

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**03-09-10
09:56 AM

March 9, 2010

Agenda ID #9270
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 09-01-019

This is the proposed decision of Administrative Law Judge (ALJ) Pulsifer. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Pulsifer at trp@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ PULSIFER (Mailed 3/9/2010)**

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)

**DECISION MODIFYING REQUIREMENTS FOR
VERIFICATION OF UTILITY INCREMENTAL MEASURE COSTS**

1. Summary

We hereby amend Decision (D.) 09-12-045 with respect to the true-up of utility claims for earnings under the energy efficiency Risk/Reward Incentive Mechanism (RRIM). This proceeding was opened for the purpose of reviewing Commission policies related to the RRIM for energy efficiency activities administered by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company (the utilities). In D.09-12-045, we addressed RRIM earnings claims covering the 2006-2008 program cycle, and adopted a process for the true-up of those claims.

For the reasons discussed below, we modify D.09-12-045 to remove the requirement for an independent verification of utility-reported “incremental measure costs” values.¹ With this modification, the schedule for the 2006-2008

¹ These “incremental” costs represent the difference between the costs of a standard measure versus an energy-efficient measure in the utilities’ portfolio.

true-up can proceed on a timely basis, while still providing a robust and reliable process for verifying RRIM earnings.

2. Background

For purposes of verifying the utilities' second interim Risk/Reward Incentive Mechanism (RRIM) earnings claim, Energy Division did not update the incremental measure costs (IMC) values, but defaulted to utility-reported actual IMC values. Since there are two sides to the incentive earnings equation (i.e., savings and costs), Energy Division focused its efforts on the energy savings side of the incentive equation.²

In comments on the Proposed Decision that was subsequently adopted as D.09-12-045, however, certain parties asked the Commission to require complete verification of IMC figures as part of the final true-up. Accordingly, a requirement was added in finalizing D.09-12-045, calling for an independent verification of utility self-reported IMC in the true up of 2006-2008 RRIM earnings. Although this additional requirement was incorporated into D.09-12-045, the adopted true-up schedule did not provide the additional time necessary to complete this expanded workload scope.

In view of the potential impact of the additional workload for IMC verification, parties were provided an opportunity to be heard as to the impact on the schedule, and any resulting implications for the Commission's commitment to award final 2006-2008 incentive payments by year-end 2010.³ On December 29, 2009, the assigned Commissioner issued a ruling soliciting

² See Energy Division Second Verification Report, Section 5.5 at 42.

³ See Order Instituting Rulemaking (OIR) 09-01-019 at 5.

comments on the true-up schedule impacts that would be required to meet the mandate in D.09-12-045 for independent verification of the utilities' IMC.

Based on preliminary estimates identified in the ruling, the additional time needed to perform the mandated IMC verification was estimated to be three months.⁴ In response to the ruling, various parties filed comments. Some parties argued that any additional time required to complete the IMC verification should be granted even if it would preclude a final Commission decision on the true up until after 2010. Other parties argued that a more limited IMC review may be feasible by using the 2008 "Database for Energy Efficiency Resources" (DEER) updates. The 2008 DEER includes IMC estimates that could be used to update the 2006-2008 energy efficiency portfolio for deemed measures (i.e., measures with predetermined savings and costs). Parties estimated that applying the DEER updates to the IMC could be done with a schedule extension of just one additional month. Other parties opposed any schedule extension at all, claiming that the existing schedule already allows sufficient time for the Energy Division to verify utility-reported IMC data.

After review of the comments in response to the December 29, 2009 ruling, the assigned Commissioner issued a subsequent ruling on February 3, 2010, affirming that three additional months would be needed for an independent verification of the utilities' self-reported IMC. The ruling stated, however, that an extension in the schedule would preclude timely adoption of a Commission decision on final 2006-2008 RRIM payments by year-end 2010. The assigned Commissioner thus declined to extend the schedule for this purpose. The

⁴ A detailed delineation of work tasks and durations supporting the estimated schedule impact was set forth in the December 29, 2009 Assigned Commissioner's Ruling.

assigned Commissioner likewise declined to extend the schedule to allow for a more limited IMC review by making use of the 2008 DEER updates, as certain parties mentioned in comments on the December 29, 2009 ruling. The 2008 DEER includes IMC estimates that can be used to update the 2006-2008 energy efficiency portfolio for deemed measures (i.e., measures with predetermined savings and costs).

The February 3, 2010 Assigned Commissioner's Ruling recognized that in order to maintain the Commission's commitment to issuing a decision on the 2006-2008 true-up by year-end 2010, a modification in the scope of D.09-12-045 would be necessary, removing the directive requiring independent verification of the IMC. Accordingly, the assigned Commissioner expressed the intention to present a proposed decision for adoption of this outcome.

3. Discussion

We hereby affirm the February 3, 2010 Assigned Commissioner's Ruling, calling for the modification of D.09-12-045 to remove the requirement for independent verification of the utilities' self-reported IMC for the purposes of the 2006-2008 true-up. This modification offers a balanced way to uphold the overall goals of the RRIM program. The existing schedule contemplates a Commission decision on the 2006-2008 earnings true-up by mid-September 2010. By incorporating three additional months into the schedule, the date for a final Commission decision on the 2010 true-up of the RRIM would move to the middle of December 2010. Extending the schedule by three months would eliminate any margin for other possible contingencies while adhering to the

Commission's commitment for a decision on final 2006-2008 incentive payments by year-end 2010.⁵

In D.08-01-042, the Commission concluded that to be effective in motivating the utilities to treat investments in energy efficiency as being comparable to supply side investments, the RRIM must provide the opportunity for the utility to recognize and book incentive earnings on a regular basis. If incentive earnings are not booked at regular intervals, they will be excluded from operating revenues, and treated as a one-time adjustment. A one-time earnings adjustment would not factor into a utility's financial valuation, thereby greatly diluting the value of the mechanism as an incentive to achieve energy efficiency.⁶

Consequently, in order to avoid such a result, the Commission committed to issue a decision on any final 2006-2008 incentive earnings by year-end 2010 as a high priority. In this way, the schedule for regular RRIM earnings will be maintained, and will factor into the utility's financial valuation. The incentive value of the mechanism will thereby be maintained, thereby supporting the Commission's commitment to achieving energy efficiency goals. At the same time, the integrity of the schedule must be maintained while recognizing the importance of independent verification of incentive earnings claims. Based on these principles, the Commission committed to issuing a final decision on the 2006-2008 true up by year-end 2010.

⁵ See OIR 09-01-019 at 5.

⁶ D.08-01-042 at 9-10.

Accordingly, in recognition of the principles set forth in D.08-01-042, it is reasonable to modify D.09-12-045 to remove the requirement for independent verification of utility-reported IMC values. In this manner, the Commission can meet its stated goal of issuing a final true-up decision during the year 2010. It is time to put the 2006-2008 RRIM issues behind us rather than to prolong uncertainty. Preserving our commitment to conclude the 2006-2008 true-up by year-end 2010 promotes this goal. We can then focus timely attention on prospective reform of the RRIM. This modified scope will still require rigorous and extensive verification of the utilities' 2006-2008 energy efficiency claims, and will preserve the integrity of the RRIM. This disposition applies only to the 2006-2008 cycle and is not intended as a precedent as to the scope of IMC verification to be applied for the 2010-2012 program cycle or beyond.

Accordingly, by this decision, we hereby affirm the February 3, 2010 Assigned Commissioner's Ruling, and amend D.09-12-045 regarding the scope of the true-up in accordance with the Assigned Commissioner's Ruling. We likewise affirm the Assigned Commissioner's Ruling not to add an additional month to the schedule for a more limited IMC review using the DEER update, as some parties suggested. In reaching this conclusion, we weigh the following factors:

- 1) The extra effort and expense that Energy Division staff, utility staff, and Energy Division consultants would expend on such a quick fix for 2006-2008 could be better directed to a more comprehensive and sensibly planned study and audit of measure costs for the 2010-2012 performance cycle. On a prospective basis, improved tracking systems can enable the utilities to gather and provide accurate measure cost data;
- 2) The Energy Division and its consultants are in the final stages of completing a monumental amount of work evaluating the 2006-2008 program cycle savings. Consistent with our

expectations, the Energy Division made difficult decisions about priorities for the 2006-2008 true up, including not evaluating some programs; not evaluating Incremental Measure Costs; and reducing the rigor of evaluation on lower priority programs, measures, and parameters;

- 3) The highest uncertainty for incremental measure costs lies in the custom measures, which staff would not be able to address with only an additional month; and
- 4) Finally, an additional month would not provide enough time for the Energy Division to convene stakeholder meetings, and thus the outcome of such an IMC update would not benefit from transparency and collaboration that this Commission has demanded of the Energy Division, the utilities, and the energy efficiency proceedings.

The adopted modification in D.09-12-048 will enable the Energy Division to complete its report on the true up in a timely manner while maintaining high standards of reliability. The range of verification work thus far completed by the Energy Division and its consultants for the 2006-2008 true up is quite robust and should mitigate any concerns regarding the lack of independent ex-post IMC verification. Based on a preliminary review, Energy Division estimates that roughly 90% of the 2006-2008 energy savings claimed by the utilities has undergone some form of evaluation review. The level of review for any given energy efficiency installation record may have included verification of installation, an on-site evaluation measurement, or was part of a net-to-gross analysis or combinations of any of the many analyses that were conducted for the portfolio. More detail about the types of analysis conducted for each record will be presented in the Energy Division report to be released by April 15, 2010.

The Commission's adoption of findings and conclusions consistent with the February 3, 2010 Assigned Commissioner's Ruling is in accordance with Public Utilities Code Section 310⁷ which states, in part:

Every finding, opinion and order made by the commission or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, is the finding, opinion, and order of the Commission.

This procedure is also in accordance with Section 1708, which states, in part, that the Commission:

... may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

In response to the ruling dated December 29, 2009, parties had the opportunity to comment on the schedule implications of requiring verification of the utilities' IMC data. Pursuant to Section 1708, the assigned Commissioner's February 3, 2010 ruling reviewed parties' comments on the schedule implications of the IMC review, and served notice of his intention to present a proposed decision amending D.09-12-045 to remove the requirement to undertake verification of the utilities' IMC data. In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, and Section 1708, parties have the opportunity to comment on this proposed decision amending D.09-12-045 to remove the directive for IMC verification

⁷ All subsequent section references are to the Public Utilities Code, unless otherwise noted.

4. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In September of 2007, by D.07-09-043, the Commission adopted the RRIM to encourage achievement of Commission-adopted energy efficiency goals, and to extend California's commitment to making energy efficiency the highest energy resource priority.

2. The RRIM was designed to rely upon independent verification of energy savings through production of Energy Division verification reports of utility energy efficiency costs and installations and services completed.

3. In D.09-12-045, the Commission examined RRIM earnings claims covering the 2006-2008 program cycle, and adopted a process for the true-up of those earnings claims, with a Commission decision to be issued by year-end 2010.

4. In its Second Interim Verification Report on Energy Efficiency Savings, the Energy Division did not update the utility-reported incremental measure costs, defaulting instead to utility-reported values

5. A requirement was added in finalizing D.09-12-045 for independent verification of utility self-reported IMC in the true up of 2006-2008 RRIM

earnings, but the adopted schedule did not incorporate additional time for this expanded workload scope.

6. If the requirement for verification of utility IMC data is retained, the existing true-up schedule would need to be extended to accommodate additional time to complete the expanded workload scope.

7. Parties provided comments on the implications of the requirement for independent IMC verification, and possible ways that the scope of IMC work might be modified while upholding the Commission's commitment to render a decision on the true up by year-end 2010.

8. Extending the schedule by one additional month would not provide enough time for the Energy Division to convene stakeholder meetings, and thus the outcome of such an IMC update would not benefit from transparency and collaboration that this Commission has demanded of the Energy Division, the utilities, and the energy efficiency proceedings.

9. A modification to D.09-12-045 to remove the IMC verification requirement would allow the existing schedule to be preserved, with provision for a final Commission decision on the 2006-2008 earnings true up by year-end 2010.

10. In D.08-01-042, the Commission concluded that to be effective in motivating the utilities to treat investments in energy efficiency as being comparable to supply side investments, the RRIM must provide the opportunity for the utility to recognize and book incentives on a regular basis.

11. The goal of providing timely and regular RRIM earnings is upheld by the Commission's commitment to issue a decision on the 2006-2008 earning true-up by year-end 2010.

12. A modification to D.09-12-045 to remove the IMC verification requirement would preserve existing requirements for a rigorous and extensive verification of the utilities' energy efficiency claims.

Conclusions of Law

1. In order to maintain the Commission's commitment to issue a final decision by year-end 2010 on the incentive earnings resulting from the 2006-2008 true-up, an amendment to D. 09-12-045 is warranted to modify the scope of IMC verification.

2. The modification of D.09-12-045 as set forth in the ordering paragraph below should be adopted.

3. The Commission's adoption of findings and conclusions consistent with the Assigned Commissioner's Ruling is in accordance with Public Utilities Code Section 310 which states that every finding, opinion and order made by the Commission pursuant to an investigation, inquiry, or hearing, when approved or confirmed by the Commission and ordered filed in its office, is the finding, opinion, and order of the Commission.

4. The modification to D.09-12-045, as ordered below, is in accordance with Public Utilities Code Section 1708, which provides that the Commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

5. This amendment to D.09-12-045 to modify the scope of the 2006-2008 true-up, as set forth in the ordering paragraph below, is not a precedent as to the scope of IMC verification to be applied for the 2010-2012 program cycle.

O R D E R

IT IS ORDERED that:

1. Decision 09-12-045 is hereby modified as follows: Ordering Paragraph 6 of Decision 09-12-045, which states that Energy Division shall complete an independent verification of the utilities' self-reported incremental measure costs in conjunction with the scheduled final 2010 true-up of Risk/Reward Incentive Mechanism earnings for the 2006-2008 cycle, is deleted.

2. Rulemaking 09-01-019 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated March 9, 2010, at San Francisco, California.

/s/ JOYCE TOM
Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.