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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the
Commission's Energy Efficiency Risk/Reward Incentive
Mechanism

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

**PREHEARING CONFERENCE STATEMENT OF
THE NATURAL RESOURCES DEFENSE COUNCIL
(NRDC)**

May 20, 2016

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I. Introduction

Pursuant to Rules 1.9 and 1.10 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Natural Resources Defense Council (NRDC) submits the following Prehearing Conference Statement in response to the Email Ruling Authorizing Prehearing Conference Statements dated May 16, 2016 (Email Ruling). NRDC appreciates the opportunity to provide this statement and will attend the Prehearing Conference prepared to discuss the issues identified in the Administrative Ruling Setting Prehearing Conference dated 5-6-16 (ALJ Ruling).

II. Discussion

The ALJ Ruling responds affirmatively to the Motion for Evidentiary Hearings of the IOUs and NRDC, determines that evidentiary hearings are appropriate, and offers guidelines for testimony and hearings. We support the determination that hearings are appropriate and agree with the goal of resolving disputed issues of material fact. However, NRDC has concerns with the proposed guidelines. As described below, NRDC offers a set of proposed changes to the guidelines that we believe will better enable the Commission to resolve these material disputes and reach a fair and reasonable resolution.

The proposed guidelines begin by elevating the status of the Evaluation Report, which is “deemed *prima facie* evidence that the resulting evaluated findings were produced in accordance with the Commission’s adopted protocols for EM&V purposes.” There is no policy or legal justification offered in support of this presumption, it disregards the Commission’s previous finding of “substantial, controversial, and unanticipated swings in a number of key parameters (D.10-12-049),” and it completely ignores the still unrebutted evidence of errors and unsupported values that NRDC and the IOUs have submitted to the record.

The proposed guidelines then arbitrarily limit the scope of the factual basis for the proceeding by imposing a severe and equally unjustified limit on the evidentiary record. “Grounds for arguing that the conclusions were or were not reasonable that were not raised before the *2006-08 Energy Efficiency Evaluation Report* was published are not relevant and will not be considered during hearings.” (p.5) By limiting the scope of factual evidence that can be brought to bear, this restriction limits the Commission’s ability to make a decision based on the best available information. Moreover, this guideline would impose severe limits on the participation of TURN and ORA since it also limits the rights of parties arguing the conclusions were reasonable. To NRDC’s knowledge, TURN and ORA did not offer any grounds for arguing that the conclusions in the Evaluation Report were reasonable prior to publication of the Evaluation Report (nor have they yet). As a result, neither of these parties would be permitted to submit factual evidence in support of the specific conclusions in the Evaluation Report that have been challenged by NRDC and the IOUs.

Finally, the ALJ Ruling places further burdens on NRDC and the IOUs by requiring that parties challenging specific aspects of the Evaluation Report must “offer an affirmative alternative metric, calculation, or method that can be independently evaluated based on its own empirical merits” and “supported with factual evidence.” (p.6) As described earlier, in contrast, the Evaluation Report is simply deemed reasonable and parties that support it are not required to make any showing or provide any factual evidence.

In sum, the Evaluation Report is granted elevated status and challenges to the Evaluation Report must shoulder a heavy burden of proof. The ALJ Ruling does not offer either policy or legal support for these unbalanced and unsupported guidelines. Clearly they unfairly burden some parties and benefit others. Moreover, they are unlikely to lead to a fair

and well-supported outcome for the Commission.

NRDC proposes that instead of excluding all evidence that became available after an arbitrary date, the Commission allow evidence up to the present, as it does for nearly all proceedings. After all, the goal should be to make the best decision based on what we know now, rather than on what we knew – or thought we knew – at some arbitrary point in the past.

In addition, instead of preemptively accepting the Evaluation Report as just and reasonable and imposing a huge burden on those who would challenge specific aspects of the report, the Commission should adopt a balanced burden of proof. Proponents of retaining the parameter values in the Evaluation Report can offer evidence in support of those values along with evidence by the parties who contest the values. If both sides offer a well-reasoned and factually-supported proposal, then the Commission can decide between the two alternatives or use an intermediate value. If only one side offers a well-reasoned and factually-supported proposal, then the choice is clear. If neither side offers an adequate proposal, then perhaps the Commission should re-affirm the prior decision, which calculated the awards based on ex-ante values. NRDC believes that this revised set of guidelines would be more likely to result in a fair and balanced resolution of the disputed issues.

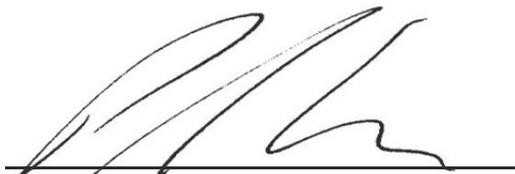
NRDC's approach will not result in an ungovernable proceeding. The Commission has already limited the scope of the issues that can be brought forward. And if further limits are needed to constrain the resources required to conduct the proceeding, the Commission should adopt other approaches which still allow for a fair and full hearing of the issues.

To the extent that NRDC's recommended changes to the guidelines are not adopted, NRDC has two requests for the hearing process. First, if the Evaluation Report is deemed *prima facie* reasonable, NRDC requests an opportunity to conduct additional discovery to develop a factual record by which it can rebut this presumption and demonstrate, where possible, that the specific values being challenged do not in fact meet the Commission's standard of reasonableness. Second, the requirement for "an affirmative alternative metric, calculation, or method that can be independently evaluated based on its own empirical merits" and "supported with factual evidence" is novel to this Ruling. If it is retained, NRDC requests additional time to amend its proposals, which were not informed by this requirement, so that it can replace the recommendations to revert to ex-ante values for some parameters with

proposals for affirmative alternative values.

Dated: May 20, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'PM', is written over a horizontal line.

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