

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Examine the
Commission's Post-2005 Energy Efficiency
Policies, Programs, Evaluation, Measurement and
Verification, and Related Issues.

R.06-04-010
(Issued April 13, 2006)

**PETITION FOR MODIFICATION OF DECISIONS 07-09-043 AND 08-01-042 BY
PACIFIC GAS AND ELECTRIC COMPANY (U 39-M), SOUTHERN CALIFORNIA
EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-
M), AND SOUTHERN CALIFORNIA GAS COMPANY (U 904-G)**

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August 15, 2008

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During the 2006-2007 timeframe the customers of the California investor-owned utilities saved over 5.5 billion kWh and 75.8 million therms. The utilities delivered on their energy efficiency portfolio plans as adopted by the Commission for the 2006-2007 period by collectively achieving almost 130% of the Commission's energy goal and over 110% of the Commission's gas goal. Such results are second to none in the nation and make significant progress towards California's energy efficiency and greenhouse gas reduction goals. This Petition provides the Commission with the ability to recognize this significant progress by adopting modifications to the current mechanism to continue its stated policy -- to make energy efficiency a part of the core utility business in California through regular performance incentives when the utilities partner with their customers to deliver energy savings to the electricity and natural gas systems.

Decision 07-09-043 adopted an energy efficiency risk/reward shareholder incentive mechanism to incent utilities to aggressively pursue the Commission's energy efficiency goals. This mechanism was intended to provide incentives for energy efficiency achievements similar to earnings, both in size and regularity, which can result from investments in utility plant such as power plants. Decision 08-01-042 granted a petition for modification to make changes to the adopted incentive mechanism to enable the utilities to book any earnings resulting from interim claims. Now a second petition for modification is needed to enable the utilities to receive their incentives in the time frame contemplated by Decision 07-09-043.

To make energy efficiency a regular, base part of a utility's business, both the utility and Wall Street need to be able to report earnings (or penalties) on a regular, systematic basis when progress is made towards the Commission's aggressive goals for energy efficiency. A delay in the ability to record earnings from outstanding performance towards Commission goals, particularly on the very first claim following adoption of the incentive mechanism, undermines the ability of the utilities to treat energy efficiency as a regular part of their business from both the perspective of the utility and the investment community, and does not bode well for the future. Since a delay in performance incentives puts the recently-adopted mechanism at odds with the policy of predictable earnings which are comparable to utility plant investment, this petition recommends modifications to the appropriate Decisions to allow for timely earnings when performance towards Commission aggressive goals has been demonstrated.

I. THE PETITION

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) petition to modify Decision 07-09-043 and Decision 08-01-042 to enable the utilities to receive timely earnings for interim claims pursuant to the energy efficiency risk/reward incentive mechanism. The petition seeks to clarify and modify how the 1st and 2nd interim claims will be calculated and paid. The 1st and 2nd interim earnings claims were to be submitted and approved based upon the Energy Division's final verification report to be completed in August each year, after issuance, review and comment on a draft verification report¹, and incorporation of updates of *ex ante* measure savings parameters in the Database for Energy Efficient Resources (DEER). The Energy Division is substantially behind schedule and will not have the report or updates completed in sufficient time to permit the utilities to file claims for their 1st

¹ To provide a reasonable time for parties to review and comment on draft verification reports, and for Energy Division to review and incorporate those comments, the draft verification reports need to be made public during June of each year.

incentive earnings claims in 2008 and receive predictable earnings from their energy efficiency programs that can be valued by the investment community.

The proposed changes are simple and straightforward. First, the petitioners request that the Commission continue the current requirements that utilities file earnings claims each year, as anticipated in the design of the adopted mechanism. If Energy Division does not meet the schedule for evaluation, measurement, and verification reports for such interim earnings claims in time to permit a full review of such reports and Commission authorization of incentives in the scheduled calendar year, then utilities should be permitted to proceed with their mid-September interim incentive claim, based upon savings and cost estimates provided in the fourth quarter reports. These claims will continue to be subject to the 35% holdback² and *ex post* true up in the 3rd incentive claim.

This petition for modification requests modifications to the text of both Decisions 07-09-043 and 08-01-042 to permit the first and second interim claims to proceed even if the Energy Division is unable to meet the schedules envisioned by the decisions. Specifically, this petition requests the following changes to the text of Decision 07-09-043, beginning at the bottom of mimeo page 122:

~~“Our staff is fully committed to meeting the deadlines established by our EM&V protocols for their reports. Nonetheless, no one can guarantee that unforeseen circumstances will never require some delay to that schedule.~~

~~Therefore, should circumstances warrant, we permit the assigned ALJ to modify the schedule set forth in Attachment 6, in consultation with Energy Division and the Assigned Commissioner.~~

Some parties to this proceeding suggest that we authorize the utilities to submit earnings claims and pay out some portion of the estimated savings if those Energy Division reports are delayed in any way. Because of the importance to the utilities and the investment community of providing timely recovery of any incentives consistent with the regularity of earnings for utility plant investments, we do not adopt this suggestion. Ratepayers’ interests are best served when the final payout of earnings (or imposition of penalties) occurs only after the installations,

² Decision 08-01-042 increased the holdback to the true up claim from the 30% holdback of the total claim adopted in Decision 07-09-043 to 35%, in exchange for eliminating the provision making the interim claims subject to refund, which would have precluded the utilities from being able to book any interim earnings, and was the reason for the first petition for modification.

program costs and ~~(for the final claim)~~ load impacts have been verified by our staff and its contractors.”

And to Finding of Fact 118, as follows:

“There is no guarantee that Energy Division’s schedule for completing EM&V reports will never be delayed, based on unforeseen circumstances. If there is a delay of the reports sufficient to impact one of the interim claims, the utilities may submit their incentive claim based on their reported measure savings and cost estimates. However, ratepayer interests are best served if the final payout for earnings (or imposition of penalties) occurs only after the installations, program costs and ~~(for the final claim)~~ load impacts have been verified by Commission staff and its contractors.

And in Ordering Paragraph 4(a) of Decision 07-09-043, at the end of the paragraph after “Attachment 6,” add the following:

“, except in the event the Energy Division is unable to issue a timely Interim Verification Report the utilities may submit interim claims and receive interim incentive amounts in accordance with Finding of Fact 118 on page 205.”

Second, the Joint IOUs request the Commission remove the requirement to update the interim earnings claims with updated estimates from the Database for Energy Efficiency Resources (DEER) and allow for the opportunity to bring measurement issues to the Commission for review. The text beginning on mimeo page 16, Findings of Fact 15 and 16 and Ordering Paragraph 3 of Decision 08-01-042 ordered Energy Division to update the *ex ante* DEER values into the interim claim calculations. However, the number of recent studies which have been released by the Commission which would support such updates is limited. In contrast, the DEER updates released in May and June of this year for use in 2009-2011 planning were significant and to a large extent not based upon recent studies. If such a release is anticipated to update the 2006-2008 program results, it is more appropriate to rely upon the measurement and evaluation studies due to be completed in 2010 for the 2006-2008 program cycle, along with timely verification reports completed in 2009, and fully incorporate those results into the final claim by the utilities for the three-year program cycle. The Joint IOUs also request the ability for Commission review of earnings-related issues raised in evaluation, measurement, and verification reports. Such an opportunity, to be used on a limited basis, would allow the

Commission to ensure that the policies set forth in the Decisions adopting the performance incentive mechanism for energy efficiency are being implemented and carried out.

Decision 08-01-042 should be modified as follows:

The text beginning in the middle of mimeo page 16, with the paragraph beginning with “For measures included...” through the end of Section 5 on mimeo page 18, through the paragraph ending with “up-to-date studies available.” should be deleted.

Finding of Fact 11 should be modified as follows:

11. A ~~combination of updated *ex ante* values combined with a~~ larger hold-back will substantially mitigate ratepayer risk brought upon by the changes we adopt to the true-up mechanism.

Finding of Fact 12 should be deleted.

Finding of Fact 15 should be deleted.

Finding of Fact 16 should be deleted.

Ordering Paragraph 3(b) should be deleted.

Decision 07-09-043 should be modified as follows:

The first sentence beginning in the middle of mimeo page 131, “In our view, the parties have failed to show why the procedures set forth in the ACR do not address parties’ concerns while achieving both efficiency and accuracy.” should be deleted.

The final sentence beginning at the top of mimeo page 133, “Because the issues are of a technical nature, no party has shown why such issues are not just as well, if not better suited to resolution Energy Division with the assistance of outside consultants rather than an ALJ and the five Commissioners.” should be deleted. Following this paragraph should insert the following:

“While it is not anticipated that the comment process detailed above and in the ACR would not be sufficient to resolve most issues raised by parties commenting on verification and evaluation reports, parties may raise issues to the Commission in limited cases where such a process is not sufficient to resolve major issues among parties.”

Finding of Fact 123 should be modified as follows:

123. The multi-party give and take available under the procedures established by the ACR and set forth in Attachment 7 is better suited than cross-examination for the kinds of disputes likely to arise with regard to evaluation study results. However, under limited circumstances, parties may bring verification and evaluation study issues to the Commission for resolution.

Finally, due to the timing of this request as it relates to the ability of the utilities to file and receive approval of claims for the 2006-2007 period in 2008, this petition requests approval of earnings claims for utility performance related to this time period. The utilities request earnings amounts of the following, as identified further in the attachment to this petition:

- SCE: \$45,928,383
- PG&E: \$77,114,757
- SDG&E: \$20,126,554
- SCG: \$9,597,585

Such amounts reflect appropriate payments under the incentive mechanisms, designed to provide payments for progress towards the Commission's 3-year goals for energy efficiency. These amounts are supported by the per-unit cost and savings estimates filed by the utilities in their recent reports and applied to the 2006-2007 unit results.

In the future, such claims will be requested through Advice Letters, pursuant to the current process established by the Commission, as modified by this petition.

With these proposed changes, the incentive mechanism will encourage the use of energy efficiency over traditional supply resources by allowing utilities to timely book any earnings claimed and received for the years 2006-2007 and 2008. The incentive mechanism can then truly serve as it was intended to allow utilities to recognize, or book incentives on a regular basis in a manner that can be anticipated by the investment community. Otherwise, earnings from energy efficiency will not be on par with generation resources in the minds of investors or utility management. The Commission stated that for the incentive mechanism to be effective, it must

provide incentives at interim points during the cycle. The Energy Division's inability to timely complete the Verification Reports seriously undermine the Commission's Risk/Reward Incentive Mechanism as previously adopted.

II. ARGUMENT

The risk/reward shareholder incentive mechanism was designed around the schedule and content of the energy efficiency evaluation, measurement, and verification process adopted by the Commission. Such a process was developed and adopted with the intent to provide annual feedback to the utilities as to the progress made towards Commission goals and a basis for annual shareholder incentives when the utilities made progress towards Commission goals. However, the ability for utilities to earn timely shareholder earnings such as those received from traditional utility investments, such as power plants, is predicated upon the timely completion of energy efficiency evaluation, measurement, and verification reports. Under the current mechanism, shareholder incentives earned by the utilities due to performance towards Commission goals may not be claimed and collected on a timely basis if such reports are delayed.

The Commission's Energy Division has encountered delays throughout the current cycle which have removed important feedback from the utilities and have now resulted in a likely delay to the first incentive claims for the 2006-2008 program cycle. The report on 2006 installations was eliminated in January 2007, removing the first expected feedback on the 2006-2008 portfolio performance.³ Subsequently, the Interim Performance Basis report, originally scheduled for March 2008 and intended to provide feedback to the utilities as to the energy savings to date, was removed and replaced with a report which simply attempted to collect the performance basis decisions to date, with no feedback as to the performance-to-date of the

³ Administrative Law Judge's Ruling Revising Protocols For Process And Review Of Post-2005 Evaluation, Measurement And Verification (EM&V) Activities, And Addressing Next Steps For Finalizing The Annual Reporting Requirement, January 2, 2007.

utilities. To date, these reports have yet to provide feedback to the utilities, feedback which would allow the utilities to better manage their portfolios and minimize the risk of not reaching the Commission's 2006-2008 goals. Such a lack of feedback, combined with the impending possibility of the utilities not being able to file earnings claims for their significant efforts put forth in 2006-2007, necessitates a re-visitation of the process adopted by the Commission in the previous Decisions. This petition is intended to modify the adopted risk/reward shareholder incentive mechanism to allow the Commission's policies for energy efficiency earnings to be maintained in light of delays in the evaluation, measurement and verification process.

Ordering Paragraph 7 of Decision 07-09-043 adopted the procedures for submitting, reviewing and approving claims, as set forth in Appendix 7 of the decision. Appendix 6 established the schedule for incentive claims, based upon the previously-adopted process and schedule for energy efficiency evaluation, measurement, and verification reports. Basically, the schedule called for the utilities to submit their report of measures installed and program costs by the end of February of a claim year. The Commission's Energy Division was to review and verify the measure and cost report by mid-August to enable the utilities to submit advice letters for interim claims in 2008 and 2009. Ordering Paragraph 3 and the text on pages 16-17 of Decision 08-01-042 tasked Energy Division with the additional requirement of updating the *ex ante* energy savings estimates for the 2008 and 2009 incentive claims. In Decisions 07-09-043 and 08-01-042, the Commission recognized the importance of making energy efficiency and any resulting earnings a regular part of the utilities' business:

- The adopted incentive mechanism “ensure[s] that utility investors and managers view energy efficiency as a core part of the utility's regulated operations that can generate meaningful earnings for its shareholders.” (D.07-09-043, p.4)
- “Utilities must be able to recognize, or book, incentives on a regular basis for accounting purposes in a manner that can be expected and anticipated by the investment community. Otherwise earnings from energy efficiency programs are not truly on par with generation resources in the minds of investors...If incentives are not booked at regular intervals, they would result in a one time earnings adjustment that would likely be excluded from operating earnings, which are the basis for a company's financial valuation. The uncertainty could result in a higher cost of financing. As a consequence, the utilities would not receive the full benefit of these shareholder incentives from the financial markets.” (D.08-01-042, p.10)

- “We recognized that an effective mechanism must include provisions for earnings (or penalties) at interim points during the three-year program cycle....The effectiveness of our adopted incentive mechanism is seriously undermined if the utilities cannot book authorized interim earnings.” (D.08-01-042, p.10)
- “The interim claims become a reward or penalty for the success or failure in implementing the energy efficiency programs and the final claim a reward or penalty for the measured load impacts resulting from the programs...it ensures that the utilities and investment community can actually recognize or “book” the interim earnings that we may authorize.” (D.08-01-042, p.24)

The utilities submitted their measure and cost reports on time in 2008. However, there have been no reports released to date on the 2006-2007 utility portfolio results, and as such it is highly uncertain whether the utilities will be able to make an earnings claim for the substantial work performed during 2006-2007 towards the Commission’s energy efficiency goals.

Decision 07-09-043 noted the utilities fears, at page 123: “Some parties to this proceeding suggest that we authorize the utilities to submit earnings claims and pay out some portion of the estimated savings if those Energy Division reports are delayed in any way.” But the Commission declined to adopt this suggestion, based on the assertion, at page 122, that: “Our staff is fully committed to meeting the deadlines established by our EM&V protocols for their reports.”⁴

This petition requests the modifications above to authorize timely interim earnings claims for utility performance towards Commission goals. This petition for modification, if adopted, allows the utilities to timely collect any incentives, gives assurances to the investment community that energy efficiency and any resulting earnings are a regular part of the utility’s base business, and provides an incentive for Energy Division to complete its tasks in the anticipated time frame. The utilities have aggressively and successfully implemented their

⁴ The fact that Energy Division is missing its deadlines for the very first claim is particularly distressing for the future. In the previous iteration of shareholder incentives for utility energy efficiency accomplishments that was in place from 1990-2002, the Commission met the adopted timetables for incentive requests and Commission authorization in the year following a program year, established through energy cost recovery proceedings until 1994 and then Annual Earnings Assessment Proceedings pursuant to Decisions 93-05-063 and 94-10-059, from 1990 through 1996. *See, e.g.*, Decision 96-12-079. However, thereafter the Commission’s consideration began to slip, first by 3 months (Decision 98-03-063), then six months (Decision 99-06-052), then nine months (Decision 00-09-038), and finally up to five years for the claims associated with program years 2000-2002 (Decision 05-10-041).

energy efficiency programs, and timely submitted their measure and cost reports. Because the delay is through no fault of the utilities, they should be authorized to collect the incentives they have earned, and it would be inappropriate to modify either the 35% holdback amount or reinstitute the “clawback” provision that would have prevented the utilities from being able to timely book any interim earnings.

Other portions of the mechanism would remain unchanged, including the modifications to the mechanism made by Decision 08-01-042, which, among other aspects, holds 35% of each claim until the year following completion of a program cycle, when it will be trued up based on final evaluation, measurement and verification (EM&V) studies. This final true up will evaluate and measure how much of the 35% of the earnings that was withheld and what portion, if any, of the 3rd and final earnings claim the utilities are entitled to claim and receive. As a result of Decision 08-01-042, earnings claimed in the 1st and 2nd interim claims are not subject to refund as a result of the final true up, unless the entire utility portfolio drops below the 65% of goal minimum performance standard, or if any of the three elements, kWh, kW, or therms, drops below a 60% minimum performance standard⁵, in which case the adopted penalties would apply.

The 35% of earnings withheld until the final claim would continue to be subject to the Energy Division’s Final Report and true-up, and provide sufficient protection to ratepayers. This modification is justified and necessary to uphold the integrity of the Energy Efficiency Risk/Reward Incentive Mechanism. It will serve both ratepayer and shareholder interests if the interim payout of earnings are on a regular basis throughout the program cycle and can be anticipated and expected in a predictable manner by the investment community. It will keep energy efficiency on par with generation resources in the minds of investors and utilities, reinforce the Commission’s commitment to make energy efficiency the highest energy resource priority, and remove uncertainty when Energy Division cannot timely issue its reports.

⁵ Because SoCalGas serves only natural gas, a 60% minimum performance standard applies to its entire portfolio.

III. CONCLUSION

Without modification of Decisions 07-09-043 and 08-01-042, the utilities will likely be unable to book any earnings this year, thereby thwarting the utilities and the Commission's goal of making energy efficiency a regular part of the utility's business, and diminishing the investment community's expectations for energy efficiency. The petition should be granted, and the utilities should be permitted to claim incentives this year for program years 2006 and 2007, and incentives next year for program year 2008, subject to the 35% hold back and appropriate adjustments to the 35% hold back based on the measurement and evaluation studies now being conducted for final release in early 2010. Attached to this petition is a table that shows the incentive that each utility will claim, based on the 9th Quarter report per unit inputs⁶, if this petition for modification is granted.

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⁶ The 9th Quarter report is the report submitted in June 2008 through the Commission's Energy Efficiency Groupware Application (EEGA) system.

The Joint IOUs request an expedited, 2-week comment period on this petition for modification. Such a request will allow for an expedited resolution to these first interim claims, in support of the policies discussed in this Petition.

The petition for modification should be granted.

Respectfully submitted,

/s/

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August 15, 2008

ATTACHMENT

2006-2007 Energy Efficiency Interim Claim

Energy savings data, costs, and Performance Earnings Basis per each Utility's 9th Quarter Report for the 2006-07 program period.¹

Southern California Edison Company

	kW	kWh
2006-7 CPUC Goal	426,000	1,968,000,000
2006-7 Achievements	400,681	2,425,342,914
Percent of Goal Achieved	94%	123%
Percent Average for MPS	109% (kWh below 95% threshold)	
Earnings Rate	9%	

Performance Earnings Basis: \$785,100,570

2006-07 Incentive Amount: Earnings Rate x PEB = \$70,659,051

2006-07 Interim Claim: \$70,659,051 x 65% = \$45,928,383

Amount Held Back for Final True-up: \$70,659,051 x 35% = \$24,730,667

Pacific Gas and Electric Company

	kW	kWh	therms
2006-7 CPUC Goal	385,000	1,773,000,000	27,500,000
2006-7 Achievements	437,298	2,606,571,702	33,017,047
Percent of Goal Achieved	114%	147%	120%
Percent Average for MPS	127%		
Earnings Rate	12%		

Performance Earnings Basis: \$988,650,732

2006-07 Incentive Amount: Earnings Rate x PEB = \$118,638,088

2006-07 Interim Claim: \$118,638,088 x 65% = \$77,114,757

Amount Held Back for Final True-up: \$77,114,757 x 35% = \$41,523,331

San Diego Gas and Electric Company

	kW	kWh	therms
2006-7 CPUC Goal*	209,500	1,102,400,000	9,500,000
2006-7 Achievements*	213,582	1,183,630,396	11,444,882
Percent of Goal Achieved	102%	107%	120%
Percent Average for MPS	110%		
Earnings Rate	12%		

Performance Earnings Basis: \$258,032,742

2006-07 Incentive Amount: Earnings Rate x PEB = \$30,963,929

2006-07 Interim Claim: \$30,963,929 x 65% = \$20,126,554

Amount Held Back for Final True-up: \$30,963,929 x 35% = \$10,837,375

*Includes Cumulative from 2004

¹ Each IOU's quarterly reports are available through the CPUC's Energy Efficiency Groupware Application (EGGA) website at: <http://eeega2006.epuc.ca.gov/DisplayQuarterlyReport.aspx>

Southern California Gas Company

	therms
2006-7 CPUC Goal*	53,300,000
2006-7 Achievements*	66,284,698
Percent of Goal Achieved	124%
Earnings Rate	12%

Performance Earnings Basis: \$123,045,958

2006-07 Incentive Amount: Earnings Rate x PEB = \$14,765,515

2006-07 Interim Claim: \$14,765,515 x 65% = \$9,597,585

Amount Held Back for Final True-up: \$14,765,515 x 35% = \$5,167,930

*Includes Cumulative from 2004

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department, PO Box 7442, San Francisco, CA 94120.

On the 15th of August, 2008, I caused to be served a true copy of:

**PETITION FOR MODIFICATION OF DECISIONS 07-09-043 AND 08-01-042 BY
PACIFIC GAS AND ELECTRIC COMPANY (U 39-M), SOUTHERN CALIFORNIA
EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-
M), AND SOUTHERN CALIFORNIA GAS COMPANY (U 904-G)**

by electronic mail to the following CPUC service list: R. 06-04-010.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 15th day of August, 2008.

/s/

LINDA DANNEWITZ

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded August 15, 2008; Last updated on August 14, 2008
Commissioner Assigned: Dian Grueneich on April 17, 2006
ALJ Assigned: David M. Gamson on November 14, 2007

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Commissioner Assigned: Dian Grueneich on April 17, 2006

ALJ Assigned: David M. Gamson on November 14, 2007

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Total number of addressees: 305

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