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THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS IN RESPONSE TO THE PROPOSED DECISION ADOPTING EFFICIENCY SAVINGS AND PERFORMANCE INCENTIVE MECHANISM

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits these reply comments in support of the Proposed Decision of ALJ Pulsifer titled *Decision Adopting Efficiency Savings and Performance Incentive Mechanism* (PD). DRA evaluates the merits of the proposals by other parties and draws the following conclusions. 7% is a comparable national average to California, the process explained in the PD for splitting up ex post and ex ante savings is not transparent and will likely result in controversy, and that ex post verified savings is critical in an effective incentive mechanism. The Commission should also adopt Sempra's proposal to use a stretch NTG value of 0.7 for gas efficiency measures.

II. DISCUSSION

A. 7% is a more *comparable* average of other jurisdictions' incentive earnings caps than the 12-13% presented by other parties. 7% is a reasonable benchmark in setting an award cap in California.

NRDC and PG&E recommend that the total award cap be raised to the 2011 average calculated by ACEEE or 12-13% of program costs.[1] ACEEE's survey also presents the range of nationwide incentive earnings caps, 5% – 20%.[2] Because ACEEE reported such a wide range of incentive earnings caps and because of fundamental differences in energy efficiency administration and regulatory structure among jurisdictions nationwide, a simple average is not the appropriate benchmark for comparison when setting a cap in California. Specifically, when comparing caps in other jurisdictions, it is important to look at the factors that may warrant substantially different earnings levels. In order to pick a comparable cap, it is necessary to omit jurisdictions that have fundamentally different energy efficiency administration and regulatory structures than of that of California. DRA is in complete agreement with the PD's observation:

> …comparisons of incentive earnings in other jurisdictions offer only a rough indicator … in terms of [] applicability to California IOUs. Other state jurisdictions are subject to different regulatory programs, risks, and opportunities. For example, not all state jurisdictions included in ACEEE survey offer revenue decoupling as California does. States without decoupling may have to use portions of the incentive awards to compensate for under-collection of revenue requirements.[3]

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[1] NRDC p. 12, PG&E p. 2.
[2] ACEEE, *Carrots for Utilities: Providing Financial Returns for Utility Investments in Energy Efficiency*, January 2011.
[3] PD, p. 26.

PG&E and NRDC state that TURN unjustifiably omitted high values when calculating the 7% statistic.[4] PG&E presents a table that shows the omitted state caps in TURN's analysis but ignores the rationale TURN gives for their exclusion.[5] NRDC states that TURN did not offer rationale for excluding Colorado and Minnesota in their analysis[6] However, Colorado should not be included because the ACEEE appendix states it's incentive earnings cap also includes 'disincentive offset' payments.[7] Minnesota should also be excluded because Minnesota's Next Generation Energy Act (beginning in 2010) would no longer cap incentive earnings, as is also stated in the ACEEE appendix.[8] NRDC argues that the fact that Texas utilities only contract with third party implementers is not a sufficient rational for excluding Texas.[9] However, Texas should not be included as it does not offer revenue decoupling as California does. TURN accurately selected only the states with similar regulatory programs and risks to California, and the resulting average cap is 7%.

NRDC also compares the PD's proposed earnings cap of 9.1% to that of the 2006-2008 RRIM and actual earnings in the past, and concludes that the proposed cap is too low.[10] But the PD acknowledges that the proposed ESPI involves much less risk to shareholders than the 2006-2008 RRIM and therefore warrants a much lower cap.[11] In addition, NRDC ignores the most recent mechanism in California (2010-2012) which awarded earnings capped at only 6% of budgets. The PD appropriately acknowledges that the 2010-2012 mechanism involved minimal risk, therefore the larger risk associated with the ESPI justifies a higher cap than 6%.[12] As stated earlier and consistent with TURN's analysis, 7% of budgets is the average cap of other jurisdictions most comparable to CA. This cap is also an appropriate benchmark *within the range of California's past earnings caps*. This cap is an appropriate limit to protect ratepayers from funding excessive awards. The PD accurately observes:

> Incentive earnings potential must remain limited as necessary to protect ratepayers' interests and guard against excessive and/or unreasonable costs, and to

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[4] NRDC, p. 12 and PG&E, p. 2.
[5] PG&E, p. 3. Also see TURN's post-workshop comments filed on10/1/2012 in R.12-01-005, pp. 5-6.
[6] NRDC, p. 12.
[7] ACEEE appendix, p. 27.
[8] ACEEE appendix, p. 42.
[9] NRDC, p. 13.
[10] NRDC, p. 10. The 2006-2008 RIMM capped earnings at $150 million a year and average earnings in CA from 2006-2010 was roughly $63 million and year.
[11] PD, p. 32.
[12] PD, p. 32

ensure that ratepayers realize commensurate benefits as a result of any incentive earnings paid.[13]

NRDC also erroneously claims that the PD's calculation of 9.1% of budget is actually 7.6% because of the PD excludes EM&V costs, administration costs, and other 'significant' portions of the budget.[14] However, NRDC's analysis should not be adopted at face value as it is not clear whether ACEEE's survey included such costs in calculating the average cap as a percentage of 'program spending.' It is necessary to know whether such costs should be included for an apples-to-apples comparison. Likewise, NRDC includes the budgets for RENs and CCAs in its calculation. Funds for non-utility programs (which will not earn awards) should not be included in the budget used to calculate awards.

B. The process set for splitting up ex ante and ex post is not transparent and would likely be time consuming and controversial.

The PD proposes awarding resource savings based on a mixture of ex ante and ex post values. This mixture would be decided by Commission staff with stakeholder input. Only measures determined to have parameters that are 'sufficiently uncertain' will be subject to ex post evaluation. Multiple parties requested clarification of "sufficiently uncertain."[15] NRDC accurately notes the PD lacks detail and that necessary criteria was not included. DRA agrees with NRDC that the vagueness of the PD and the critical nature of such a process would likely lead to controversy. DRA also agrees with Sempra's comment that "Such an approach will lead to an overly complex and contentious mechanism that lacks transparency."[16]

Unfortunately, Sempra recommends that if the Commission undertakes this process that all deemed measures use ex ante values.[17] Likewise, SCE proposes a poor recommendation suggesting that approved DEER values, large custom projects approved through the EAR process, and workpapers approved through the EAR process all use ex ante values in determining awards.[18] The Commission should ignore these proposals as they do not better define 'sufficiently uncertain' but merely suggest to use more ex ante values. Published values approved in the ex ante process only reflect the best data available at the time of publication.

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[13] PD, p. 25.
[14] NRDC, p. 12.
[15] NRDC, p. 6, SCE pp. 4-5, and DRA, p. 11.
[16] Sempra, p. 2.
[17] Sempra, p. 6.
[18] SCE, p. 5.

Ultimately, the more accurate measurement of program effectiveness are the ex post evaluations. As such, the Commission should abandon the PD proposal to use a mixture of ex ante and ex post values and simply use ex post values exclusively.

C. Ex post verified savings are critical to an effective mechanism, as such, the resource savings component should be based on ex post values

PG&E and Sempra erroneously argue that the resource savings component should be based on ex ante values.[19] These recycled arguments have already been dismissed by the PD. DRA agrees with the PD that: 1) the IOUs do not require certainty in order for an incentive mechanism to be effective; 2) timing concerns with ex post evaluations do not impede an IOU's incentive to maximize savings; 3) ex post evaluations do not change the goals of the cycle being evaluated; 4) ex post evaluations are not 'retroactive adjustments' but instead confirm what was actually realized, 5) the uncertainty with ex post evaluation will keep the IOUs from complacency, and finally, 6) the ex ante lockdown process is no less contentious than ex post evaluation .[20]

The Commission should ignore PG&E's argument that because the Commission considers ex ante inputs sufficiently certain to approve the EE portfolio, it should also consider them sufficiently certain to evaluate the results of the portfolio.[21] Again, the Commission should use the best available information at the time of portfolio approval to set budgets. The Commission should also do the same when awarding incentive earnings. Ex post verification is the best available data available to determine award incentive earnings as it reflects actual performance.

D. Ex post verified stretch NTG and EUL values are a critical part of the proposed ESPI as long as they equitably encourage superior performance

DRA recommends the Commission use stretch NTG and EUL values as they encourage the utilities to pursue longer-term savings and market transformation activities.[22] In addition, DRA recommends the Commission ignore PG&E's proposal to award incentives based on gross savings.[23] The Commission should strive to award the utilities for only savings that result from their performance and not for savings that would have occurred anyway. As such, NTG ratios should be included as an input to the ESPI mechanism. Also, DRA recommends the

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[19] PG&E, p. 4, Sempra, pp. 2-5.
[20] PD, pp. 48-50 and p. 56.
[21] PG&E, p. 4.
[22] See DRA's comments on the April 4, 2013 ACR and DRA's opening comments on the PD.
[23] PG&E p. 6.

Commission ignore PG&E and NRDC's proposal to use ex ante NTG values in the resource savings component.[24] Using ex post values is not a retroactive adjustment as NRDC asserts, but reflects what *actually* occurred.[25] Measuring free-ridership is difficult but necessary to do, and can only be accurately measured after the program is completed. Further, DRA recommends the Commission to use stretch values because it encourages superior performance. If the Commission were to use average NTG and EUL values as PG&E recommends, it would only encourage "average behavior" which should not be the basis for a ratepayer funded incentive mechanism.

DRA does support Sempra's proposal to reduce the stretch value for gas measures. Sempra convincingly argues that a stretch NTG of 0.8 may disadvantage gas efficiency measures and SoCalGas in particular, because gas measures have lower NTG values on average (e.g., SoCalGas's average NTG is 0.54).[26] DRA finds this persuasive and supports using a NTG of 0.7 for gas measures.

III. CONCLUSION

The Commission should adopt the PD as modified by DRA in our opening comments. DRA's modifications include; adding a cost effectiveness threshold to the resource savings component, basing incentive earnings solely off of ex post evaluation results, and reducing the total award cap from 9.1% to 7% of portfolio budgets. The Commission should also adopt Sempra's proposal to use a stretch NTG value of 0.7 for gas efficiency measures.

Respectfully submitted,

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[24] NRDC, p. 5, PG&E p. 6.
[25] NRDC, p. 5.
[26] Sempra, p. 9.