will be effective on Jan. 1, 2014, so some of the tools created for HVAC will be taken to scale earlier than 2015..

The IOUs should be directed to take the developed tools to scale in 2015. OP 6 should be amended to require proof of permit documentation prior to issuing rebates. Additionally, any software or other tools created during this pilot should be flexible and non-proprietary, so they can be used in any jurisdiction and can expand to meet future code compliance needs.

#### 4. The EM&V Plan Should Include a Rigorous Study of Energy Savings Contribution Attributable to C&S, Including a Rigorous Assessment of Compliance Rate Assumptions

As DRA has stated in its earlier comments in this proceeding, evaluation methodology for C&S deserves serious assessment to ensure that energy savings claims from C&S beyond the 2013-2014 transition cycle are reliable. DRA and the IOUs agree that compliance rates need further assessment.[19] DRA proposes that sufficient resources be allocated to support a robust independent analysis of compliance rates for the most significant Title 24 measures and building performance. This may require that some of the revised Compliance Improvement budget be dedicated to EM&V. The transition period presents an opportunity to develop and execute sound methodology to achieve higher confidence in EE savings and attribution to the C&S program.

### C. The PD's application of a spillover 'bonus,' should go hand-in-hand with data collection and program designs targeted to create spillover effect

The application of an assumed 5% bump in savings credited to IOU EE programs is a modest and reasonable compromise given the lack of data on spillover effects in California. This amounts to a 60 MW bonus in savings over the course of the two-year cycle, using IOU estimates of total portfolio savings as reported by ED staff.[20] However, to assume savings are occurring is not enough. Maintaining the *reliability* of EE savings calculations is crucial for integrated resource planning, in addition to ensuring the integrity of cost-effectiveness determinations. Therefore, these spillover assumptions should be supported by data and action. Towards this purpose, the IOUs should be directed to revise their Program Implementations Plan in each program area such that they are designed to cause this specific spillover effect, complete with logic models. Further, a portion of 2013-2014 EM&V funds should be earmarked for

[19] PG&E Response to DRA data request, September 2012.

[20] IOU portfolio savings provided in Peter Lai's e-mail to the A.12-07-001 Service List on October 11, 2012.

measuring spillover effects in California by the end of 2013 to inform the 2015-2017 portfolio cycle.

### D. The PD should direct EM&V funds in the transition period to utilize meter and billing data to calibrate energy savings estimates

Significant capital has been spent in the deployment of smart meters and ratepayers have not yet seen benefits from this capital outlay. Billing and smart meter data should be used to 1) 'true up' energy savings estimates for future program cycles and 2) improve the efficacy of estimated load reductions attributable to energy efficiency in the integrated energy resource planning process, including the Commission's resource adequacy and long-term procurement planning process. As use of data from smart meters is a new endeavor, the effort during the 2013-2014 transition period could be limited to custom projects, HVAC improvements, and whole building retrofits. Calibration of energy savings estimates in these three areas can then inform the 2015-2017 program cycle. The effort to use billing and smart meter data can then be expanded as part of the Commission's efforts to continually improve EM&V for future cycles.

Furthermore, the following improvements should be made in EM&V:

- Progress of energy efficiency programs should be measured across program cycles. As EM&V plans are rolling out, it is becoming increasingly evident that evaluation studies hit the restart button each cycle, making EE program progress difficult to track.
- Spillover effects should be evaluated so that reliable estimates can be used in future program cycles beginning with the 2015-2017 portfolio cycle. Spillover is a desired market effect and an indicator of progress toward market transformation. It is therefore important that it be appropriately quantified.
- The methodology for estimating energy savings from C&S should be improved. C&S compliance rate assumptions need to be updated. As pointed out earlier, energy savings from C&S is now a significant portion of total portfolio energy savings, and it will continue to grow in future cycles. Now is the time to calibrate these estimates to ensure their reliability for use in integrated energy resource planning, resource adequacy, and long-term procurement planning.

### 5. The Three-Measure Minimum Requirement Should be Removed from Flex Path

The PD correctly directs the RENs to scale or tier their incentives, "as recommended by TURN, such that greater incentives are available for greater levels of energy savings."[21] However, the PD's requirement to include at least three qualifying energy efficiency measures is counterproductive because it may shut out hard-to-reach markets such as low and middle income households. Adding new measure requirements would increase costs to consumers without necessarily corresponding benefits. According to FlexPath literature, the program has successfully served lower and middle income households ($31,000-$48,000 and up to $70,000 annual income segment). The average cost of a FlexPath project is $5672, or roughly 8-18% of the participating households' annual incomes. Given this reality, it is unlikely that similar households would spend more than 8-18% of their annual income on additional EE measures without higher incentive levels. Further, there is no evidence demonstrating a one-to-one relationship between number of measures and level of savings. One measure (such as insulation, air sealing or HVAC replacement) may be able to surpass the savings achievement of multiple measures, depending on the measure. Quantity of measures does not necessarily equal greater savings, especially if this policy shuts out low and medium income households. The purpose of FlexPath should not only be to increase volume of savings to a limited number of households, but also to increase accessibility of savings to a larger segment of households.

### 6. The IOUs' Testimony and Supporting Exhibits should not be admitted into Evidence

As indicated in the PD, the IOUs filed their applications on July 2, 2012 and, in response to questions in the Scoping Memo, supplemental information was filed on September 5, 2012. The only response allowed to that supplemental information was on September 14, 2012, less than 10 days later. Five days before the PD was issued, the IOUs jointly moved to admit all of their testimony and supporting materials into evidence. That motion was granted five days later in the PD:

> PG&E, SCE, SDG&E, and SoCalGas jointly filed a motion on October 4, 2012 to move written testimony and supporting exhibits into evidence in this proceeding. These are all materials that were

[21] PD, p. 23.

> available to all parties electronically beginning July 2, 2012, and revised throughout the course of the proceeding.[22]

Admission of that material would be a violation of the non-IOU parties' due process rights because they were not given adequate opportunity to conduct discovery after the supplemental information was provided, to cross examine the proponents of the testimony and exhibits, and/or to submit their own evidence in rebuttal. The precondition for moving testimony and exhibits into the record is not whether the materials have been available to parties throughout the proceeding, but whether non –IOU parties have been given their opportunity to be heard on the material now admitted into evidence. Here, that threshold condition has not been met. Thus, the Commission should not rely on admission of that material as the basis for any findings of fact or conclusions of law in this decision.

### 7. The PD should more clearly indicate what is being approved

The PD does not address all aspects of the IOUs' applications or of the RENs' motions, but summarily adopts everything not mentioned by stating:

> Finally, the program filings of the utilities, RENs, and MEA in this proceeding are voluminous. Not every aspect of every filing or program proposal has been discussed in this proceeding. Therefore, any aspects of the applications of the utilities or the motions of the RENs or MEA in this proceeding that are not discussed, deferred, or rejected in this decision are deemed approved.[23]

Such a blanket order is confusing at best and hopelessly vague at worst. Such an order could easily lead to disputes, potentially before the Commission or its staff, or in civil court. The clearest way to inform the public and parties what is being adopted by the eventual Decision (and any Decision for that matter) is to identify each aspect of what is being allowed or adopted in the Decision. An alternative would be to order the Applicants and Movants to file an Advice Letter delineating what they believe is approved by the above quoted language, and give the parties an opportunity to respond and object if necessary.[24]

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[22] PD, p. 100, and see, OP 47.

[23] PD, p. 100, and see, OP 45.

[24] Because DRA supports more clarity in the eventual decision, it has not provided proposed language for an Ordering Paragraph, but will, of course, do so on request from the ALJ.

## III. CONCLUSION

DRA recognizes the effort exhibited by the PD and supports many of the decisions in it, but also believes that the PD should be modified as described in these comments.

Respectfully submitted,

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