FILED
04-06-12
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.	))))	Rulemaking 09-11-014 (Filed November 20, 2009)

NOTICE OF *EX PARTE* COMMUNICATION OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

JANET COMBS
LARRY R. COPE
MONICA GHATTAS

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-2570
Facsimile: (626) 302-7740
E-mail:larry.cope@sce.com

Dated: **April 06, 2012**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.	))))	Rulemaking 09-11-014 (Filed November 20, 2009)

NOTICE OF *EX PARTE* COMMUNICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

Pursuant to Rule 8.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), Southern California Edison Company (SCE) hereby gives notice of the following *ex parte* communication.

On Wednesday, April 4, 2012, at approximately 4:00 p.m., SCE's Director of Regulatory Affairs, Michael Hoover, and SCE's Director of Customer Energy Efficiency and Solar Division, Gene Rodrigues, met in-person with Bishu Chatterjee, Energy Advisor to Commissioner Timothy A. Simon. The meeting occurred at the Commission's Offices at 505 Van Ness Avenue, San Francisco, CA, 94102 and lasted approximately 30 minutes. The meeting was initiated by SCE, and involved both oral and written communication.

During the meeting, Mr. Hoover and Mr. Rodrigues expressed general support with the guidance contained in Administrative Law Judge (ALJ) Farrar's Proposed Decision Providing Guidance on 2013-2014 Energy Efficiency Portfolios and 2012 Marketing, Education, and Outreach, issued on March 20, 2012, in proceeding R.09-11-014. Mr. Hoover and Mr. Rodrigues discussed the information contained in the handouts which are attached hereto. SCE provided the attached documents to Mr. Chatterjee during this meeting.

To receive a copy of this *ex parte* notice and attachments, please contact:

Andrea Moreno
Southern California Edison Company
P.O. Box 800 (GO1 – Law Dept. – Case Administration)
Rosemead, CA 91770
Telephone: (626) 302-4702
Facsimile: (626) 302-3719
E-mail: andrea.moreno@sce.com

Respectfully submitted,

JANET COMBS
LARRY R. COPE
MONICA GHATTAS

/s/ Larry R. Cope
By: Larry R. Cope

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-2570
Facsimile: (626) 302-7740
E-mail:larry.cope@sce.com

April 06, 2012

Attachment A

2013-2014 EE Goals in the Proposed Decision – April 4, 2012

Briefing: 2013-2014 EE Goals in the Proposed Decision

Summary

The Decay Recovery component of the goals is inconsistent, unreasonable, and exceeds all cost-effective achievable market potential by nearly 200%. It would result in a significant ratepayer investment in non-cost-effective energy efficiency

Ex Parte Energy

Goal Components (Proposed Decision)	Energy Savings (GWh)				Demand Reduction (MW)		
	2012	2013	2014		2012	2013	2014
IOU Program Targets	n/a	716	718		n/a	160	151
Codes & Standards	n/a	285	270		n/a	37	40
Decay Recovery	n/a	299	590		n/a	94	150
Total	**1,093**	**1,300**	**1,578**		**239**	**291**	**340**
Percentage increase over 2012	n/a	119%	144%		n/a	122%	142%

Meetings on Effieicn

A. SCE Supports Key Elements Of The Goals Proposal

- IOU Program Targets = 100% of cost-effective achievable market potential
- Codes & Standards Advocacy credit has been recalculated to "adjusted net" which now accounts for IOU attribution

B. SCE Has Significant Concerns With The Decay Recovery Component Of The Goal

- The Decay Recovery component amounts to nearly 200% of all cost-effective achievable market potential
- It is primarily comprised of short-lived CFL measures
  - Due to increased stringency of codes, standards, and legislation, markets have begun to transform and decayed measures are no longer eligible for ratepayer investment
  - The PD places limits prohibiting more than a minor investment in general purpose CFLs
  - Recovery of lower-cost energy savings with much higher-cost measures would put significant downward pressure on portfolio cost-effectiveness
  - Would require a significant increase in ratepayer investment as IOUs would be forced to rapidly increase spending on non-cost-effective energy efficiency measures

- The Decay Recovery base year should begin in 2010 (not 2006), consistent with the PD's treatment of cumulative IOU goals
  - The PD should seek consistency and alignment in the goal-setting process
  - The PD does not require make up of unmet portions of the goal from the 2006-2009 program years.

        - This is due to the significant difference between *ex ante* and *ex post* savings in those years, rendering it "no longer reasonable to expect the IOUs to achieve these savings."
    - The Decay Recovery component is calculating using the same *ex post* savings, rendering it similarly unreasonable to achieve

C. Proposed Solution

- The Potential Study model should be augmented to determine what portion of the Decay Recovery can be recovered cost-effectively through IOU programs
    - It will take into account what portion of Decay Recovery is now covered in codes and standards
    - It will take into account what portion is cost-effective for the IOUs to achieve
- The Decay Recovery base year should begin in 2010, consistent with the PD's treatment of cumulative IOU goals

D. Engagement To Date With Stakeholders

- Over the past week, SCE has engaged with stakeholders, including Energy Division and Navigant (consultant for Potential Study) on the proposed goals through the DAWG (Demand Analysis Working Group) process.
- From those discussions, SCE believes that the proposal identified above is consistent with Commission policy, has support by stakeholders, and can be easily and quickly implemented by Navigant.

Attachment B

2013-2014 EE Proposed Decision

ME&O Co-Branding and Administration

Briefing: 2013-2014 EE Transition Period Proposed Decision[1]

STATEWIDE ME&O Co-Branding and Administration: Key Issues, Concerns & Remedies

Summary: DSM marketing is branded with statewide umbrella brands ("Flex Your Power", "Engage 360"), and has also prominently featured the utility role and encouraged utility co-branding to maximize resources and likelihood of success. The PD does not appear to recognize a significant role for utilities in increasing the uptake of EE initiatives, and does not provide sufficient detail regarding the role of utility co-branding or local marketing. Additionally the PD creates a new layer of administration without articulating a compelling role or clear need for the new layer and its attendant costs.

In prior program cycles, Statewide DSM Marketing has been branded as "Flex Your Power" and "Engage 360". These initiatives prominently featured the utility role as a result of Commission guidance that authorizes co-branding when the brand has enough public recognition. However, although the PD appears to allow for utility co-branding under the new umbrella brand, "Energy Upgrade California", the PD does not provide an optimal role or sufficient detail regarding the role of utility co-branding or local marketing, and does not appear to recognize the role that utilities have played, and can continue to play, in increasing the uptake of EE initiatives. Additionally the PD calls for the California Center for Sustainable Energy (CCSE) to serve in a newly created "intermediary implementation role". Key issues and concerns in the PD and proposed remedies, include the following.[2]

1. ***Issue**:* <u>New "intermediary implementation" role created</u>. The PD calls for a new layer of administration to be created to serve as an "intermediate entity in between the utility coordinator and the marketing and web hosting firms hired to carry out the campaign." The PD does not fully articulate a clear need or compelling role for the new layer and its attendant costs to ratepayers, and why it is not preferable (less expensive, faster moving) to maintain the current framework without a new layer. The PD directs the California Center for Sustainable Energy, CCSE, to serve in this role.
   ***Remedy**:* The new layer of ME&O administration is not needed and need not be added.
   If it is in fact added, the Commission should clarify in advance the need for such a new layer, the role for the new entity to play (and the boundaries of that role), and cap in advance the costs. Furthermore, the Commission should not prescribe the selection of a given party for any new role, but can require the competitive solicitation of the most qualified, least costly party.
2. ***Issue:*** <u>Utility Co-Branding is not explicitly authorized</u>. The Commission has over the years explicitly authorized and encouraged co-branding of DSM marketing efforts between the statewide umbrella brands and the utility brands. This has generally worked well, increased total resources to the activities, aided the launching of new statewide umbrella brands that do not yet have consumer recognition.
   ***Remedy**:* The PD should expand on the value of utility co-branding of DSM ME&O efforts and lay out in detail the optimal role of utilities and utility co-branding.
3. ***Issue:*** <u>ME&O decision making</u>. Several very important branding, communication and consumer-facing outreach decisions were not made using the marketing field's processes and protocols. For example, the proposed new umbrella brand name, "Energy Upgrade California" was not subjected to professional marketing means, such as focus group testing.
   ***Remedy**:* No important branding or consumer-facing decisions should be made until they have been fully and professionally tested by ME&O professionals, including using California energy consumers.

[1] On March 20, the Commission issued a guidance PD on the 2013-2014 EE Bridge Period. http://docs.cpuc.ca.gov/efile/PD/162141.pdf

[2] Ordering Paragraphs #115-123, pp. 406-409. The ME&O Discussion is primarily on pp. 283-301 of the PD.

Attachment C

2013-2014 EE Proposed Decision

Local Government Regional Pilots

Briefing: 2013-2014 EE Transition Period Proposed Decision[1]

LOCAL GOVERNMENT REGIONAL PILOTS: Key Issues, Concerns & Remedies

Summary: *The 2013-2014 Proposed Decision authorizes local governments to independently administer regional EE pilots during 2013-2014. Local governments are authorized to submit proposals for Commission review and selection. The IOUs would then be required to enter into contracts with selected local governments and to co-manage the contracts with Energy Division staff. This new model begins to erode IOU administration of a portion of the EE portfolios, may overlap with existing IOU programs, and is unlikely to produce cost-effective energy savings.*

The PD[2] calls for local government administration of regional EE pilots, designed to determine if local governments are in a position to plan and administer EE programs absent utility support or intervention. The PD reasons that while the Commission chose not to pursue local government administration in 2005, local governments have since gained substantial experience implementing both utility and other local and regional EE programs, including ARRA-funded and financing programs. If approved, local governments would be authorized to submit program implementation plans and meet specified criteria, including use of IOU PIP templates, use of IOU ex ante values, and inclusion of programmatic components including water/energy nexus, deep energy savings, deployment of new technologies, workforce education issues, and addressing hard-to-reach customers.

Key issues and concerns to SCE in the PD include the following.[3]

1. ***Issue***: Non-utility administration of EE.
   - The Commission must retain jurisdiction over EE program administration to ensure that energy efficiency funds are properly spent. This is part of the Commission's overriding statutory duty to ensure that programs funded by ratepayers are carried out in the public interest. The PD's proposals to shift program administration to nonutility administrators are unlawful because they would divest the Commission of such jurisdiction. See D.05-01-055.
   - The Commission lacks jurisdiction to regulate non-utility administrators. The Commission's regulatory jurisdiction is limited to utilities, unless expressly extended by legislation. And no law authorizes the Commission to regulate non-utility administrators. Instead, the PD proposes to rely on contract rights and obligations to oversee the non-utility administrators, but its contractual substitute would not be sufficient to ensure that the Commission fulfills its statutory responsibilities.
   - A contract is facially insufficient to give the Commission the latitude that it requires to ensure that it has the full range of tools necessary to protect the public's interest and the disposition of ratepayer money in the face of unforeseen circumstances. See PG&E Corp. v. Public Utilities Commission, 118 Cal. App. 4th, 1174, observing that there is "no indication that the Legislature intended the Commission to enter into

[1] On March 20, the Commission issued a guidance PD on the 2013-2014 EE Bridge Period. http://docs.cpuc.ca.gov/efile/PD/162141.pdf Opening Comments due April 9, reply comments due April 16.
[2] PD, Discussion Section 145-145 and Ordering paragraphs 32-34.
[3] Ordering Paragraphs #19-29, pp. 383-386; of the 11 OPs on EE Financing the four key ones are 20, 21, 22, 29. The Financing Discussion is primarily on pp. 18-21 and pp. 99-138 of the PD.

any type of contract as a means to fulfill its mandate to protect the interests of ratepayers" and that Public Utilities Code Section 1759 bars a contract approach to regulation.4

***Remedy**:* The PD must be modified to provide for utility administration so that the Commission can discharge its statutory duty to oversee the EE programs in public interest. To the extent the Commission wishes to reconsider the legal conclusions reached in D.05-01-055, parties must first have the opportunity to file legal briefs to inform the record and the Commission's decision-making on the issues.

To reflect these (and other needed) changes a redline of the Ordering Paragraphs is in Appendix A, of the Findings of Fact and Conclusions of Law in Appendix B, and of the Discussion sections in Appendix C.

[4] The Court found that "[r]equiring the Commission to bring a breach-of-contract action to enforce the conditions would enmesh the Superior Court in the Commission's performance of its duties [therefore] a Superior Court action treating the Commission's orders as contracts would clearly interfere with the Commission's regulatory duties."

Attachment D

2013-2014 EE Proposed Decision

Financing

Briefing: 2013-2014 EE Transition Period Proposed Decision[1]

ENERGY EFFICIENCY FINANCING: Key Issues, Concerns & Remedies

Summary: The PD calls for a minimum of $200 million ratepayer-funded investment statewide in EE Financing programs during the 2013-2014 period to fund: (1) continuation of existing IOU On-Bill Financing (OBF) programs; (2) continuation of successful ARRA-funded financing programs; (3) new statewide financing offerings, including credit enhancements for residential and non-residential customers, an On-Bill Repayment (OBR) strategy for non-residential customers and potentially multi-family residential customers. Although the PD admits that the Commission and Utilities have little experience with financing, it sets an unreasonably aggressive schedule. SCE is concerned that this will lead to a misuse of ratepayer resources. SCE is also concerned that ratepayer funds will be used to inappropriately buy down risk for lenders and fund a database that is unlikely to be useful by lenders or others. Finally, SCE is concerned that the PD's proposal for pro rata allocation of customer payments to lender charges breaks with established Commission precedence and will jeopardize the utilities excellent credit ratings.

SCE has submitted several sets of comments regarding EE financing in the past several months. These briefs outline the various hurdles to EE financing, and ultimately propose a pilot which could then be used to determine whether EE financing measures will result in tangible increase to EE upgrade uptake. The PD fails to address a number of the issues raised by SCE, and instead dictates the parameters of future financing programs. SCE's specific issues and concerns include the following:[2]

1. ***Issue**:* <u>Pace, Scale and Sequencing</u>
   - The PD calls for a very rapid pace and large size (>$200M statewide 2013-2014) of mandated EE financing actions and program roll-out, directing the utilities to make specific proposals in the next 3 months, roll out pilots next year, and implement full-scale programs in 2014.
   - The proposed sequence of actions is also inappropriate: the PD calls for the utilities to jointly hire an EE financing expert consultant and for that expert to work with the CPUC staff and utilities to convene stakeholder working groups and solicit their input. The PD also mandates specific requirements of financing programs and requires the utilities to file proposals for those specific programs in their July 2, 2012 application – long before the work of the expert consultant.
   - Similarly, the schedule calls for full-scale program roll-out before results from pilots are available.

   ***Remedy**: Create a schedule and sequence of actions that is more deliberate, providing time for the consultant and working groups to craft pilot programs, then providing time to analyze the results of pilots to select the most effective (if any) program prior to wide-scale roll out of the financing options. Perform data collection and research to ensure that the financing mechanism is affecting customer behavior to prevent waste of limited ratepayer resources. Use the Advice letter process to allow for key decisions to be made when the needed information and analysis is available, and not* before.(Specific language to accomplish this is in the Appendices.)

[1]On March 20, the Commission issued a guidance PD on the 2013-2014 EE Bridge Period. http://docs.cpuc.ca.gov/efile/PD/162141.pdf

[2]Ordering Paragraphs #19-29, pp. 383-386; of the 11 OPs on EE Financing the four key ordersare 20, 21, 22, 29.The Financing Discussion is primarily on pp. 18-21 and pp. 99-138 of the PD.

2. ***Issue**:* Required funding of ARRA programs
   - The new requirement for utilities to continue the "successful financing programs" originally supported by the federal ARRA funds is of particular concern; clarification is needed to determine which of those will affect SCE and what SCE's obligations might be. (OP 20B and 26)

   ***Remedy**: The unqualified requirement that the utilities should continue the federal ARRA's financing programs "sight unseen" is potentially an illegal delegation of administration of ratepayer funds, as discussed in the LG Administration briefing and should either be removed, or amended to allow the utilities to contract with existing implementers of ARRA funds and permit the consultant and stakeholders, to review the specifics of the federal ARRA-sponsored financing projects to determine their merit and appropriateness going forward.*

3. **Issue:** Ratepayer-funded Credit Enhancements & IOU Billing Enhancements
   - The PD requires ratepayer funded credit enhancements, such as a loan loss reserve, for residential, multi-family, and small business customers. (OP 21)
   - The PD requires the IOUs to provide an estimate of cost for OBR billing system enhancements in their Applications, and states the cost should be minimal. SCE estimatescosts are at least $4-6 million; this cost should not be borne by ratepayers

   ***Remedy:** The requirement for ratepayer-funded credit enhancements should be removed from the PD. Other programs, such as the State's CAEAFTA Program currently offer loans to broad market sectors for EE projects for customers not interested in OBF or OBR. Similarly, IOU billing enhancements should not be funded by ratepayers.*

4. ***Issue**:* Ambiguity regarding Eligible, Mandatory Measures
   - It is not clear from the PD what EE measures are eligible/mandatory for EE financing.
     - For example, while OP 29 addresses to a degree the proposed nexus of EE financing with EE rebates, the PD does not provide adequate direction regarding whether a utility must (or may) provide financing for measures that are not cost-effective and not part of utilities EE programs (e.g. multi-pane, high-e windows in coastal climates).
     - Additionally, it proposes financing of DR, DG, solar and storage measures.

   ***Remedy**: In order to ensure that any ratepayer funding is being used for energy efficiency, the PD should require that EE loans only be offered for Commission-approved EE measures. It should also be clarified to provide that utilities are not required to provide financing for measures that are not cost-effective.*

5. ***Issue**:* Prohibition on Bill Neutrality
   - The PD prohibits bill neutrality for non-residential OBR.(OP 22) This may lead to loan obligations that increase the total financial responsibilities of the customer with potential worrisome consequences for the customer's cash flow and perception of energy efficiency's performance.

   ***Remedy**: The PD should require (or at least allow) bill neutrality in EE financing programs.*

6. ***Issue**:* Pro Rata Payment & Disconnection
   - The PD requires a "pro-rata allocation of payments between utility bill obligations and loan repayment." (OP 22) This makes the third-party loan charges disconnectable and would provide for payment of loan charges prior to an ESP receiving payment for its services.
     - This is a break with established Commission precedence in the Direct Access context which requires that disconnectable utility charges be paid first, with a pro rata allocation of remaining funds to third party charges.

- Additionally, by combining the loan with the energy payment and sharing the revenues pro-rata, the IOUs and their customers are subjected to a substantially increased risk of default on loans rather than a write off risk of an energy payment.

***Remedy**: The PD should be revised to permit for pro rata application of funds to loan charges and other non-disconnectable charges after all disconnectable obligations are fulfilled.*

7. ***Issue**:* Usefulness of Database
   - An EE loan database is unlikely to provide tangible benefits to utility ratepayers through the attraction of private lenders and capital for EE upgrades.
     - Private lenders are unlikely to trust the information from such a database – as they use financial performance data almost exclusively from firms such as Moody's who have their own methods of collecting and analyzing data, typically based on many years of verifiable performance data.
     - The costs and risks to SCE and its ratepayers of building the database are unlikely to be commensurate with the database's value.
     - Customer confidential information provided by the utilities into a database must be done in accordance with existing privacy laws.
     - If the IOUs are required to consider development of a database, construction should only begin after relevant stakeholders have determined the data is needed, and have provided input as to what data should be collected. The PD requires the IOUs to begin immediate development of a database, which is not logical without first understanding what is needed.

***Remedy**: The PD should be revised to remove the requirement that the IOUs develop a database. Alternatively, the PD should delay the implementation of a database until the advice of an expert consultant and relevant stakeholders (e.g., lenders) can be utilized in the database's development. The PD should also confirm that the provision of any customer confidential information be done in a manner that preserves confidentiality of customer information.*