



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Application of Southern California Edison
Company (U 338-E) for Approval of its 2009-
2011 Energy Efficiency Program Plans and
Associated Public Goods Charge (PGC) and
Procurement Funding Requests

Application 08-07-021
(Filed July 21, 2008)

And Related Matters

Application 08-07-022
Application 08-07-023
Application 08-07-031
(Filed July 21, 2008)

**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON
ADMINISTRATIVE LAW JUDGE GAMSON'S RULING REGARDING EVALUATION,
MEASUREMENT, AND VERIFICATION ISSUES**

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Dated: **December 8, 2009**

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MEASUREMENT, AND VERIFICATION ISSUES**

I.

INTRODUCTION

Pursuant to Administrative Law Judge Gamson's Ruling Regarding Evaluation, Measurement and Verification issues dated November 20, 2009, Southern California Edison (SCE) hereby provides its comments and responses to the questions posed in Attachment 2 to that Ruling. Also pursuant to ALJ Gamson's Ruling, SCE has not submitted comments on the Joint Energy Division/IOU EM&V plan, however SCE may respond to comments of others in its subsequent Reply Comments in this matter. SCE hereby provides its responses to the questions raised in Attachment 2 and has included its response in Attachment A hereto.

SCE appreciates the opportunity to submit this response to the questions in Attachment 2 to the Ruling and looks forward to continuing to work cooperatively with the Energy Division and others on this important matter.

Respectfully submitted,

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December 8, 2009

Attachment A

**Responses to the Questions and Recommendations in Attachment 2 to the ALJ's Ruling
Regarding Evaluation, Measurement & Verification Issues**

ATTACHMENT A

RESPONSES TO THE QUESTIONS AND RECOMMENDATIONS IN ATTACHMENT 2 TO THE ALJ'S RULING REGARDING EVALUATION, MEASUREMENT & VERIFICATION ISSUES

QUESTION 1: What are the respective roles of Energy Division and IOU EM&V staff for conducting EM&V projects?

In subsections “i” and “ii” below, SCE recommends changes to Energy Division’s (ED) recommendations.

The recommended changes are appropriate for two reasons: (1) to be consistent with the division of roles that the Commission mandated in Decision (D.)05-01-055 and D.05-11-011; and (2) to require coordination and enable collaboration between ED and the investor-owned utilities (IOU). These decisions identified what activities and decision-making powers fall within the role of program administrator. They specifically determined that the program administrator’s powers needed to include the authority to identify information needs and to conduct process evaluations, market assessments, and early measurement and verification (M&V) studies. Requiring coordination with ED on such activities makes sense, but the policies established in these Decisions should not be overturned by giving ED the sole authority to determine which studies may be done and when.

i. Are the IOUs permitted to manage any impact evaluation or M&V projects that develop ex-ante savings estimates, which may be used for determining portfolio performance, reporting accomplishments, or calculating incentives? If so, what are the Commission’s expectations for rules and procedures for oversight of these projects?

In order to allow program administrators to get the information they need without undue delay, ED’s proposed response should be amended to read as follows:

The IOUs should be permitted to manage projects to develop energy savings estimates in the specific cases where there is no existing ex-ante estimate or the IOUs believe that an existing estimate is out of date and needs testing. The IOUs should be required to notify the Energy Division before initiating such work and to proactively provide opportunities for Energy Division to review project plans and milestones and provide input directly to the project manager. If Energy Division is already conducting or planning to conduct a project to develop estimates for the same measure, with results scheduled to be available within three months of the scheduled IOU project completion date, then Energy Division should conduct the project but must provide the IOU the same opportunities to review project plans and milestones and provide input directly to the project manager. If the Energy Division project is scheduled to be completed more than three months later, then the IOU should proceed with its project, coordinating with Energy Division as described above, so that work will not be duplicated between the two projects.

ii. Is Energy Division expected and therefore permitted to initiate and manage evaluations that may be considered process or formative evaluations?

SCE recommends adding the following paragraph at the end of the Energy Division’s recommendation for Question 1(ii):

In cases where the IOUs are already conducting or planning to conduct process or formative evaluations on the same program or same topic, the Energy Division must coordinate with the IOUs to either conduct the study jointly under IOU management or to avoid duplication of data collection and attempt to make maximum use of the other’s work in the later-starting study. Disputes arising over projects addressed here would be subject to the dispute resolution language proposed by SCE in response to Question 6, hereof.

QUESTION 2: Should ED be responsible for approving IOU EM&V projects? Should there be exceptions to this process for expedited projects?

SCE’s response is provided in the response to Question 4 below.

QUESTION 3: Current policy requires ED to approve all IOU EM&V contractors in order to manage contractor conflicts of interest. Should this process continue or be modified?

SCE’s response is provided in the response to Question 4 below.

QUESTION 4: Should ED have the authority to be involved in IOU EM&V projects?

Process for Commission oversight of IOU EM&V project initiation

SCE is willing to accept ED’s recommendations for this section with three provisos.

First, the wording should be changed to refer to “review” rather than “review and approval,” consistent with our response to Question 1.

Second, ED must, as stated in section 4.1, page 3, reserve any extensive review process for IOU evaluation, measurement, and verification (EM&V) projects to a minority of projects that are truly are of high importance to ED and the Commission in providing information for policy-making, rather than reviewing virtually all projects. We believe that is ED’s intent. However, if an IOU finds repeated instances of studies being substantially delayed without good reason, the IOU may use the dispute resolution process described in the recommendation and comments on Question 6, to request that the Commission provide more specific limitations on the use of the review process.

Most of the IOU-initiated EM&V projects will be ones needed to help programs perform better, and a protracted review process will hamper the IOU program administrators from meeting their CPUC goals. In D.05-01-055, the Commission stated clearly that conducting certain types of studies is a necessary component of the program administrator role, critical for enabling utilities to be able to meet their goals.

Third, ED’s recommendation on Item 7, Contractor Selection, should be clarified to state that:

- The reason for overturning an IOU’s selection of a preferred contractor must be due to ED’s identification of a meaningful conflict of interest that would be created for this contractor by the award of the project in question; and

- ED must describe and discuss the alleged conflict of interest and alternative contractor selections with the IOU before making a final decision on what contractor is to be selected.

The IOU EM&V staffs have expertise and multiple reasons for selection of particular contractors for particular projects, so their judgment should not be overturned by ED without opportunity for a full discussion and a possibility of coming to agreement on a selection or alternative selection.

Process for Commission oversight of IOU EM&V project implementation

1. *Project Reporting*

The language should clarify that uploads of listed project documents will be for Energy Division review only, unless specified for public review in the recommendation on Question 8, on public vetting processes.

Also, ED should clarify that the same types of uploads will be made for ED-managed projects, to enable review by other ED consultants and IOU EM&V staff. This will help catch any erroneous interpretations of data or inadequate analytical approaches early, before a project is completed.

QUESTION 5: Should ED have the authority to allocate the authorized EM&V budget between ED and IOU-managed EM&V projects according to the overall EM&V priorities?

As currently stated, this ED recommendation effectively eliminates any independent decision-making on needed studies by the IOU program administrators, as mandated by D.05-01-055. Consequently, some level of budget that is under the discretion of the IOUs must be retained. In addition, the importance of consultation and coordination must not be ignored. The ED recommendation should be modified by adding three qualifiers to the grant of ED authority:

- 1) That ED will have this authority only for expenditures beyond the total EM&V budget that was granted to the IOUs for the 2006-2008 program cycle;
- 2) That ED should consult with the IOUs before making these decisions; and
- 3) That the IOUs be allowed to use the dispute resolution process described in ED's recommendations and SCE comments on Question 6, in the unlikely event that they find a pattern of over-riding the IOU program administrators' expressed priorities for EM&V needs to manage their programs, in favor of studies that the IOU judges to be less critical.

QUESTION 6: How should major disputes arising out of the EM&V work be managed? When should these disputes be elevated to the full Commission for resolution?

Informal approaches to dispute resolution should be attempted first, including voluntary mediation involving independent EM&V experts. Only when such approaches have failed should parties elevate an issue for Commission resolution.

Despite the question above asking *when* major disputes should be elevated to the full Commission, ED's recommendation is that all disputes will remain solely with the Assigned ALJ for resolution. ED's proposal should be rejected. Issues altering or affecting existing Commission decisions and policy must be resolved

by the Commission. SCE recommends that for major disputes that cannot be resolved: 1) the parties file comments setting forth their positions, and 2) the ALJ issues a Proposed Decision which is subject to all of the provisions of ARTICLE 14. RECOMMENDED DECISIONS, of the Commission's Rules of Practice and Procedure. This process would properly adhere to the Commission's Rules and afford all parties due process, opportunity to be heard, and fair treatment.

The types of issues that parties should be able to elevate include not only those listed in ED's recommendations, but also interpretation of any EM&V policy that the ED or a party believes is being misinterpreted in a significantly damaging way by the other organization. This could include perceptions of significant misallocation of funds by priorities, a pattern of unnecessary changes in contractor selections, etc.

QUESTION 7: How extensively should IOU's be involved in ED projects?

ED states that it maintains its recommendations articulated in Section C of the ED Straw Proposal. However, only one subsection of Section C is relevant to this question and should be used to establish guidelines: the EM&V Project Implementation and On-going Feedback section, pp. 8-9. Other subsections of Section C are replaced by new ED proposals in Attachment 2, proposals. These new proposals deviate in some ways from the original Straw Proposal sections.

QUESTION 8: What is the appropriate level of public involvement in EM&V projects? Should certain EM&V projects be exempted from a full public process? How will the exempted EM&V projects be determined?

SCE is willing to accept the Energy Division's recommendation for Question 8, except SCE recommends adding the following sentence: Disputes arising over projects addressed here would be subject to the dispute resolution language proposed by SCE in response to Question 6, hereof.

QUESTION 9: Should all IOU EM&V related projects, regardless of funding source (such as projects that develop savings estimates for non-DEER measures funded out of program funds), be required to follow the same policies and procedures that are required for EM&V funded projects?

This recommendation attempts to prevent rare situations where a project that should be classified as EM&V work is not exposed to review because it is program-funded, with the potential consequence that it results in duplicative efforts because of the lack of communication and coordination. To SCE's knowledge, these situations have been so rare and minor that an attempted policy to address them is unnecessary and will create far larger problems than it solves.

The proposed language is too broad and has the potential to create major delays in program administrators' abilities to carry out normal program activities needed to meet their goals, as well as administrative cost increases. Many program activities can be seen as "EM&V-related." Examples include contracts for third party support for designing or conducting program inspections and verifications to allow for incentive payments, consultant support for designing improved program processes in consultation with the program manager, or developing initial work papers using existing data sources (in contrast, to an early M&V project or Emerging Technologies program project that does primary data collection to form the basis for engineering calculations in a new work paper should be counted as an EM&V study). Further, as currently

stated, the ruling could be interpreted to apply to activities funded by Demand Response funds or shareholder funds, which are outside the scope of this proceeding.

QUESTION 10: Should the IOUs modify program eligibility rules to require very large customized program participants to participate in evaluations if selected in a sample, as a condition for receiving EE funding?

This is a program policy issue, not an EM&V issue. In fact, SCE (and we believe, the other IOUs) already requires such customers to sign a statement to be eligible to receive program benefits, a statement that acknowledges that they may be required to participate in a study as a result of their program participation. In addition, as the ED recommendation noted, ED and the IOUs are jointly attempting to reduce the burden of customer participation in evaluations by coordinated inspection and verification processes. However, if ED believes this issue needs further resolution, it should be addressed in the new Energy Efficiency Rulemaking (R.)09-11-014.

QUESTION 11: Should the Commission allow the IOUs the opportunity to count savings from behavior-based programs?

There is broad agreement that behavioral change and conservation are important to achieve the market transformational goals and reductions in overall energy use targeted by the California Long-Term Energy Efficiency Strategic Plan. The Commission wishes its program administrators to put their best efforts into moving towards its Strategic Plan goals. To enable this, it needs to create a regulatory environment that minimizes the conflict between meeting these goals and its goals for currently counted program energy savings, which are also important. Clearly, this means that performance incentive mechanisms for program administrators need to incorporate ways to track and credit progress in working towards these goals.

A solid first step to doing so would be to end the artificial practice of excluding the energy savings of behavior-based programs from the measurement of energy savings goal achievement. The major uncertainty hampering such programs is not the annual energy savings achieved. These can generally be measured by statistical energy usage (billing) analysis if they are significant. (This method is already an approved one included in the California Evaluator Protocols for measurement of energy efficiency program savings. SCE has successfully done this kind of measurement in studies spanning three decades of its residential audit programs.) Rather, behavior-based programs face a greater uncertainty as to how long the savings persist. Thus, it is feasible to develop and use ex ante initial savings estimates with short effective lives while the IOUs and ED conduct the jointly planned study(ies) identified on page 25 of the Joint EM&V Plan, designed to identify reliable methodologies to measure the initial and persisting savings from behavior-based programs.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON ADMINISTRATIVE LAW JUDGE GAMSON'S RULING REGARDING EVALUATION, MEASUREMENT, AND VERIFICATION ISSUES on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **8th day of December, 2009**, at Rosemead, California.

/s/ ALEJANDRA ARZOLA

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