

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Commission's Energy Efficiency Risk/Reward
Incentive Mechanism.

Rulemaking 09-01-019
(Filed January 29, 2009)

**THE OFFICE OF RATEPAYER ADVOCATES
AND THE UTILITY REFORM NETWORK'S COMMENTS ON
PROPOSALS TO RESOLVE RISK/REWARD INCENTIVE MECHANISM ISSUES**

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I. INTRODUCTION

The Office of Ratepayer Advocates (ORA)¹ and The Utility Reform Network (TURN) submit these comments in response to the proposals of Pacific Gas and Electric Company (PG&E),² Southern California Edison Company³ (SCE), San Diego Gas & Electric Company (SDG&E),⁴ Southern California Gas Company (SoCalGas)⁵ and the Natural Resources Defense Council⁶ (NRDC). Decision (D.) 15-09-026⁷ granted rehearing of D.08-12-059,⁸ D.09-12-045⁹ and D.10-12-049¹⁰ and ordered the consolidated rehearing of those decisions in this docket to ensure that the incentives awarded by the three decisions are “based on calculations verified by the Commission, via the Energy Division.”¹¹ The *Assigned Commissioner and Administrative Law Judge’s Amended Scoping Memo and Ruling*, issued January 22, 2016 (Scoping Memo) directed the submission of proposals on the “the total incentive level for each utility” consistent with the scope of the proceeding as defined by D.15-09-026.

Rather than comply with this direction, the Utilities dispute the existence of any “legal or factual basis”¹² for reconsidering the RRIM incentives and request that the Commission affirm

¹ ORA was also known as the Division of Ratepayer Advocates (DRA) at some points during the course of the energy efficiency proceedings described in these comments, but for the sake of simplicity the comments refer exclusively to ORA.

² *Pacific Gas and Electric Company’s (U 39 M) Proposal to Resolve Issues in Scope*, March 18, 2016 (PG&E Proposal).

³ *Southern California Edison Company’s (U 338-E) Proposal to Resolve Issues In Scope in Compliance with Assigned Commissioner and Administrative Law Judge’s Amended Scoping Memo and Ruling*, March 18, 2016 (SCE Proposal).

⁴ *Joint Proposal of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) to Resolve Issues In Scope*, March 18, 2016 (SoCalGas/SDG&E Proposal).

⁵ ORA and TURN’s comments refer to PG&E, SCE, SDG&E and SoCalGas jointly as Utilities.

⁶ *Natural Resources Defense Council (NRDC) Proposal for Resolution of Issues in Scope*, March 18, 2016 (NRDC Proposal).

⁷ D.15-09-026, *Order Granting Rehearing of Decisions 10-12-049, 09-12-045 and 08-12-059 and Consolidating Rehearings, Modifying Rulemaking 09-01-019 and Denying Rehearing of Rulemaking, and Denying Request for Official Notice*, September 22, 2015, Ordering Paragraphs 4 and 5 at p. 13.

⁸ D.08-12-059, *Decision Granting in Part and Denying in Part the Petition for Modification*, January 2, 2009.

⁹ D.09-12-045, *Decision Regarding [Risk/Reward Incentive Mechanism] RRIM Claims for the 2006-2008 Program Cycle*, December 29, 2009.

¹⁰ D.10-12-049, *Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008*, December 27, 2009. ORA and TURN’s comments refer collectively to D.08-12-059, D.09-12-045 and D.10-12-049 as the RRIM decisions.

¹¹ D.15-09-026, Ordering Paragraph 6, p. 13.

¹² SoCalGas/SDG&E Proposal, pp. 2, 13; see also PG&E Proposal p. 9; SCE Proposal, p. 4.

the awards of the RRIM decisions for which rehearing was granted. Alternatively, PG&E, SoCalGas and SDG&E recommend that the Commission should adopt awards using Scenario 3,¹³ which calculated energy savings using *ex ante* savings estimates.¹⁴ The Utilities and NRDC contend that the independently verified energy savings results of the Energy Division’s evaluations contained inaccuracies and attempt to undermine the evaluations by arguing for the alternative analyses NRDC developed outside of the adopted proceeding processes and completed in 2011, a year after the Energy Division’s *2006-2008 Energy Efficiency Evaluation Report* was finalized.

The Commission should reject the Utilities’ and NRDC’s proposals, which do not comply with D.15-09-026’s clear directive that the incentive awards must be “based on calculations verified by the Commission, via its Energy Division.”¹⁵ Furthermore, the Commission should dismiss the attempt of the Utilities and NRDC to justify awards that deviate from the bedrock principle of the RRIM, the requirement that:

“[a]ll calculations of the net benefits and kW [kiloWatt], kWh [kilowatt hour] and therm achievements are independently verified by the Commission’s Energy Division and its evaluation, measurement and verification (EM&V) contractors, based on adopted EM&V protocols.”¹⁶

The Commission should reject the notion that the grant of rehearing allows NRDC and SCE to introduce new studies and analyses outside the record of the proceeding and completed well after the final award of incentives in 2010.

The Commission should likewise reject the notion that it is required to hold hearings and make findings on all the disputed issues related to the evaluation, measurement and verification (EM&V) of the energy savings from the Utilities; 2006-2008 portfolios. Decision 07-09-043 denied the Utilities’ request for an incentives process in which the Utilities filed applications accompanied by testimony and followed by hearings. The Commission revised the process to

¹³ The Energy Division prepared the *Scenario Analysis Report*, which was released for comments pursuant to the May 4, 2010 *Assigned Commissioner’s Ruling Providing Energy Division Report and Soliciting Comments on Scenario Runs*. Scenario 3 used the Utilities’ forecast, or *ex ante* savings parameters, but the verified installation rate of energy efficiency measures.

¹⁴ SoCalGas/SDG&E Proposal, pp. 2, 13; see also PG&E Proposal, p.9.

¹⁵ D.15-09-026, Ordering Paragraph 6, p. 13.

¹⁶ D.07-09-043, *Interim Opinion on Phase I Issues: Shareholder Risk/Reward Incentive Mechanism for Energy Efficiency Programs*, Conclusion of Law 5(3), p. 216.

award incentives by requiring the Energy Division to issue its interim evaluation reports as proposed resolutions, but did not otherwise modify the process adopted in D.07-09-043.¹⁷ To date, the Commission has awarded nearly \$212 million in incentives without holding a single hearing.

Finally, the Commission should reject the unsupported assertion of PG&E and NRDC that the *ex-ante* values for key parameters, particularly the net-to-gross (NTG) value for the residential upstream lighting program (ULP), are by default superior to *ex-post* values simply because of uncertainties associated with some *ex-post* estimates.

The Commission should order the Utilities to refund to their ratepayers the approximately \$169 million in incentives that exceeded the level of incentives that were “earned” according to the Energy Division’s independent review of the Utilities’ 2006-2008 energy savings.¹⁸

II. DISCUSSION

A. **The Utilities’ recommendations to adopt the incentives awarded in the RRIM decisions that are the subject of this rehearing misapprehend D.15-09-026 and fail to comply with the Scoping Memo.**

Rather than responding to the Scoping Memo’s direction to present proposals that calculate incentives that are “based on calculations verified by the Commission, via the Energy Division,”¹⁹ SCE attempts to argue that:

“[n]othing in the record of the consolidated proceedings, including in D.15-09-026 ordering rehearing for purposes of this reasonableness review, demonstrates any legal error on the part of the Commission in finalizing the 2006-08 energy efficiency savings and earnings.”²⁰

PG&E, SDG&E and SoCal Gas all agree that there is no reason to reconsider the incentives granted by the RRIM decisions.²¹

¹⁷ D.08-12-059, p. 21, Ordering Paragraph 4, p. 28.

¹⁸ *The Office of Ratepayer Advocates and The Utility Reform Network’s Proposal to Resolve Risk/Reward Incentive Mechanism Issues*, March 18, 2016 (ORA/TURN Proposal).

¹⁹ D.15-09-026, Ordering Paragraph 6, p. 13.

²⁰ SCE Proposal, p. 9, (see also SCE Proposal pp. 4, 19).

²¹ PG&E Proposal, p. 1 (“The Commission should affirm its prior decisions approving the shareholder incentive awards for 2006-2008.”); SoCalGas/SDG&E Proposal, p. 2 (“there is no legal or factual basis to overturn prior Commission EE [energy efficiency] earnings decisions”).

The Utilities made similar arguments prior to the issuance of the Scoping Memo.²² Given that the purpose of applications for rehearing is to allow the Commission to correct legal errors,²³ the Scoping Memo correctly rejected the Utilities' recommendations to reconsider whether the grant of rehearing meant that there were legal errors in the RRIM decisions. Instead, the Scoping Memo established a process for determining incentives that rely on the Energy Division's independently verified results.²⁴ This process should allow the Commission to issue a decision that rectifies the legal errors identified in the applications for rehearing of the RRIM decisions and acknowledged in D.15-09-026.²⁵ The Commission should continue to disregard the Utilities' ongoing efforts to collaterally attack D.15-09-026, the decision granting rehearing of the RRIM decisions.

B. Claims that D.10-12-049 reasonably adjusted the RRIM are not supported by the record in this case, including D.07-09-043, Administrative Law Judge (ALJ) Pulsifer's proposed decision regarding the RRIM true-up, the dissents to D.10-12-049, and ORA and TURN's application for rehearing of D.10-12-049.

PG&E observes that D.10-12-049, the final RRIM decision based on an alternate drafted by Commission President Peevey, used *ex-ante*²⁶ savings values rather than the *ex-post* values in the *2006-2008 Energy Efficiency Evaluation Report*.²⁷ According to PG&E, D.10-12-049 revised the RRIM in recognition of the fact that the “incentive mechanism as implemented was/is unfair to the utilities, in that it bases its results on assumptions the [U]tilities cannot be

²² *Southern California Edison Company's (U 338-E) Prehearing Conference Statement*, December 4, 2015, p. 2 (The rehearing process should first “focus on whether the [RRIM] Decisions committed any legal error as to the awards.”); Reporter's Transcript (RT) 49:3-7 “there is sufficient evidence in the record for this Commission to determine that the Commission issuing the true-up decision did so lawfully properly, and within its discretion.” (PG&E attorney); RT 55:10-12 “if the Commission decides to overturn the earnings decisions themselves, they have to have a legal basis to do that.” (SoCalGas/SDG&E attorney).

²³ “The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.” Rule 16.1(c) of the Commission's Rules of Practice and Procedure.

²⁴ Scoping Memo, pp. 3-4.

²⁵ D.15-09-026, Ordering Paragraph 6, p. 13.

²⁶ The tension between the use of *ex ante* and *ex post* measurements was at the heart of nearly all RRIM disputes. *Ex ante* means parameters (including number of energy efficiency measures installed, amount of energy savings per measure, and the amount of demand reduction per measure) predicted at the outset of the program. *Ex post* applies to those same parameters measured and verified after the completion of the program. Thus, *ex ante* and *ex post* numbers will almost certainly differ, just as any real world forecast is likely to differ from the actual event.

²⁷ PG&E Proposal, p. 6.

reasonably expected to anticipate.”²⁸ Decision 10-12-049’s reversal on the issue of using *ex post* energy savings parameters was a complete departure from the RRIM’s foundational premise that incentives would be based on savings independently verified by the Energy Division.²⁹

1. **Decision 07-09-043 rejected arguments that requiring the Utilities to adjust their portfolios in response to changing market conditions would be unfair or infeasible.**

Decision 07-09-043 considered and rejected the Utilities’ arguments that it was unfair to expect them to revise their portfolios in response to changing market conditions.

“Since early 2005, the [U]tilities have been on notice that the parameters used to evaluate near-term net savings, including NTG ratios, would be subject to true-up in calculating the PEB for each program cycle. The Commission made this very clear in D.05-04-051, issued on April 21, 2005, as did the September 2, 2005 ALJ ruling on related EM&V protocols. Moreover, incorporation of up-to-date NTG values into the current portfolios has been the subject of extensive discussion at Commission workshops, as well as program advisory group and peer review group meetings prior to and during the implementation of the 2006-2008 programs.

In sum, the [U]tilities cannot in good faith claim that risks associated with EM&V results—particularly NTG ratios—are ‘unforeseen expected evaluation risk.’ They have had ample opportunity to adjust their portfolios in response to available data, and should be encouraged by Commission policies to minimize expenditures on free riders by doing so.³⁰

2. **The Proposed Decision of ALJ Pulsifer rejected claims that the Utilities had no opportunity to revise their portfolios in response to updated information.**

The proposed decision of ALJ Pulsifer,³¹ which did not use *ex ante* energy savings values for its proposed incentives, rebutted claims that the Utilities had no opportunity “to make meaningful mid-course adjustments in program funding in response to the updated NTG ratio.”³² The Pulsifer PD cited the October 7, 2005 *Assigned Commissioner’s Ruling Addressing Net-to-Gross Ratio True-Up and Methodology for Lighting Programs in the 2006-2008 Energy*

²⁸ PG&E Proposal, p. 7, citing D.10-12-049, p. 41.

²⁹ D.07-09-043, Conclusion of Law 5(3), p. 216.

³⁰ D.07-09-043, pp. 174-175 (emphasis added, and internal citations omitted).

³¹ *Proposed Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008*, September 28, 2010 (Pulsifer PD), <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=34663>.

³² Pulsifer PD, p. 51.

Efficiency Portfolios (October 5, 2007 ACR regarding True-Up of 2006-2008 Portfolios)³³ as one example of the notice to parties about issues with the net-to-gross (NTG)³⁴ ratios used in planning the 2006-2008 portfolios and of the importance of updating that parameter in response to changing market conditions. The Pulsifer PD pointed out that the Utilities were not required to wait for the Energy Division EM&V updates before adjusting their programs to respond to changing market conditions.³⁵

3. **Commissioner Grueneich’s dissent highlighted that D.10-12-049 shifted all the risk of energy efficiency programs to the ratepayers and removed from the decision facts demonstrating that the Utilities had notice that they must use realistic assumptions to plan their energy efficiency portfolios.**³⁶

Commissioner Grueneich’s dissent to D.10-12-049 noted that the decision’s determination that the Utilities should earn incentives based on the energy savings estimates they used when planning their programs, rather than actual savings or their responsiveness to changing market conditions or expert evaluation feedback, placed all the risk of energy efficiency programs on ratepayers. Decision 10-12-049’s premise for revising the RRIM to rely on *ex ante* values was that the utilities “had no reasonable basis to know their assumptions were not realistic and did not reflect changing market conditions”³⁷ Commissioner Grueneich’s dissent pointed out the fallacy of this premise, based on the events, rulings, decisions and “a 2005 utility

³³ The October 5, 2007 ACR, issued in R.06-04-010, included an attachment that listed the opportunities beginning in 2004 for parties to energy efficiency proceedings to consider issues underlying the RRIM. The attachment summarized July 18, 2005 comments from Peer Review Group (PRG) members about the Utilities’ 2006-2008 proposed energy efficiency budget plans, including the observation that the Utilities “used NTG values for a variety of strategies that were outdated, inaccurate, and probably too high” and the recommendation that PG&E reduce its reliance on lighting measures. The ACR regarding True-Up of 2006-2008 Portfolios, acknowledged that the Utilities “were on notice since as early as September 2005 that *ex post* NTG ratios would be used to true-up energy efficiency savings.”

³⁴ D.07-09-043 explained that for purposes of energy efficiency programs, energy efficiency programs, free riders are “program participants who would have undertaken the energy efficiency activity in the absence of the program. The net-to-gross or “NTG” ratio is the total number of participants that are *not* free riders, e.g., a ratio of 0.80 indicates that 20% of the participants are free riders.” D.07-09-043, p. 152.

³⁵ Pulsifer PD, p. 53.

³⁶ D.10-12-049, Dissent of Commissioner Dian M. Grueneich, p. 3.

³⁷ D.10-12-049, Dissent of Commissioner Dian M. Grueneich, p. 2.

filing” summarized in the October 5, 2007 ACR regarding True-Up of 2006-2008 Portfolios, which was appended to Commissioner Grueneich’s dissent.³⁸

While D.10-12-049 eliminated the reference to the October 5, 2007 ACR regarding True-Up of 2006-2008 Portfolios, it could not eliminate the facts summarized in the ACR, or the Commission’s earlier decisions requiring the use of *ex post* values as the basis for the final award of incentives.³⁹

4. **Commissioner Ryan’s dissent noted that the Utilities had been on notice regarding the expectation that they continually adjust their portfolios based on all available information, not just the final approved Energy Division evaluation.**

Commissioner Ryan’s dissent raised issues similar to those of Commissioner Grueneich regarding the fact that the Utilities knew they were expected to continually adjust their portfolios:

“Prior decisions clearly stated our expectation that the [U]tilities would be judged based on *ex post* updates. The decision establishing the Risk Reward Incentive Mechanism program underscored the uncertainty about *ex ante* parameters, so the [U]tilities were put on notice that these parameters were stale and likely to change. We expected the [U]tilities to continually adjust portfolio plans in response to all available information, not just the final and approved Energy Division evaluation.”⁴⁰

5. **The Commission authorized the Utilities’ request for funding for “Early Measurement and Verification (M&V)” studies.**

Decision 05-11-011 allocated \$44,766,168 in 2006-2008 evaluation, measurement and verification (EM&V) funding to the Utilities for the purpose of conducting studies needed by the utilities to understand the markets and improve programs on a real-time basis.⁴¹ In providing this allocation the Commission explicitly authorized the utilities to:

³⁸ The Utilities Joint Case Management Statement, filed by PG&E on July 18, 2005, notes that PRG members were frustrated that the [U]tilities used NTG values for a variety of strategies that were outdated, inaccurate, and probably too high (page 6). The PRG requested that PG&E reduce its reliance on lighting measures, particularly residential lighting, to which PG&E responded that it would ‘adjust its 2006 portfolio lighting savings to reflect more realistic and updated assumptions on NTG ratios.’ (pages 17-18) (See October 5, 2007 ACR regarding True-Up of 2006-2008 Portfolios, Attachment A, p. 8.)

³⁹ D.05-09-043, *Interim Opinion. Energy Efficiency Portfolio Plans and Program Funding Levels for 2006-2008 - Phase 1 Issues*, p. 97 (“NTGs will in fact be adjusted (trued-up) on an *ex post* basis when we evaluate actual portfolio performance.”).

⁴⁰ D.10-12-049, Dissenting Statement of Commissioner Nancy E. Ryan, p. 2.

⁴¹ D.05-11-011, p. 3.

“...conduct early M&V assessments on a quick turnaround basis in order to support the program design process and ensure quality control. As they explain, if the programs are not producing the savings expected because of faulty installation procedures, inaccurate baseline condition estimates or other reasons, the IOU program administrators need to know immediately by initiating targeted M&V activities to correct the problems or begin planning for more productive uses of the funds. In addition, early M&V can come in the form of measuring key assumptions during a pilot launch where the sample population is relatively small and testing the viability of innovating programs.”⁴²

With the early M&V funding authorization in hand, their large in-house expertise, and their ability to quickly enter into contracts with consultants, the Utilities could have anticipated the findings of the key Energy Division managed impact evaluation studies and made appropriate adjustments to *ex-ante* values and program priorities well before the Energy Division released its first interim evaluation report in May 2008.

6. **SCE’s claim that the final decision represents a “middle of the road” compromise ignores the Commission’s prior decisions and rulings.**

SCE contends that:

“[Decision]10-12-049 ultimately took a middle of the road approach to the potential outcomes between ALJ Pulsifer's PD, which proposed zero additional incentives, and Assigned Commissioner Bohn's alternate PD, which would have awarded more incentives than D.10-12-049. A middle of the road approach, in and of itself, can be viewed as [] reasonable under the circumstances.”⁴³

While it is true that decision makers must often balance competing policy objectives to achieve a fair result, SCE appears to argue that a result that simply falls between two other possible results is a rational basis for decision making. Whether that is true depends on other factors, including whether the decision is based on the record and complies with the laws governing Commission decision making. Decision 10-12-049 removed from the final decision material facts demonstrating that well before the start of the 2006-2008 energy efficiency programs, the Utilities were on notice of changes in the lighting market and the need to respond accordingly.⁴⁴ ORA and TURN’s Application for Rehearing of D.10-12-049 included the decision’s removal of those relevant facts from the decision as one of the decision’s legal

⁴² D.05-11-011, p. 12.

⁴³ SCE Proposal, p. 8.

⁴⁴ D.10-12-049, Dissent of Commissioner Dian M. Grueneich, p. 3.

errors.⁴⁵ SCE’s claim that D.10-12-049 is reasonable under the circumstances is therefore unsupported.

C. The Commission took reasonable steps to mitigate the uncertainties the Utilities faced when it established and revised the RRIM.

The Utilities claim that the RRIM unfairly exposed them to risk,⁴⁶ overlooking the significant steps the Commission took to mitigate their risk of underperformance in both the design and subsequent modification of the RRIM. The Commission noted in D.07-09-043 that the performance earnings basis (PEB) would include the entire portfolio to decrease the risk of underperformance based on individual programs.⁴⁷ Acknowledging the “significant unknowns at the time of portfolio and program planning”⁴⁸ regarding market response and actual load impacts, the Commission adopted a minimum performance standard (MPS) of 80 to 85% of the Commission’s energy savings goals as a threshold for earning incentives.⁴⁹ Decision 08-01-042 allowed the Utilities to retain earnings and continue earning at the rate of 9% as long as their final evaluated performance did not fall below 65% of the Commission’s adopted savings goals.⁵⁰

The Commission recognized and took reasonable steps to mitigate the risks inherent in the RRIM. The rules in place allowed for performance to be far below the Commission’s goals and still allow for performance awards. The subsequent actions of the RRIM decisions, in particular, D.10-12-049’s removal of the requirement to use the Energy Division’s *ex post* evaluation results did more than mitigate risk—they essentially eliminated it.

⁴⁵ ORA and TURN’s *Application for Rehearing of Decision 10-12-049*, January 27, 2011, p. 20 (“Decision 10-12-049 fails to satisfy the substantial evidence standard by ignoring relevant and material evidence that contradicts its primary conclusion. In this regard, the Decision also constitutes an abuse of discretion.”).

⁴⁶ PG&E Proposal, p. 7; SCE Proposal, p. 6.

⁴⁷ D.07-9-043, p. 107.

⁴⁸ D.7-9-043, p. 107.

⁴⁹ D.07-09-043, pp. 25-27 (adopting a hybrid approach to the MPS as recommended by PG&E and SDG&E/SoCalGas in order to allow flexibility in achieving the MPS through averaging, as well as setting the MPS 15% to 20% below the Commission’s adopted savings goals).

⁵⁰ D.08-01-042, Ordering Paragraph 2(j), p. 28.

D. The RRIM awards were not just and reasonable.

The Utilities argue that the Commission’s revision of the RRIM and the incentives awarded were justified because the RRIM was flawed.⁵¹ The utilities attempt to argue that as the energy efficiency program managers, they were not able to modify their programs to effectively respond to market conditions. As discussed in Section II C above, the Commission addressed the issue of uncertainty in the design and modification of the RRIM.

The Utilities’ arguments that the incentives were just and reasonable because they are within the range of incentives awarded by other states⁵² or within the range authorized by the Efficiency Savings Performance Incentive (ESPI)⁵³ overlook a key premise of the RRIM: the Commission expected the Utilities to manage their energy efficiency portfolios proactively to maximize energy savings.

1. The RRIM was conditioned on superior performance and superior achievement.

Decision 07-09-043 explained the Commission’s intentions and expectations in creating the RRIM: given the importance of energy efficiency in combatting climate change and reducing energy consumption, “we adopt a risk/reward incentive mechanism designed to extend California’s commitment to making energy efficiency the highest energy resource priority.”⁵⁴ The RRIM attempted to align shareholder and ratepayer interests by creating a shared savings mechanism. The expectation was that the shared savings mechanism would motivate the Utilities to place energy efficiency on par with “steel in the ground” investments in order to achieve benefits that would accrue to both ratepayers and shareholders.⁵⁵

While the Commission anticipated that the ratepayers’ investments in energy efficiency had the potential to produce substantial savings, it cautioned that to achieve the potential benefits of the RRIM, the Utilities “must be more innovative, aggressive and motivated to ‘mine deeper’ for cost-effective energy savings....”⁵⁶ In order to achieve incentive earnings for their shareholders, the Commission expected that the Utilities would “quickly and efficiently

⁵¹ PG&E Proposal, p. 1; SCE Proposal, p. 8.

⁵² SCE Proposal, p. 13.

⁵³ PG&E Proposal, p. 46; SoCalGas/SDG&E Proposal, p. 11; SCE Proposal, p. 12.

⁵⁴ D.07-09-043, p. 1.

⁵⁵ D.07-09-043, pp. 3-4.

⁵⁶ D.07-09-043, p. 11.

incorporate new information into their program designs” and “aggressively pursue all potential avenues for cost-effective energy efficiency throughout the program cycle.”⁵⁷

The Commission did not expect the Utilities to sit back and await final results of the Energy Division’s EM&V studies in order to revise their portfolios. Rather, the Commission expected that the Utilities would use the previously granted “authorization and funding to conduct meaningful process and market penetration studies to assist them in managing these uncertainties during the program cycle.”⁵⁸ The Commission thus expected as a condition of RRIM incentives, that the Utilities would deliver “superior performance” and “superior achievement” in reaching the Commission’s energy savings goals.⁵⁹

The Commission’s expectations that the Utilities would respond with superior performance were not realized. Rather than responding to the changes in NTG parameters identified before the start of the 2006-2008 portfolio cycle,⁶⁰ or conducting their own early M&V to respond to changes in the energy efficiency markets, the Utilities opted to not adapt their portfolios. Instead, they now criticize the RRIM for creating “unanticipated and tremendous uncertainty” and for expecting the Utilities to modify their portfolios in response to changes in the energy efficiency markets.⁶¹ The Utilities, who participated in every stage of the development of the RRIM, now argue they were incapable of responding effectively to meeting the challenges that were established and recognized at the outset.

2. Measuring the reasonableness of RRIM incentives against awards in other states or the ESPI misapprehends the Commissions’ intent in establishing the RRIM.

The Utilities do not attempt to argue that “superior” performance in implementing energy efficiency during the 2006-2008 program cycle justified their RRIM incentives. Instead, they claim that the awards were just and reasonable because the ratio of incentives to program

⁵⁷ D.07-09-043, p. 27.

⁵⁸ D.07-09-043, p. 107. Decision 05-11-011 authorized the Utilities to conduct early measurement and evaluation assessments “on a quick turnaround basis to correct problems or reallocate funds to more effective programs. D.05-11-011, p. 13 and Finding of Fact 4, p. 18.

⁵⁹ D.07-09-043, p. 108.

⁶⁰ See Section II. C. above.

⁶¹ SCE Proposal, p. 16; see also PG&E Proposal, p. 2 (most of the Energy Division’s *ex post* evaluation reports were produced too late to permit the Utilities “to modify their portfolios to respond to the extreme changes in values.”); SoCalGas/SDG&E Proposal, p. 4.

expenditures was within the range of that ratio of incentives to programs expenditures for other states⁶² and within the range of the subsequently adopted ESPI.⁶³ The yardstick for determining whether the RRIM incentives were just and reasonable is neither energy efficiency incentives in other states, nor incentives permitted by the current ESPI. California's energy efficiency programs may not be directly comparable to programs in other states.⁶⁴ The ESPI that replaced the RRIM is likewise not the correct yardstick, because the new incentive mechanism emphasized different factors and operated differently than the RRIM.⁶⁵

Instead, the Commission should judge the reasonableness of the incentives based on its expectations when it established the RRIM. The Commission expected that in order to achieve incentives, the Utilities would "quickly and efficiently incorporate new information into their program designs"⁶⁶ and use their allocated EM&V budget to complete "process and market penetration studies" to manage uncertainties during the program cycle.⁶⁷ In light of the Utilities' admissions that they were unable or unwilling to adjust their portfolios until they received the Energy Divisions' EM&V results,⁶⁸ it is clear that the Utilities failed to meet the Commission's expectation that in order to receive the benefits of the RRIM, the Utilities must "be proactive and innovative"⁶⁹ to meet the challenges and uncertainties of effectively maximizing energy efficiency savings.

According to PG&E, the total incentives for all Utilities "based on the total 2006-2008 energy efficiency budget of \$2.2 billion "represent an equivalent fee of approximately 9.63% of

⁶² SCE Proposal, p.13 ("The 2006-08 earnings are also reasonable in light on average utility earnings for energy efficiency savings across the U.S.")

⁶³ PG&E Proposal, p. 46; SoCalGas/SDG&E Proposal, p. 11; SCE Proposal, p. 12. The Utilities' do not provide information about the ratio of incentives to program expenditures under the ESPI, but ORA and TURN estimate that they range from approximately 4.35% to 7.92% .

⁶⁴ D.13-09-011, *Decision Adopting Efficiency Savings And Performance Incentive Mechanism*, notes at pages 25-25 that other "state jurisdictions are subject to different regulatory programs, risks, and opportunities," including the fact that other states may not have revenue decoupling , which protects California utilities from the risk of revenue under collection from energy efficiency programs.

⁶⁵ For example, the ESPI emphasizes deeper, more comprehensive, and longer lasting energy savings, "a shift from the previous priority to maximize net economic benefit." D.13-09-011, p. 35.

⁶⁶ D.07-09-043, p. 27.

⁶⁷ D.07-09-043, pp. 27, 107.

⁶⁸ SCE Proposal, p. 8 (RRIM "did not fairly permit the utilities to adjust their portfolios to meet goals based on *ex post* data."); pp. 9-10 ("Timing issues around the *ex post* information also raised questions of fairness in expecting the utilities should have responded to these updates with substantial modifications to their portfolios.").

⁶⁹ D.07-09-043, p 27.

[energy efficiency] expenditures.”⁷⁰ PG&E’s total shareholder incentives in the 2006-2008 program cycle were approximately 11.3% of its audited energy efficiency expenditures.⁷¹ SCE claims that its “\$74.5 million earnings for 2006-08 is 10.5 % of its energy efficiency expenditures...” for that program cycle, comparable to the savings and earnings of utilities in other states.⁷² SoCalGas claims that its incentives represented 14.2% of its energy efficiency expenditures, while SDG&E claims that its incentives represented 7.5% of its energy efficiency expenditures.⁷³

Incentives ranging from 7.5% to 14.2% of portfolio expenditures for simply implementing measures and then calculating the results based on energy savings estimates from 1994-2000 are not just and reasonable in light of the Commission’s stated intention that RRIM incentives should be for superior, proactive, and innovative management of the Utilities’ energy efficiency portfolios. Decision 07-09-043 anticipated that the Utilities would earn \$176 million⁷⁴ if each of the Utilities achieved the minimum performance standard utilizing the proactive and innovative portfolio management envisioned by the decision. Instead, D.10-12-049 finalized the incentives so that the Utilities received nearly \$212 million dollars for their business as usual performance of installing measures without regard to their actual delivery of savings in a changing energy market.

ORA and TURN’s proposed incentives of \$41,915,644⁷⁵ are based on adherence to the Commission’s established RRIM process, which allowed Utilities to retain the interim incentive payments as long as they achieved a low-level of verified performance relative to the goals.⁷⁶

E. The Commission is not required to hold hearings or making findings on every claimed “error” that the Utilities and NRDC raise.

The Utilities and NRDC raise a host of purported errors contained in the *Energy Division’s 2006-2008 Energy Efficiency Evaluation Report*.⁷⁷ According to the Utilities and

⁷⁰ PG&E Proposal, p. 45, citing D.12-12-032, p. 27.

⁷¹ PG&E Proposal, p. 46 and Table 19.

⁷² SCE Proposal, p. 3.

⁷³ SoCalGas/SDG&E Proposal, p. 12.

⁷⁴ D.07-09-043, p. 10.

⁷⁵ ORA/TURN Proposal, Table 7, p. 10.

⁷⁶ D.08-01-042, Ordering Paragraph 2(j), p. 28.

⁷⁷ NRDC Proposal, pp. 5-7; PG&E Proposal, pp. 10-44; SoCal Gas/

(continued on next page)

NRDC, in order for the Commission to revise the current incentives, the Commission must allow parties to submit testimony and hold hearings on every fact disputed regarding the calculation of the incentives.⁷⁸ The requested hearings to revise the incentives would be a first in this proceeding; up to this point, the Commission has relied primarily on documents, comments and other pleadings, rather than testimony and cross examination,⁷⁹ to award both interim and final incentives. The Utilities and NRDC thus argue that the Commission could allow the Utilities to collect (originally) and now keep the shareholder incentives authorized in the RRIM decisions without hearings, but that any decision to order refunds would require hearings on each disputed element of every EM&V study related to the 2006-08 programs.

The assertion that hearings are required in order to award incentives is unsupported by D.07-09-043, which considered and rejected requests to reinstate procedures similar to those of the Commission's prior Annual Earnings Assessment Proceedings (AEAP).⁸⁰ The AEAP required the Utilities to submit applications and testimony in support of their claims for energy efficiency earnings, and provided the opportunity for hearings and cross examination. However, the Commission chose not to adopt the AEAP procedures for the award of RRIM incentives. Instead, D.07-09-043 established a process that included stakeholder input to contractors on the assumptions and methods for evaluating energy savings as they prepared their studies, stakeholder comments on the draft results of the studies, and stakeholder comments on the draft energy efficiency reports.⁸¹ The Commission revised the process in D.08-12-059 to require the issuance of the Energy Division's interim verification reports by resolution, but did not otherwise

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SDG&E Proposal, pp. 5-11, SCE Proposal, pp. 16-20.

⁷⁸ PG&E Proposal, p. 2; SCE Proposal, p. 21; NRDC Proposal, pp. 2-3. SoCalGas and SDG&E contend that if the Commission admits into the record new documents or evidence, it must allow parties to conduct discovery and present recommendations, but do not explicitly request hearings. SoCalGas/SDG&E Proposal, p. 6.

⁷⁹ The April 14, 2009 *Assigned Commissioner's and Administrative Law Judge's Ruling Providing Schedule and Scoping Memo* in this proceeding provided the opportunity for parties to submit testimony and request hearings if parties were unable to resolve issues by settlement. D.09-12-045 noted that SCE submitted testimony and ORA submitted reply testimony, but the decision's award of incentives did not rely on either the settlement proposed by PG&E, SoCal Gas/SDG&E and NRDC, or SCE's testimony. Women's Energy Matters requested hearings, but its motion was denied in the July 8, 2009 *Administrative Law Judge's Ruling Denying Motion For Evidentiary Hearings And Addressing Further Procedural Matters* in this proceeding.

⁸⁰ D.07-09-043, pp.128-129.

⁸¹ D.07-09-043, pp. 128-129.

revise the process to require hearings.⁸² Furthermore, the Utilities had the opportunity to request hearings in this proceeding regarding the proposed settlement of PG&E, SDG&E, SoCalGas and NRDC and did not do so.⁸³ Their request for hearings now, over five years after the *2006-2008 Energy Efficiency Evaluation Report* and the Scenario Analysis Report were prepared is unfounded, and if granted, will likely result in a waste of Commission and party resources.

PG&E argues that if the Commission wishes to revise the award of incentives, it would be necessary to resolve the disputes regarding the *2006-2008 Energy Efficiency Evaluation Report* and the Scenario Analysis Report with “admissible non-hearsay evidence and sworn testimony.”⁸⁴ PG&E states that the “Commission’s findings in a decision cannot solely be based on uncorroborated hearsay evidence where the veracity and accuracy of the statements are disputed.”⁸⁵ PG&E’s statement that Commission decisions cannot be based on uncorroborated hearsay omits the fact that the Commission routinely adopts decisions based solely on hearsay. Hearsay is any statement, other than one made at a hearing in which the person making the statement is subject to cross examination.⁸⁶

The purpose of the hearsay rule is to prevent unfairness to parties who do not have the opportunity to conduct cross examination regarding the truth and accuracy of the hearsay statements.⁸⁷ The Commission is not required to hold hearings to resolve every single matter it decides and often decides matters using the comments of parties and other hearsay documents.⁸⁸

Decision 07-09-043 established a process for resolving RRIM claims that anticipated reliance on hearsay documents from the outset: the reports of the Energy Division, and the comments of parties. The *2006-2008 Energy Efficiency Evaluation Report* was prepared at the

⁸² D.08-12-059, Ordering Paragraph 6, p. 28.

⁸³ See June 1, 2009 *ALJ Ruling Regarding the Schedule for Evidentiary Hearings And For Comments on Proposed Settlement*, p. 4. The deadline for requesting hearings was June 26, 2009 and Women’s Energy Matters was the only party to request hearings.

⁸⁴ PG&E Proposal, p. 10.

⁸⁵ PG&E Proposal, p. 10.

⁸⁶ *California Evidence*, Fifth Edition, 2012, B. E. Witkin, Vol. 1, Chapter VI, Section 1, p. 783.

⁸⁷ California Evidence Code, Section 135.

⁸⁸ In a matter that had been set for hearings, the Court of Appeal found that the Commission could not base its finding of need solely on the on the hearsay statement of the California Independent System Operator. *The Utility Reform Network v. Public Utilities Commission*, 223 Cal. 4th 945, 949 (2014). PG&E points out the ORA and TURN’s Application for Rehearing of D.10-12-049 states at page 20 that an agency finding may not rely solely on uncorroborated hearsay evidence. ORA and TURN acknowledge that the statement PG&E cites is not on point in this context.

direction of the Commission and by the Commission's own Energy Division. The draft version of the Report was also subject to extensive stakeholder review and comment, and thus the Utilities had ample opportunities to provide feedback on the calculation methodology.⁸⁹ The Commission awarded nearly \$212 million in incentives without hearings. The *ex-ante* estimates on which PG&E prefers to rely are also uncorroborated hearsay. If the Commission believes that hearings would be useful to resolve issues in this proceeding, it is of course within its authority to hold hearings. But it should reject the argument that absent hearings, it is powerless to order refunds of RRIM awards it finds to have been inappropriately ordered.

F. The Commission should ignore NRDC's after the fact "reanalysis" of energy savings, which is outside the scope of this proceeding.

NRDC, SCE and PG&E all claim that NRDC's 2011 "reanalysis"⁹⁰ of energy savings supports the incentives awarded.⁹¹ This Commission should not broaden the scope of this proceeding to include "reanalysis" of the Commission's independent EM&V completed more than six months after the final awards of incentives in December 2010. As ORA and TURN demonstrate in their March 18 proposal, NRDC and other stakeholders had numerous opportunities to comment on the methodology and conclusions of the Energy Division's Upstream Lighting Program evaluation as it was being implemented.⁹² If the Commission allows consideration of NRDC's after-the-fact reanalysis of the Energy Division's reports, then it should allow the Energy Division to respond to the reanalysis on the record.⁹³

⁸⁹ ORA and TURN Proposal, Appendix B-2.

⁹⁰ NRDC attached two studies to its proposal: Attachment 1, "Investigation of Interactive Effects in Residential Building," dated December 8, 2011, and Attachment 2 "Reanalysis of the 2006-08 Upstream Lighting Program," dated July 20, 2011. These documents propose alternate methods to estimate the energy impacts of interactive effects and the Upstream Lighting Program, but were completed one and a half years and one year, respectively, after the Energy Division finalized the *2006-2008 Energy Efficiency Evaluation Report*.

⁹¹ NRDC Proposal, pp. 5-6 and Attachments 1-2; SCE Proposal, pp.3-4 and Attachment A; PG&E Proposal, p. 26.

⁹² See ORA Proposal, Appendix B-2.

⁹³ If the Commission allows consideration of NRDC's reanalysis purporting to show additional benefits of the Utilities' CFL programs, then it should also allow consideration of additional information pertinent to the ULP, such as, for example, information relating to the substantial cost of CFL disposal, a cost shifted to counties and municipalities, yet not reflected as a cost in the Utilities' CFL programs. See e.g. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwinzZ2R4P_LAhVY6WMKHZZRAZAQFggdMAA&url=https%3A%2F%2Fwww.nema.org%2FPolicy%2FEnvironmentalStewardship%2FLamps%2FDocuments%2FRecycling_Household_CFLs.pdf&usg=AFQjCNGpg2hBGLhcdnl4jEKh4BrwdKXhuA

G. The recommendations of PG&E, SoCal Gas, and SDG&E to use Scenario 3 fail to comply with the requirement to use savings evaluated by the Energy Division.

While the Utilities and NRDC prefer that the Commission not disturb the existing RRIM awards, PG&E states that “Scenario 3, which calculates the IOUs' awards based on the *ex-ante* savings values produces a result which is most consistent with the intent of the Commission in approving the RRIM.”⁹⁴ This statement is simply untrue, as the Commission made it clear on multiple occasions that under the RRIM the final true-up would use *ex-post* savings verified by the Energy Division.⁹⁵ SoCalGas and SDG&E also recommend that if the Commission modifies the RRIM incentive awards, that the Commission use “Scenario 3—Verified Net Savings” (Table 13).⁹⁶ Scenario 3 included the verified installation rates of energy efficiency program measures, but otherwise used *ex ante* estimates of energy savings. The Commission should reject this effort to justify incentives using forecast savings parameters (*ex ante*) rather than the updated savings parameters(*ex post*) required when it adopted the RRIM.

1. Ex ante values do not reflect best estimates of program impacts

The highest priority single savings parameter for the Utilities and NRDC is the residential upstream lighting program (ULP) NTG value. The shareholder incentives granted in D.10-12-049 are largely determined by the *ex-ante* ULP NTG value in Scenario 3, which is in turn based on the 2005 version of DEER managed by SCE.⁹⁷ The 2005 DEER update did not actually model NTG values but rather referred DEER users to the generic residential program NTG estimate included in the 2003 Energy Efficiency Policy Manual.⁹⁸ The generic residential NTG estimate provided in the 2003 Energy Efficiency Policy Manual is based on a September 2000 workshop report prepared by CALMAC.^{99,100} The September 2000 CALMAC workshop

⁹⁴ PG&E Proposal, p. 45.

⁹⁵ ORA and TURN Proposal, pp. 12-13.

⁹⁶ SoCalGas/SDG&E Proposal, p. 4.

⁹⁷ 2004-2005 Database for Energy Efficiency Resources (DEER) Update Study Final Report. Available at http://www.deeresources.com/files/deer2005/downloads/DEER2005UpdateFinalReport_ItronVersion.pdf

⁹⁸ The 2003 Energy Efficiency Policy Manual is available at www.calmac.org/events/Policy%20Manual%20V2.pdf

⁹⁹ CALMAC is a forum for EM&V technical experts to discuss issues.

¹⁰⁰ Energy Efficiency Policy Manual, footnote 9, p. 18. The September 2000 workshop report prepared by CALMAC is available at: http://www.calmac.org/publications/CALMAC_OP_Meetings.pdf

report, prepared in response to several ordering paragraphs in D.00-070-017, restates NTG ratios from EM&V studies completed between 1994 and 1998.¹⁰¹ The September 2000 filing prepared by CALMAC found that EM&V studies completed between 1994 and 1999 did not have a good estimate for residential lighting measures, so it recommended averaging net to gross ratios weighted by kWh impacts, across all 1994-1999 programs.¹⁰² This method produced the NTG of 0.80 that the Utilities and NRDC recommend that the Commission use as a basis for the 2006-2008 shareholder incentives. The *ex-post* ULP NTG value, based on a triangulated approach using more recent data for the actual 2006-2008 lighting programs, is superior to the *ex-ante* value that is an average of NTG ratios estimated for non-lighting programs implemented in the mid 1990's, which do not even resemble the 2006-2008 Upstream Lighting Program.

H. The Commission is not required to use the refund procedures in D.07-09-043.

The Utilities contend that any refunds ordered in this proceeding should offset future energy efficiency incentive shareholder awards. To support this recommendation, SCE cites D.07-09-043, which directs with respect to RRIM incentives that “[a]ny pay-back obligations that might arise in the final true-up claim should be booked against positive earnings in the next energy efficiency program cycle.”¹⁰³ PG&E, SDG&E, and SoCalGas also reference D.08-01-042 to support their assertion that any refund or penalty would be offset against future shareholder incentive earnings claims.¹⁰⁴ D.08-01-042 reaffirmed the refund methodology articulated in D.07-09-043, so these comments focus on D.07-09-043.¹⁰⁵ While the [U]tilities correctly cite D.07-09-043’s directive regarding any “pay-back obligations,” the decision referred to the RRIM, which as the Utilities acknowledge, has been replaced with the ESPI. Decision 07-09-043 addressed the RRIM for the 2006-2008 program cycle, and not the present case where the fairness and reasonableness of a prior decision is under review. Conclusion of Law 16 of D.07-09-043 requires booking pay-back obligations against positive earnings in the next program cycle. In the present case, at least three program cycles have been completed since

¹⁰¹ September 2000 CALMAC Workshop Report, Attachment A, Table 1.

¹⁰² September 2000 CALMAC Workshop Report, p. 29.

¹⁰³ SCE Proposal, pp. 20-21; referencing D.07-09-043, Conclusion of Law 16, p. 218.

¹⁰⁴ SoCalGas/SDG&E Proposal, p. 12; PG&E Proposal, pp. 47-48.

¹⁰⁵ D.08-01-042, p. 26, Finding of Fact 2d.

the 2006-2008 cycle ended and energy efficiency programs currently utilize an entirely different incentive mechanism.

Conclusion of Law 16 of D.07-09-043 only applies to any “pay-back obligations” that arise from a valid and fair true-up process that was consistent with the RRIM protocols laid out in that Decision. Because D.10-12-049 did not comply with the established RRIM protocols and true-up procedures, D.07-09-043’s requirement that any pay-back obligations be booked against positive earnings in the next energy efficiency program cycle does not apply to the present situation.¹⁰⁶ This rehearing proceeding presents a unique situation and thus requires a refund mechanism that is tailored to address the existing circumstances.

The Commission should implement one of the two refund mechanisms included in ORA and TURN’s proposal:

- 1) a revenue credit to customers’ distribution and gas transportation accounts, as described in pages 166 and 167 of D.07-09-043; or
- 2) a line item to the customers’ first monthly bill following the issuance of a decision resolving RRIM issues.¹⁰⁷

These mechanisms are appropriate because they ensure that any refunds are credited against customer rates and will be returned to customers in a more expeditious fashion than waiting until the next true-up in the current energy efficiency incentives program cycle.

Option one-- a revenue credit to customers’ distribution and gas transportation account-- would allow the most efficient return of incentives to customers. Option two-- a line item bill credit-- would promote transparency regarding the Commission’s rehearing process and would demonstrate to customers that when the Commission makes a mistake, it works to rectify it. Providing a bill credit is the method the Utilities use to provide the California Climate Credit twice yearly for electric customers and once yearly to gas customers.¹⁰⁸

¹⁰⁶ D.07-09-043, Conclusion of Law 16, p. 218.

¹⁰⁷ ORA/TURN Proposal, pp. 9-10.

¹⁰⁸ See PG&E, SCE, SDG&E & SoCalGas responses to data request TURN-001, Question 4. Other examples of line item refunds or credits include: Transportation Charge Adjustment (SoCalGas, established by Advice Letter 4256 in compliance with the D.10-01-022); Department of Water Resources Credit (SDG&E, D.12-11-040, OP 1b for 2013; D13-12-004, OP 1b for 2014; D.14-12-002, OP 1b for 2015; and D.15-12-003, OP 1a for 2016); 2009 electric bill credits under the Energy Resource Recovery Account trigger mechanism (PG&E, D.09-10-021); Gas Customers One-Time Bill Credit (PG&E established by Advice Letter 3597-G-B in compliance with D.15-04-024 and Resolution G-3512); and Electric Deferred Refund Account (EDRA) refunds (SCE, use of the bill credit was included in a settlement agreement that was adopted in D.05-03-022).

TURN conducted discovery regarding the costs for issuing a bill credit and there is a wide range of costs across the utilities.¹⁰⁹ Accordingly, if the Commission decides to utilize the bill credit mechanism to implement any refunds resulting from this proceeding, it should limit ratepayer funding for the implementation costs to an appropriate level (ORA and TURN suggest \$200,000). This will incentivize the utilities to keep the costs of implementing the bill credit to a reasonable level. Any utility that objects to ratepayer funding limitations should be required to provide a detailed explanation of the bill credit implementation costs to explain why it is so costly to implement.

ORA and TURN therefore recommend that the Commission consider the cost-effectiveness and other benefits of each option in light of the adopted refund amounts.

III. CONCLUSION

The Commission faces two choices (1) revise the incentives to reflect D.07-09-043's clearly articulated requirement that incentives would depend on the Utilities' performance in achieving energy savings, or (2) ignore the findings in D.15-09-026 and approve the existing incentives, which compensated the Utilities for installing measures based on energy savings estimates from the early 2000's or earlier. The Commission already recognized the uncertainties the Utilities faced by significantly revising the RRIM in D.08-01-042 to allow the Utilities to keep interim incentives even if their measured savings fell short of initial estimates.¹¹⁰

The Order Granting Rehearing (D.15-09-026) clearly noted that the Commission must ensure that the shareholder awards in Rulemaking 09-01-019 are just and reasonable. Ordering paragraph 6 in the Order Granting Rehearing specifies that the shareholder awards must be based on "calculations verified by the Commission, via its Energy Division, pursuant to the directives and process adopted in Rulemaking 06-04-010 and Rulemaking 09-10-019 as modified." In awarding the final incentive amounts in D.10-12-049, the Commission inappropriately substituted forecast savings parameters (*ex-ante*) for parameters verified by the Energy Division. This change was not just or reasonable, settled for subpar performance,¹¹¹ and unfairly deprived ratepayers of the benefits promised in D.07-09-043. ORA and TURN

¹⁰⁹ See PG&E, SCE, SDG&E & SoCalGas responses to data request TURN-001.

¹¹⁰ D.08-01-042, Ordering Paragraph 2(j), p. 28.

¹¹¹ Grueneich Dissent to D.10-12-049, p. 2.

therefore respectfully request that the Commission adopt their proposal to award incentives based on the independently verified savings of the Energy Division.

Respectfully submitted,

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