



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)

**SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SOUTHERN
CALIFORNIA GAS COMPANY (U 904-G) AND SAN DIEGO GAS & ELECTRIC
COMPANY'S (U 902-M) RESPONSE TO THE APPLICATION FOR REHEARING OF
DECISION 08-12-059**

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I.

INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, Southern California Edison Company (SCE), Southern California Gas Company and San Diego Gas & Electric Company (the "Southern Utilities") submit this Response to the Application for Rehearing of Decision (D.) 08-12-059 by the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) (together, DRA/TURN).

The Application for Rehearing must be rejected because DRA/TURN fail to identify any legal error in D.08-12-059. While DRA/TURN allege that the Commission's decision to authorize interim incentive payments to the Utilities in the interest of preserving the timeliness and efficacy of the incentive mechanism was bad policy and not necessary, such allegations do not amount to legal error. DRA/TURN had their opportunity to argue their positions in response to the Utilities' Petition to Modify, and the Commission, upon weighing the facts and arguments, rendered its decision in favor of authorizing the interim incentive payments.

The Southern Utilities support the Commission’s vision to make energy efficiency a core part of utility operations and to implement the important policies set forth in the Energy Action Plan. The Southern Utilities appreciate and agree with the Commission’s commitment to make energy efficiency the highest energy resource priority and to establish a model for the rest of the United States. As the Commission has correctly recognized through the recent Order Instituting Rulemaking, R.09-01-019, this possibility can only be realized if all stakeholders share the same vision, and work to ensure that integrity and success of the Risk/Reward Incentive Mechanism (“RRIM”) framework which aligns the interests of utility customers and shareholders. D.08-12-059 is a step in the right direction and goes a long way in fulfilling the Commission’s vision.

II.

BACKGROUND

After multiple years of discussions on the necessary policies and strategies of a Risk/Reward Incentive Mechanism, in September 2007, the Commission adopted D.07-09-043, establishing the Energy Efficiency Risk/Reward Incentive Mechanism or RRIM for energy efficiency. This mechanism was developed with the objective of providing incentives to encourage deployment of energy efficiency measures such that energy efficiency would be viewed by the Utilities as comparable to investments in supply side resources. This was the direct implementation of the 2003 California Energy Action Plan which proposed to “provide utilities with demand response and energy efficiency investment rewards comparable to the return on investment in new power and transmission projects.” D.07-09-043 also established the earnings claim and recovery process that afforded the Utilities the opportunity to file annual claims, with interim claims based on estimated performance achieved in Years One and Two of the three-year program cycle and a final claim based upon measurement studies.

In 2007, the Utilities filed a Petition for Modification and Amended Petition for Modification specifically asking that the interim claim process be modified such that any interim incentives provided to the Utilities would not be subject to potential “claw-back” should the ex

post review find that overpayment had occurred. In D.08-01-042 the Commission granted Petitioners' request, modifying the interim claim process to reduce the uncertainty associated with interim payments. Specifically the decision allows the Utilities to retain any interim incentives received except in circumstances where ex post review indicates that the Utilities' performance fell within the penalty band. D.08-01-042 also increased the holdback amount from 30% to 35% and required that the ex ante assumptions used to calculate interim claims be updated with 2008 and 2009 Database for Energy Efficiency Resources (DEER) measure savings parameters.

On August 2008, the Utilities filed a petition for authorization of the first interim incentive payment to reflect performance in deploying energy efficiency measures in 2006 and 2007, based on the reports submitted by the Utilities rather than on Verification Reports Energy Division were in the process of developing, among other requests. Decision 08-12-059 adopted in part the August 2008 petition and authorized payments in the amounts of \$41.5 million, \$24.7 million, \$10.8 million, and \$5.2 million for PG&E, SCE, SDG&E and SoCalGas, respectively for the 2006 and 2007 periods. This reflects the amounts the Utilities requested, adjusted to include a higher holdback on the earnings. In the Decision, the Commission reiterated that D.07-09-043 determined that interim claims under which the Utilities could receive incentives for mid-cycle program achievements would enhance the overall effectiveness of the mechanism, that regular and timely issuance of incentive payments is critical to the ability of the RRIM in creating a meaningful linkage between utility investments in energy efficiency and utility earnings, and that updates to the DEER energy efficiency performance assumptions and the methodologies supporting those updates have been the subject of considerable controversy over the course of this proceeding, particularly with respect to NTG ratios.

III.

STANDARD OF REVIEW

An application for rehearing must “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”¹ As discussed below, DRA/TURN have failed to demonstrate any legal error by the Commission in issuing D.08-12-059.

IV.

DECISION 08-12-059 COMPLIES WITH SECTION 451 OF THE PUBLIC UTILITIES CODE

DRA/TURN claim that D.08-12-059 violates Section 451 of the Public Utilities Code. DRA/TURN argue that the Commission’s order authorizing \$82.2 million in incentives to the Utilities, in light of the Energy Division’s Draft Verification Report showing incentive payments in the amount of \$3.6 million, results in rates that are not just and reasonable.² These assertions are without merit. It is well within the Commission’s exercise of discretion and authority under the Constitution to order the interim incentive payment amounts included in D.08-12-059.³

The huge flaw in DRA/TURN’s argument is their reliance on the Energy Division’s Draft Verification Report as the basis for their conclusion that the Commission’s decision is not just and reasonable.⁴ The Commission has found at least twice that the Report is controversial and

¹ Rule 16.1(c).

² Application for Rehearing, p. 10.

³ Cal. Const, Art. XII, §§ 5 & 6; *see also Pacific Telephone and Telegraph Co. v. Public Util. Comm. Of the State of Calif.*, 62 Cal.2d 634, 647 (1965); *Toward Utility Rate Normalization v. Public Util. Comm’n*, 22 Cal. 3d 529, 543 (1978).

⁴ As stated by the Commission in D. 08-12-059, Finding of Fact No. 12, there has been “considerable controversy” over the Energy Division’s Draft Verification Report, including updates to the DEER energy efficiency performance assumptions and the methodologies supporting those updates. The Commission has continued to recognize the controversies surrounding the methodologies used by the Energy Division in

Continued on the next page

there are concerns about its assumptions.⁵ DRA/TURN themselves admit in the Application for Rehearing that “it is likely that the final results [in the Report] will change” and that the “magnitude and direction of those changes” are unknown.⁶ In other words, DRA/TURN themselves own up to the fact that the final results in the Draft Verification Report will change and that they have no idea how much the figures will change or whether they will be substantially higher or lower.⁷ Indeed, while DRA/TURN speculate that the Decision, when compared to the Draft Verification Report, may have resulted in an overpayment of \$78 million,⁸ the Utilities’ Reports show the opposite – that the Decision may result in a significant underpayment to the Utilities of over \$70 million.⁹

Moreover, DRA/TURN’s assertion that the Commission ignored the results of the Draft Verification Report¹⁰ is not supported by a reading of the Decision itself. The Decision shows that the Commission weighed several different factors in reaching its findings. The Commission looked at the results of the Draft Verification Report and found many concerns including the underlying assumptions and therefore gave it little weight.¹¹ The Commission also looked at:

- The RRIM, established by D.07-09-043, which “sought to put investments in energy efficiency on equal footing with supply side investments by creating a

Continued from the previous page

calculating interim incentive payment and the Draft Verification Report in the recent Order Instituting Rulemaking to Examine the Commission’s Energy Efficiency Risk/Reward Mechanism, R. 09-01-019.

⁵ *Id.*

⁶ Application for Rehearing, p. 11.

⁷ A document titled “Final Verification Report” was issued by the Energy Division on February 5, 2009, with different results than the Draft Verification Report. That report, however, fails to adequately address the numerous significant concerns and issues raised by the IOU’s regarding the Draft Verification Report. See: December 15, 2008 Comments submitted by SCE on the Draft Verification Report. In addition, in the *Order Instituting Rulemaking to Examine the Commission’s Energy Efficiency Risk/Reward Mechanism*, R.09-01-019, the Commission suspended the schedule for verification and review of incentive claims in favor of the rulemaking. (R.09-01-019, p. 1). The Commission also stated that “we anticipate that the upcoming Commission Resolution will consider the Energy Division report moot for the purposes of 2006 and 2007 interim incentive payments.” R.09-01-019, p. 4.

⁸ Application for Rehearing, pp. 10-11.

⁹ D. 08-12-059, pp. 6, 27 (Ordering Paragraph No. 1); 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 902-M), and Southern California Gas Company (U 904-G), pp. 6, 11, and Attachment.

¹⁰ Application for Rehearing, p. 11.

¹¹ D. 08-12-059, pp. 21, 28 & 29.

comparable earning opportunity for the successful deployment of energy efficiency measures;”¹²

- The determination in D.07-09-043 that interim claims under which the Utilities could receive incentives for mid-cycle program achievements would “enhance the overall effectiveness of the mechanism;”¹³
- The fact that “[r]egular and timely issuance of incentive payments is critical to the ability of the RRIM in creating a meaningful linkage between utility investments in energy efficiency and utility earnings;”¹⁴
- The “significant delays to the completion of the verification reports on which interim claims to the Utilities are to be based such that any interim award, to the extent owed, would not be approved until 2009;”¹⁵
- NRDC’s analysis “that it believes shows that the interim claim amounts sought by PG&E, SCE, and SDG&E, SoCalGas are reasonably conservative and, thus, combined with the existing holdback provisions are unlikely to result in overpayment;”¹⁶

In weighing these and other findings, the Commission concluded that, while it was reasonable to rely on utility-submitted savings reports, it also would help mitigate the risk of incentive overpayment by (1) imposing a higher holdback amount, and (2) reinstating the deadband for purposes of conducting the ex post true-up for the 2006-2008 program cycle.¹⁷ In short, the Commission did consider the Draft Verification Report, but also several other facts in reaching its decision. In the end, the Commission reasonably concluded that “allowing the schedule for interim payments to slip such that any incentives that may be owed cannot be booked in the same year the interim claim was filed undermines the effectiveness of the

¹² D. 08-12-059, Finding of Fact No. 1.

¹³ D. 08-12-059, Finding of Fact No. 2.

¹⁴ D. 08-12-059, Finding of Fact No. 3.

¹⁵ D. 08-12-059, Finding of Fact No. 6.

¹⁶ D. 08-12-059, Finding of Fact No. 8.

¹⁷ D. 08-12-059, pp. 25-26, Conclusion of Law No. 1, Finding of Facts No. 10 & 11.

mechanism.”¹⁸ DRA/TURN are attempting to relitigate issues, asking the Commission to reweigh evidence in the record, and reach a different policy determination on order interim incentive payments. DRA/TURN have offered no legal basis to require such a reweighing of evidence. Thus, there is no legal error.¹⁹

DRA/TURN also argue that the Commission’s authorization of interim incentive payments that might result in overpayment to the Utilities “flies in the face of the obligation to ensure that rates are just and reasonable.”²⁰ Again, DRA/TURN are incorrect. The issue of whether the Commission can authorize incentive payments that contain the risk of overpayment has already been decided in D.08-01-042.

In D.08-01-042, the Commission found that approving the Utilities’ October 31, 2007, Petition to Modify subject to a 35% hold-back of interim claims “will provide the Utilities with an opportunity to book meaningful earnings during the program cycle, based on verified measure installations and program costs, and at the same time will minimize the potential risk of earnings overpayment once the final ex post load impact studies are completed.”²¹ The language is clear in D.08-01-042 that the Commission was not completely eliminating all risk of overpayment, but rather minimizing and mitigating the risk. In D.08-01-042, the Commission reasonably determined that the minimal risk of overpayment associated with the modifications proposed by the Utilities was “reasonable and necessary to improve the effectiveness of the risk/reward incentive mechanism adopted in D.07-09-043.”²²

Neither DRA/TURN sought rehearing of D.08-01-042, even though that decision, like D.08-12-059, adopted changes to the RRIM that resulted in the small risk of overpayment to the Utilities. DRA/TURN’s Application for Rehearing of D.08-12-059 therefore is not only without

¹⁸ D. 08-12-059, p. 16.

¹⁹ See D. 06-01-045 Application of Pacific Gas and Electric Company for Recovery of Pre-Deployment Costs of the Advanced Metering Infrastructure (AMI) Project (U 39 M), Order Denying Rehearing of Decision (D.) 05-09-044, (*mimeo*), p. 3.

²⁰ Application for Rehearing, p. 11.

²¹ D. 08-01-042, p. 21, Finding of Fact No. 13.

²² D. 08-01-042, p. 22, Conclusion of Law No. 1 and 2.

merit because it fails to recognize the Commission’s reasonable exercise of discretion in authorizing just and reasonable rates, but it also is an improper collateral attack on D.08-01-042.²³ DRA/TURN’s allegations regarding this issue are merely an attempt to improperly relitigate an issue that was decided in D.08-01-042. These allegations should have been raised in an application for rehearing of D.08-01-042. The opportunity for DRA/TURN to seek judicial review of D.08-01-042 has passed.²⁴ DRA/TURN cannot now cure their failure to seasonably seek judicial review of D.08-01-042 in the guise of a challenge to D.08-12-059, when they are in fact seeking review of an issue decided in D.08-01-042.²⁵

V.

DECISION 08-12-059 PROVIDES A RATIONAL BASIS FOR ITS AWARD OF INCENTIVES

A. Decision 08-12-059 Offers Adequate Support for Finding of Fact No. 3

DRA/TURN claim that D.08-12-059 fails to offer adequate support for Finding of Fact No. 3, which states that: “[r]egular and timely issuance of incentive payments is critical to the ability of the RRIM in creating a meaningful linkage between utility investments in energy efficiency and utility earnings.”²⁶ This claim is without merit.

As DRA/TURN themselves acknowledge, the Commission already made findings in D.08-01-042 that regular and timely incentive payments at interim points during the cycle are a necessary part of the incentive mechanism.²⁷ In D.08-01-042, the Commission found that the effectiveness of the mechanism would be “seriously undermined” unless utilities are able to book

²³ See D. 09-01-039 Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Reserve Planning, Order Denying Rehearing of Decision (D.) 08-07-048, mimeo, p. 4.

²⁴ See Cal. Public Util. Code § 1756

²⁵ See *Northern Cal. Ass’n v. Public Util. Comm.*, 61 Cal. 2d at 135.

²⁶ Application for Rehearing, pp. 13-14; D. 08-12-059, p. 25, Finding of Fact No. 3.

²⁷ Application for Rehearing, p. 14.

any interim earnings that are authorized. Specifically, the Commission found in D.08-01-042 that:

1. To provide effective financial feedback to utility managers and investors, a risk/reward incentive mechanism for energy efficiency must include provisions for earnings (or penalties) at interim points during the three-year program cycle.
2. Uncertainty over *ex post* measurement results coupled with the “all or nothing” nature of the MPS, makes it unlikely that the Utilities will in fact be able to book any authorized interim earnings during the program cycle, given the true-up provisions adopted in D.07-09-043.
3. As a result, the effectiveness of the incentive mechanism we adopted in D.07-09-043 will be seriously undermined unless we take steps to ensure that the Utilities are able to book any interim earnings that we may authorize for portfolio performance.
4. None of the arguments that TURN, DRA or CE Council present in their opposition to the Joint Petition address his fundamental problem to our satisfaction.²⁸

DRA/TURN cannot credibly claim that there is a lack of adequate support for Finding of Fact No. 3 in D.08-12-059. This finding was made in D.08-01-042 and confirmed in D.08-12-059. As stated above, DRA/TURN’s attempt to relitigate this issue is an improper collateral attack on D.08-01-042.

DRA/TURN also argue that the record devoid of factual information demonstrating that a short delay in payment of the first interim earnings would harm the Utilities’ shareholders or their energy efficiency programs.²⁹ The Commission in D.08-12-059 reasonably determined that the Utilities’ ability to book any incentives owed in the same year the interim claim is important to the effectiveness of the mechanism.³⁰ The record is not devoid of factual information supporting this finding. Indeed, the process for booking earnings in the same year that the incentive claim is made was established early on, in D.07-09-043.

²⁸ D. 08-01-042, p. 19, Finding of Fact Nos. 1-4.

²⁹ Application for Rehearing, p. 15.

³⁰ D. 08-12-059, p. 16.

DRA/TURN is again asking the Commission to reweigh the evidence in the record by giving “regular and timely issuance of incentive payments” less consideration in considering whether to approve the Utilities’ Petition for Modification. The Commission routinely considers and weighs its own policy objectives in reaching its determinations and that does not constitute legal error.³¹ The Decision was based on a reasonable weighing of the facts in making a determination.

B. Decision 08-12-059 Offers Adequate Support for Finding of Fact No. 8

DRA/TURN assert that D.08-12-059 does not provide adequate support for Finding of Fact No. 8 that states:

NRDC offers an analysis that it believes shows that the interim claim amounts sought by PG&E, SCE, and SDG&E, SoCalGas are reasonably conservative and, thus, combined with the existing holdback provisions are unlikely to result in overpayment.³²

It is difficult to understand DRA/TURN’s issue with this statement. Finding of Fact No. 8 is merely a statement of NRDC’s own belief of what its analysis shows. The Commission does not endorse or adopt NRDC’s analysis. Rather, the Commission in Finding of Fact No. 9 states that “[n]otwithstanding NRDC’s analysis, relying on utility-submitted savings reports that have not been verified by Energy Division as a basis for assessing interim claims increases the risk of overpayment.”³³ The Commission then goes on to state in Finding of Fact No. 10 that a higher holdback amount can help mitigate the risk of incentive overpayment. Similarly, Conclusion of Law No. 2 states:

Although NRDC has provided an analysis indicating that the interim claim amounts requested by PG&E, SCE, SDG&E and SoCalGas are reasonably conservative, because reliance on these reports as the basis for assessing interim claims necessarily involves greater risk of overpayment, a higher holdback amount of 65% is warranted and reasonable.³⁴

³¹ See, *supra*, D.06-01-045, mimeo, p. 4.

³² Application for Rehearing, p. 15; D.08-12-059, p. 25, Finding of Fact No. 8.

³³ D. 08-12-059, p. 25, Finding of Fact No. 9 (emphasis added).

³⁴ D. 08-12-059, p. 26, Conclusion of Law No. 2.

As shown above, in spite of NRDC’s analysis showing that the Utilities’ claims are “reasonably conservative” and “unlikely to result in overpayment,” the Commission determined that a higher holdback amount was warranted and reasonable. Therefore, DRA/TURN’s claim that the Commission decision is faulty because it includes Finding of Fact No. 8 must be rejected.

C. Decision 08-12-059’s Findings of Fact Nos. 10 and 11 Support the Interim Incentive Payments

DRA/TURN assert that D.08-12-059 does not provide adequate support for Finding of Facts No. 10 and 11 that state:

10. All else equal, imposing a higher holdback amount can help mitigate the risk of incentive overpayment.
11. Reinstating the deadband for purposes of conducting the ex post true-up for the 2006-2008 program cycle will further reduce the risk of overpayment.³⁵

DRA/TURN argue that neither of these changes will eliminate the risk that the Utilities will receive incentives for performance that falls short of the Commission’s goals and that these changes are insufficient to protect ratepayers from overpayment.³⁶ The only way to totally eliminate any risk as requested by DRA/TURN would be for the Commission to discard several of its other goals, including:

- The goal that energy efficiency should be equal to other utility investments, such as “steel in the ground;”
- The goal that energy efficiency should be the highest resource selected; and
- The goal that the Utilities should see the regular and timely results on their efforts.

As stated above, the Commission weighed several factors in reaching its decision to authorize incentive payments. The Commission did not purpose to eliminate all risk of

³⁵ Application for Rehearing, pp. 18-19; D. 08-12-059, pp. 25-26, Finding of Fact Nos. 10 and 11.

³⁶ Application for Rehearing, p. 19.

overpayment, but to mitigate and minimize that risk. The Commission found that such minimal risk is warranted “in the interest of preserving the timeliness and efficacy of the incentive mechanism.”³⁷ This was a proper exercise of the Commission’s discretion. The fact that DRA/TURN disagree with the way the Commission weighed the facts and exercised its discretion does not amount to legal error.³⁸

D. Decision 08-12-059 Correctly Recognizes That Regular And Timely Issuance Of Incentive Payments Is Critical To The Ability Of The RRIM In Creating A Meaningful Linkage Between Utility Investments In Energy Efficiency And Utility Earnings

DRA/TURN states that the Decision contains no finding recognizing the essential linkage between incentives and verified energy savings that the Commission seeks to achieve.³⁹ DRA/TURN, however, fail to articulate why the absence of such a finding constitutes legal error. The Commission in D.08-12-059 recognizes “regular and timely issuance of incentive payments is critical to the ability of the RRIM in creating a meaningful linkage between utility investments in energy efficiency and utility earnings.”⁴⁰ The Commission determined that, due to “the significant delays to the completion of the verification reports on which the interim claims to the Utilities are to be based,”⁴¹ the need for timely issuance of interim incentive payments outweighed the need for verification of energy savings by the Energy Division. Again, the fact that the Commission weighed the facts and reached this conclusion, contrary to what DRA/TURN had hoped for, does not amount to legal error.

³⁷ D. 08-12-059, p. 26, Conclusion of Law No. 2.

³⁸ See, *supra*, D.06-01-045, mimeo, p. 4.

³⁹ Application for Rehearing, p. 19.

⁴⁰ D. 08-12-059, p. 25, Finding of Fact No. 3.

⁴¹ D. 08-12-059, p. 25, Finding of Fact No. 6.

E. Decision 08-12-059 Correctly States That The Payments It Authorizes Are Based On The Utilities' Fourth Quarter Reports

DRA/TURN argue that the Decision is incorrect in stating that the payments it authorizes are based on the Utilities' Fourth Quarter Reports.⁴² DRA/TURN are wrong. SCE provided documentation to DRA in response to data requests which showed the data behind the requested payments in the Petition. Such data was in the form of links to the previously submitted fourth quarter report submitted by SCE. This report had been available to parties for nearly six months.

F. Decision 08-12-059's Finding of Fact No. 12 Supports the Interim Incentive Payments

DRA/TURN argue that Finding of Fact No. 12, which takes note of the considerable controversy surrounding the Energy Division's updates to the DEER energy efficiency performance assumptions and methodologies supporting those updates, while accurate, does not support the incentive payment.⁴³ DRA/TURN are incorrect.

As DRA/TURN acknowledge, there is no dispute over the fact that there has been significant controversy surrounding the DEER updates and a delay in timely issuing the Draft Verification Report.⁴⁴ The Commission reasonably found that in the interest of preserving the timeliness and efficacy of the incentive mechanism, the Commission should authorize interim payments to the Utilities based on their quarterly performance reports (but subject to a higher holdback amount). The controversy and delays surrounding the Draft Verification Report certainly supports the Commission's conclusion.

⁴² Application for Rehearing, p. 20.

⁴³ Application for Rehearing, p. 21.

⁴⁴ Application for Rehearing, p. 21.

VI.

THE COMMISSION DID NOT COMMIT LEGAL ERROR IN GRANTING THE PETITION FOR MODIFICATION

DRA/TURN argue that the Commission committed legal error by granting a Petition for Modification that failed to demonstrate changed circumstances that would justify modification of D.07-09-042 or D.08-01-042.⁴⁵ There is no legal error. The changed circumstances are the delays and considerable controversy surrounding the Energy Division's Draft Verification Report. The Commission reasonably determined that issuance of timely interim payments based on the Utilities Fourth Quarter Reports was warranted.

The fact that there has been a delay in the incentive process is not a fact that is in dispute. The ALJ, the Assigned Commission, the Energy Division, DRA and TURN all have acknowledged both orally and in writing the considerable delays in the Energy Division Draft Verification Report. This is a fact that is not reasonably subject to dispute and the Commission is capable of accurate determination of this fact by resort to sources of reasonably indisputable accuracy.⁴⁶

A. There Is Sufficient Factual Support For The Commission's Decision

DRA/TURN argue that there is inadequate factual support in the record to warrant the Commission's decision to grant the Utilities' Petition for Modification.⁴⁷ DRA/TURN complain that in D.08-12-059, the Commission reversed its approach taken in its prior Commission decision, D.08-01-042, and elevated payment of incentives by the end of 2008 above the goal of avoiding overpayment.⁴⁸ TURN/DRA's arguments should be rejected.

⁴⁵ Application for Rehearing, p. 22.

⁴⁶ Cal. Evid. Code § 452; Rules of Practice and Procedure 13.9.

⁴⁷ Application for Rehearing, p. 24.

⁴⁸ Application for Rehearing, p. 25.

It is well within the Commission's discretion to modify its prior decisions. In this case, the Commission found that the severe delays and controversy surrounding the Energy Division's Draft Verification Report warranted granting the Utilities' petition.

B. The Commission's Recognition Of The Importance Of Regular And Timely Issuance Of Incentive Payments Supports The Decision

DRA/TURN state that the Commission's belief that paying incentives in 2009 rather than 2008 undermines the incentive mechanism does not warrant introducing the risk of overcharging ratepayers 82.2 million.⁴⁹ The Commission and DRA/TURN clearly disagree on this policy issue. The fact that DRA/TURN disagree with the Commission's conclusion does not amount to legal error.⁵⁰

VII.

THE COMMISSION DID NOT ABUSE ITS DISCRETION

As shown above, the Commission did not violate Section 451 of the Public Utilities Code by issuing D.08-12-059. The Decision was fully supported by substantial evidence, as shown in the Finding of Facts and Conclusions of Law. Accordingly, DRA/TURN have failed to show any abuse of discretion by the Commission in issuing D.08-12-059.

VIII.

CONCLUSION

The Southern Utilities respectfully urge the Commission to reject the DRA/TURN application for rehearing. Decision 08-12-059 complies with all parts of the Public Utilities Code and the Conclusions and Findings in the Decision are well supported and substantiated. DRA/TURN are merely continuing the fight against the energy efficiency risk/reward

⁴⁹ Application for Rehearing, p. 26.

⁵⁰ See D. 06-01-045, mimeo, pp. 7-8.

mechanism they began over 18 months ago. DRA/TURN have made the same arguments and objections every step of the way. The Commission should again reject these arguments.

Respectfully submitted,

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February 17, 2009

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 SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SOUTHERN CALIFORNIA GAS COMPANY (U 904-G) AND SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902-m) RESPONSE TO THE APPLICATION FOR REHEARING OF DECISION 08-12-059 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 **17th day of February, 2008**, at Rosemead, California.

/s/ JENNIFER ALDERETE

Jennifer Alderete

Project Analyst

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Service Lists

**PROCEEDING: R0604010 - CPUC - PG&E, EDISON,
FILER: CPUC - PG&E, EDISON, SDG&E, SOCALGAS
LIST NAME: LIST
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