

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 30, 2009

TO PARTIES OF RECORD IN RULEMAKING 09-01-019

At the Commission Meeting of December 17, 2009, Commissioner Grueneich reserved the right to file a concurrence in Decision 09-12-045. The decision was mailed on December 29, 2009.

The concurrence is attached herewith.

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

KVC:jt2

Attachment

Concurrence of Commissioner Dian M. Grueneich

Item 63a [9049]

December 17, 2009 Commission Meeting

When we established the energy efficiency Risk Reward Incentive Mechanism (RRIM) in 2007, we recognized the structure of utility administration and shareholder incentive payments from ratepayers would succeed only if built on a credible foundation of independent measurement and evaluation of energy efficiency savings. Without it, the overarching integrity of the entire administrative structure is compromised.

Both the Administrative Law Judge's (ALJ) Proposed Decision and Commissioner Bohn's Alternate Decision use the Energy Division's Verification Report as the basis for calculating incentive payments. This reflects a firm commitment on the part of our agency to verify independently energy efficiency savings achievements, as opposed to the utilities' self-reported savings claims.

I am reassured to see this. Both proposed decisions embrace the key principle I advocated last year in my dissent to Decision 08-12-059 — namely the need to rely on staff's extensive and rigorous verification work rather than utility self-reporting.

As the assigned commissioner overseeing the energy efficiency portfolios, let me explain why rigorous, independent, reliable evaluation, measurement and verification, or "EM&V", is so crucial to California's energy efficiency efforts.

First, EM&V plays a key role in the reliability of energy efficiency savings. For energy efficiency to be considered a reliable resource, California must have accurate and reliable data. Because we have set up a shareholder incentive system, the utilities have an inherent bias towards over-reporting savings. Independent EM&V is the necessary tool to ensure the savings are real and can be counted on for resource procurement decisions and greenhouse gas emission reductions.

Secondly, independent EM&V ensures that ratepayers get the energy efficiency for which they pay. Our statutory and constitutional obligations to protect the interest of ratepayers require a regulatory structure that reasonably assures that ratepayer money is used wisely.

Finally, independent EM&V enables the utilities as program administrators to assemble the strongest portfolio of programs moving forward. Honest assessments of how programs have performed lead to important course corrections – we know which programs to continue, which to fix, and which to shut down. We have set very ambitious goals for California’s energy efficiency. In order to hit our mark, we need a clear line of sight to where our programs have been effective, and where they have not. Under our framework, only independent evaluation can provide this.

Delivering on reliable EM&V is a considerable task. That the Verification Report has been the subject of such controversy speaks both to the complexity of the task and to the fact that the stakes are especially high because of the energy efficiency shareholder mechanism.

But in my view, the dispute over the Verification Report is secondary to a larger issue in this matter, which determines my vote today. The incentive mechanism itself, as established in D.07-09-043 and modified in D.08-01-042, used a framework which has turned out to be fundamentally unworkable.

In particular, the incentive mechanism requires that we update each year the assumptions and methodologies used to determine how utilities have performed relative to the goals we have set for them, usually in prior years. This has led to two problematic outcomes.

First, it has set up an overly complex standard by which utility goals are set and measured. The utilities have argued, with some reason, that in updating the assumptions underlying the goals, we moved the goal posts mid-kick.

Second, it has institutionalized a highly adversarial process that has required that our Energy Division carry out a large amount of work to ensure their results can withstand repeated challenges from the utilities.

The ALJ has crafted a sound and well justified Proposed Decision faithful to the incentive mechanism as adopted. I want to commend ALJ Tom Pulsifer for his measured judgments and quality work on the Proposed Decision.

Commissioner Bohn’s Alternate Decision, however, reaches to resolve this fundamental conflict in the mechanism itself. By evaluating utility goal

attainment on the basis of the same assumptions that were used when the goals were set and portfolios planned, the Alternate Decision resets the goal posts to their original position. We adopted this principle in our recent September decision approving the utilities' 2010-2012 energy efficiency programs (D.09-09-047) and it is appropriate to use the same principle here.

At the same time, the Alternate Decision assesses the total earnings payable on the basis of up-to-date verification work, and thus preserves a measure of ratepayer protection to ensure the utilities earn in proportion to the verified net benefits their portfolios have delivered.

This approach is a much needed change to the mechanism we approved in 2007 and 2008, and the Alternate Decision strikes a reasonable compromise between rewarding genuine accomplishment in the implementation of energy efficiency programs and the need to ensure incentives are paid only on the basis of independently-verified achievements. Absent the Alternate Decision's reliance on independently verified savings, I would not support the Alternate Decision, for the same reason I did not support Decision 08-12-059 this time last year. The outcome of Commissioner Bohn's Alternate Decision is consistent with the outcome of the original ALJ decision that I supported in December 2008.

Because Commissioner Bohn's Alternate Decision does use independently verified savings data for determining total earnings payable, I will support it.

Dated December 18, 2008, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Commissioner