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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 06-04-010
(Filed April 13, 2006)

**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**

In the Administrative Law Judge ruling issued on January 11, 2006 (ALJ Ruling)¹, I adopted the following process and review protocols for Joint Staff's² EM&V activities associated with impact evaluations for the 2006-2008 program cycle:

- a) The Performance Basis Protocol, which identifies when Joint Staff and its consultants plan to verify various components (e.g., measure installations, program costs, unit energy savings) used to calculate the performance basis for each portfolio administrator for the 2006-2008 planning cycle.

¹ *Administrative Law Judge's Ruling Adopting Protocols for Process and Review of Post-2005 EM&V Activities*, January 11, 2006.

² Joint Staff refers to CPUC's Energy Division and California Energy Commission (CEC) staff working collaboratively on EM&V-related activities as initially discussed in D.05-01-055.

- b) The Public Process Protocol for the risk analysis, priority assessment and study scoping that Joint Staff will be undertaking in the coming weeks for impact evaluation studies.
- c) The Study Review Protocol, that describes the process Joint Staff will use to develop and review comments after a contractor has been selected to conduct a specific set of evaluations for impact and market effects studies. This protocol also identifies the Annual Earnings Assessment Proceeding as the forum for dispute resolution.

On May 24, 2006, the assigned Commissioner issued a ruling (ACR) and scoping memo for this rulemaking,³ which retained as Phase 2 all the EM&V-related activities requiring ongoing attention during the 2006-2008 program cycle and reiterated the reporting schedule for the results of Joint Staff's impact evaluation studies as follows:

- August 2007: The **2006 Verification Report** that verifies through December 2006 the number and types of measure installations, services rendered and program costs;
- March 2008: The **Interim Performance Basis Report** that verifies through July 2007 performance basis parameters that include:
 - (1) energy savings and peak demand reductions at the measure/unit, program and portfolio level, (2) load factors/daily load shapes, (3) incremental program costs, (4) net-to-gross ratios).
- August 2008: The **2007 Verification Report** that verifies through December 2007 the number and types of measure installations, services rendered and program costs;

³ *Assigned Commissioner's Ruling and Scoping Memo and Notice of Phase 1 Workshops on Risk/Reward Incentive Mechanism, May 24, 2006.*

- August 2009: The **2008 Verification Report** that verifies through December 2008 the number and types of measure installations, services rendered and program costs;
- March 2010: The **Final Verification and Performance Basis Report** that will verify and true-up performance parameters as required under the adopted EM&V protocols for the 2006-2008 program cycle.

Attachment 3 of the ACR presents the Joint Staff reporting schedule in tabular form as well as a discussion of how each performance parameter will be updated.

As noted in the ACR, the specific timeline for resolving all Phase 2 EM&V-related issues is based on current Energy Division work plans, and that the work needed by Energy Division and its contractors to fulfill their EM&V responsibilities is ongoing. The ACR further anticipated that EM&V-related issues would continue to be addressed throughout the 2006-2008 program planning cycle.

By this ruling, I am adopting modifications to the process and review protocols and EM&V results reporting schedule that have been adopted in the prior rulings identified above. These changes, further discussed below, are necessary in light of the delays and contracting issues that Energy Division and Joint Staff have encountered in undertaking their various EM&V activities

Attachment 2 of the January 2006 ALJ Ruling (i.e., Attachment 3 of the May 2006 ACR) is revised to eliminate the August 2007 Verification Report, which is supposed to provide verified number of measure installations and portfolio and program costs for 2006. Given that Energy Division continues to have delays in getting program impact evaluation Request for Proposals (RFPs) released and now expects that program impact contractors may not be hired

until March or April 2007 *at the earliest*, then the timeline for the August 2007 Verification Report will not provide enough time to get contractors in the field to obtain the information needed for this particular report. Energy Division recommends waiting until the following year (August 2008) to issue the first verification report, which would cover the first two years (2006 and 2007) of the current program cycle. I have consulted with the assigned Commissioner and we concur with Energy Division's recommendation since it appears to be the most reasonable option given the reality of the current contracting situation. We intend to consider this delay in the verification report for its possible impact on the shareholder incentive mechanism that is being considered in Phase 1 of this rulemaking, and will make the necessary adjustments for this particular program cycle as needed. Attachment 1 to this ruling is the revised version of the *"Performance Basis Protocol For Verifying Performance Basis Parameters And Joint Staff's Reporting Schedule"*.

Attachment 3 to the January 2006 ALJ Ruling is also revised to modify the process and schedule that Energy Division and Joint Staff will undertake in obtaining public input on various EM&V program impact study plans for 2006-2008. The process protocols require Joint Staff to develop study scopes for various program impact evaluation studies; have public workshops to solicit input on the study scopes (which will include matching of applicable protocols to programs, applicable levels of rigor, risk factors and corresponding budgets); and after the workshop, to prepare and post final impact evaluation plans on the CPUC website, which will then be used in the development of RFPs to hire evaluation contractors.

Energy Division requests that the above process be modified to shift the public review of the scopes of various program impact evaluation studies to a

later stage *after* the contractors have been hired and they have had time to work with Joint Staff in drafting more detailed evaluation plans. Energy Division believes that parties have already been given a chance to review and comment on the high-level risk analysis, applicable rigor of evaluation, and evaluation budgets in prior workshops and that developing more detailed study scopes to be vetted out in public workshops *prior* to releasing the RFPs would not be productive at this time and will only serve to add further delays to the process. Energy Division is currently planning on issuing program impact evaluation RFPs with more simplified work scopes than initially anticipated, and will solicit public input by either requesting written comments or holding public workshops (in-person or via teleconference) on the selected contractors' evaluation plans as they become available.

I find Energy Division's recommendations reasonable in light of current constraints and in order to expedite the release of RFPs and the hiring of evaluation contractors. Attachment 2 to this ruling is the revised version of the *"Public Process Protocols for Impact Evaluation Study Scoping: Description of the Planning Process to Develop Specific Evaluation Studies and Budgets for Impact Studies"*.

Energy Division further suggests that, as a protocol, the utilities be required to pay its EM&V contractors in a timely manner, i.e., within 30 days of receiving a payment request from the Energy Division, and that the utilities should submit to Energy Division with copy to the service list, their plans for managing the payment of invoices to Energy Division contractors (e.g., what is the anticipated internal process and who is involved in each utility for processing the payments). Furthermore, Energy Division requests that it be

given the discretion to transfer some of its EM&V budget to the utilities, as needed.

I find it reasonable to adopt a protocol requiring the utilities to pay the Energy Division's EM&V contractors within 30 days of receiving a payment request from the Energy Division contract manager. In addition, the utilities should provide Energy Division, with their respective plans for managing the payment of invoices to Energy Division contractors within 45 days of this ruling, with copy to the service list of this rulemaking. The utilities should consult with Energy Division regarding the specific information that they have to provide. Energy Division may also request approval by the assigned Commissioner or Administrative Law Judge(s) on a case-by-case basis to transfer to the utilities portion of its EM&V budget, as needed, for services and/or studies that the utilities could more expeditiously obtain or undertake, within the constraints of our conflict of interest rules and guidelines set forth in prior Commission decisions.

Energy Division has informed me that they believe the annual energy efficiency portfolio reporting requirements requires further examination. On October 17, 2006 Energy Division issued proposed annual reporting requirements based on the reporting format used over the past several years. Based on party comments Energy Division would like to hold public workshops to explore several issues with parties before finalizing the reporting requirements. In addition to the issues raised in comments, Energy Division intends to explore the following:

What report should be used by the utilities to submit their "reported" (not yet verified by Joint Staff) performance basis and accomplishments relative to goals (achievement of the minimum performance standard) on a portfolio basis for the purpose of the

shareholder incentive mechanism currently under consideration by the Commission?

Do the current quarterly reports provide cumulative information that is sufficient for this purpose? If not, should they be augmented, and if so, how? Should the annual report instead provide this information?

What specific information needs to be provided in the annual report as a baseline for staff's verification effort?

I find Energy Division's request to continue to examine the annual reporting requirement to be reasonable. I encourage staff to hold workshops in January 2007 and to finalize their proposal for annual reporting requirements as soon as possible thereafter.

IT IS RULED that:

1. The revised Performance Basis Protocol For Verifying Performance Basis Parameters and Joint Staff's Reporting Schedule presented in Attachment 1 to this ruling is adopted.

2. The revised Public Process Protocol for Impact Evaluation Study Scoping presented in Attachments 2 of this ruling is adopted.

3. Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company and Southern California Edison Company (collectively, "the utilities") are directed to pay Energy Division's evaluation, measurement and verification (EM&V) contractors within 30 days of receiving a payment request from the Energy Division contract manager.

4. Within 45 days of this ruling, the utilities will provide Energy Division, with copy to the service list of this rulemaking, their respective plans for managing the payment of invoices to Energy Division contractors. The utilities will consult with Energy Division regarding the specific information that should be provided.

5. Energy Division may request approval from the assigned Commissioner or assigned Administrative Law Judge(s) to transfer portions of its EM&V budget to the utilities for procuring services or studies that could be more expeditiously obtained by the utilities, subject to pertinent conflict of interest rules and guidelines set forth in prior Commission decisions.

6. As discussed in this ruling, Energy Division shall hold workshop(s) to further address annual reporting requirements.

Dated January 2, 2007, at San Francisco, California.

 /s/ MEG GOTTSTEIN
Meg Gottstein
Administrative Law Judge

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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 copy 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 copy of the filed document is correct as of today's date.

Dated January 2, 2007, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

N O T I C E

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