

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
11-12-13  
04:59 PM

Application of the California Energy  
Commission for Approval of Electric  
Program Investment Charge Proposed  
2012 through 2014 Triennial  
Investment Plan.

Application 12-11-001  
(Filed November 1, 2012)

And Related Matters

Application 12-11-002  
Application 12-11-003  
Application 12-11-004

**REPLY COMMENTS  
OF THE OFFICE OF RATEPAYER ADVOCATES**

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November 12, 2013

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**I. INTRODUCTION**

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Office of Ratepayer Advocates ("ORA") hereby submits these reply comments on the *Revised Proposed Decision Addressing Applications of the California Energy Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of their Triennial Investment Plans for the Electric Program Investment Charge Program for the Years 2012 Through 2014* ("RPD"), issued October 15, 2013 in Application ("A.") 12-11-001 et al.

ORA makes the following recommendations in response to issues raised in the opening comments:

- The Commission should uphold the Electric Program Investment Charge (“EPIC”) fund collection cap at \$162 million per year for the 2012-2014 triennial investment plan period; and
- The RPD’s order to utilize a net revenue mechanism for revenue sharing related to financial benefits of Intellectual Property (“IP”) should remain unchanged.

## II. DISCUSSION

### A. **The Commission should uphold the EPIC fund collection cap at \$162 million per year for the 2012-2014 triennial investment plan period.**

The California Energy Commission (“CEC”) and Pacific Gas and Electric Company (“PG&E”) challenge the RPD’s order to cap the collection of EPIC funds at \$162 million per year<sup>1</sup> pursuant to Public Resources (“Pub. Res.”) Code Section 25711.7.<sup>2</sup> Both parties argue that while Section 25711.7 does institute a cap on the collection of EPIC funds it does not identify a specific monetary amount. The CEC suggests that the Commission revise the RPD to remove the firm \$162 million annual cap because Decision (“D.”) 12-05-037 does not set a cap of \$162 million per year, but “establishes an adjustable cap that starts at \$162 million a year and is adjusted upward in

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<sup>1</sup> See CEC Opening Comments, pp. 2-3; and PG&E Opening Comments, pp. 1-2.

<sup>2</sup> Pub. Res. Code Section 25711.7 states:

(a) The Public Utilities Commission shall not require the collection of funds pursuant to its Decision 12-05-037 (May 24, 2012), Phase 2 Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020, as corrected by Decision 12-07-001 (July 2, 2012), Order Correcting Error, and as modified by Decision 13-04-030 (April 18, 2013), Order Modifying Decision (D.) 12-05-037, and Denying Rehearing of Decision, as Modified, in an annual amount greater than the amount specified in those decisions.

2015 and 2018 based on changes in the Consumer Price Index.”<sup>3</sup> PG&E echoes this argument and recommends that the RPD “should be clarified to incorporate the [Consumer Price Index] escalation factors authorized in Ordering Paragraph 7 of D.12-05-037”.<sup>4</sup>

As the RPD states, “[t]his proceeding reviewed the Administrators’ 2012-2014 investment plans for compliance with D.12-05-037 and this [RPD] approves the investments plans, as modified.”<sup>5</sup> The escalation factors were already authorized in D.12-05-037, and do not apply until January 1, 2015,<sup>6</sup> which coincides with the start of the 2015-2017 second triennial investment plan cycle.<sup>7</sup> Application of the escalation factor in 2015 is outside the scope of the 2012-2014 investment plans under consideration in this proceeding, and the RPD’s order to cap the EPIC fund collections at \$162 million per year for the 2012-2014 investment plan cycle is consistent with collection levels established in D.12-05-037 and thus compliant with Pub. Res. Code Section 25711.7.

**B. The RPD’s order to utilize a net revenue mechanism for revenue sharing related to financial benefits of IP should remain unchanged.**

Southern California Edison Company (“SCE”) disagrees with the RPD’s revenue sharing mechanism for financial benefits related to IP.<sup>8</sup> The RPD adopts a 40/60 (40% shareholders/60% ratepayers) allocation for IP royalties and 33/67 (shareholder/ratepayer) allocation for conversion of warrants and encumbrances of

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<sup>3</sup> CEC Opening Comments, p. 2.

<sup>4</sup> PG&E Opening Comments, p. 2; *Also See*, CEC Opening Comments, p. 3.

<sup>5</sup> RPD, p. 2.

<sup>6</sup> D.12-05-037, OP 7, p. 101 states, “The total collection amount shall be adjusted on January 1, 2015 and January 1, 2018 commensurate with the average change in the Consumer Price Index...”

<sup>7</sup> D.12-05-037, p. 31.

<sup>8</sup> SCE Opening Comments, p. 2.

investor owned utility (“IOU”) interests in IP.<sup>9</sup> SCE recommends the Commission instead adopt the Gross Revenue Sharing Mechanism (“GRSM”) “to share with ratepayers the financial benefits associated with the intellectual property developed under EPIC that are considered utility assets”<sup>10</sup> whereby “gross revenues will be shared 90/10 (90% shareholders/10% ratepayers) for products and services in ‘active’ categories.”<sup>11</sup> For products and services in “passive” categories, SCE argues for a “70/30 (70% shareholders/30% ratepayers)” split.<sup>12</sup> SCE’s recommendation would incorrectly result in its shareholders receiving nearly all of the financial benefits of IP developed in EPIC, thus becoming the primary beneficiaries rather than ratepayers. In D.12-05-037, the Commission explicitly ordered that EPIC’s primary and mandatory guiding principle is to “provide electricity *ratepayer benefits*.”<sup>13</sup> SCE’s pro-shareholder position is also belied by the RPD’s orders to institute mandatory conditions on the IOUs’ treatment of IP, specifically:

[The IOUs] must either own for the ***benefit of ratepayers*** the [IP] developed by [EPIC] investments or, absent IOU ownership of the IP for the ***benefit of ratepayers***, the IOUs must, at a minimum, hold a nonexclusive, transferable, irrevocable, royalty-and cost-free, perpetual license to be used for the ***benefit of ratepayers*** that funded the IP.<sup>14</sup>

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<sup>9</sup> RPD, OP 33, p. 133:

[The IOUs] must apply a 60/40 (ratepayer/shareholder) revenue sharing mechanism for net revenues (future or ongoing royalties from the use of a license, sale of securities) related to financial benefits of Intellectual Property (IP) that was developed with [EPIC] funds, and apply a 67%/33% (ratepayer/shareholder) sharing mechanism for proceeds from the conversion of warrants and the gain-on-sale, lease, licensing, or other encumbrance of IOU interests in IP.

<sup>11</sup> SCE Opening Comments, p. 3.

<sup>12</sup> SCE Opening Comments, p. 3.

<sup>13</sup> D.12-05-037, OP 2, p. 99 [*Emphasis added*].

<sup>14</sup> RPD, OP 32, pp. 132-133 [*Emphasis added*].

The Commission’s clear intent is for ratepayers to benefit from the financial gains derived from IP developed under EPIC – not IOU shareholders. SCE’s attempt to place the interests of its shareholders above those of its ratepayers violates the basic principle for which the Commission established EPIC, and should be rejected.

Lastly, the RPD’s proposed allocation for IP royalties is consistent with the most recent review of risk as a determinant of the gain/loss allocation.<sup>15</sup> The GRSM revenue sharing mechanism adopted in D.99-09-070 is not consistent with the Commission’s more recent allocation of gains on sale of utility assets decision adopted in D.06-05-041.<sup>16</sup> The RPD correctly cites to D.06-05-041 as the prevailing authority when determining appropriate allocations on gains (and losses) of utility assets<sup>17</sup> and should be retained. Further, unlike D.99-09-070 which stated that, “[i]n essence, the ratepayers are a limited liability partner in the venture,”<sup>18</sup> ratepayers are the majority partner under the EPIC program. SCE’s proposal to use its GRSM revenue sharing mechanism instead of an allocation consistent with the more recently adopted gain on sales rules should be rejected.

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<sup>15</sup> See, D.06-05-041, pp. 16-32, as modified by D.06-12-043, pp. 3-9 (“*Gain on Sale Decisions*”).

<sup>16</sup> See, D.99-09-070, 2 CPUC3d 579, at 586-587 (1999), quoting D.94-10-044, 56 CPUC2d 642, at 651, (“[w]e adopt this split not because it represents the ‘right’ formula, but because it is acceptable to the parities and appears likely to produce benefits for everyone involved.”) Cf. Extensive consideration of revenue allocation by the Commission in the *Gain on Sale Decisions*.

<sup>17</sup> RPD, OP 33, p. 133. See also , RPD, CoL 85, 122.

<sup>18</sup> D.99-09-070, 2 CPUC3d at 586.

### III. CONCLUSION

For the reasons states above, ORA respectfully requests the Commission adopt the recommendations provided here.

Respectfully submitted,

/s/

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