



**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking  
Concerning Energy Efficiency Rolling  
Portfolios, Policies, Programs,  
Evaluation, and Related Issues.

Rulemaking 13-11-005

**ADMINISTRATIVE LAW JUDGE'S RULING  
INVITING COMMENTS ON WHETHER TO ELIMINATE  
EVALUATION, MEASUREMENT, AND VERIFICATION  
DISPUTE RESOLUTION PROCESS**

**Summary**

This ruling provides notice and opportunity to comment on whether the California Public Utilities Commission (Commission) should eliminate the evaluation, measurement, and verification (EM&V) dispute resolution process established in Decision (D.) 10-04-029. The dispute resolution process was part of an "incentive mechanism" established for large investor-owned utilities (IOU) running Commission energy efficiency programs. The IOUs' shareholders were eligible to receive compensation if the IOUs' energy efficiency programs achieved certain pre-set goals as established by EM&V of their programs. Because the IOUs had an economic motive in the form of shareholder incentives linked to EM&V of their program, they successfully sought a dispute resolution process related to EM&V. This ruling proposes to eliminate the EM&V dispute resolution process as it is not warranted by the current energy efficiency framework.

## 1. Discussion

Pursuant to Public Utilities Code Section 1708, this ruling proposes to eliminate the EM&V dispute resolution process established in D.10-04-029 as it is not warranted by the current energy efficiency framework.<sup>1</sup>

The Commission's Energy Division carries out certain Commission energy efficiency policy, including contracting and oversight of EM&V studies and reports, through delegated authority.<sup>2</sup> In 2007, after several years without a comprehensive energy efficiency shareholder incentive mechanism, the Commission resumed use of a shareholder incentive mechanism with the adoption of the energy efficiency Risk/Reward Incentive Mechanism (RRIM) in D.07-09-043. Under this mechanism, EM&V results affected large IOU eligibility for shareholder incentives, which rewarded the utilities financially if they met certain energy efficiency goals.

The IOUs sought a dispute resolution process in petitions for modification of D.07-09-043 and D.08-01-042, both of which addressed shareholder reward payments that were based on EM&V studies/reports. The IOUs proposed a dispute resolution process for situations in which EM&V results might reflect negatively on IOUs' eligibility for shareholder financial incentives.<sup>3</sup> The

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<sup>1</sup> Public Utilities Code Section 1708: The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

<sup>2</sup> D.10-04-029, *Decision Determining Evaluation, Measurement and Verification Processes for 2010 Through 2012 Energy Efficiency Portfolios*, issued April 21, 2010 (D.10-04-029) at 30-31.

<sup>3</sup> Application (A.) 08-07-021, *et al.*, *Application of Southern California Edison Company (U338E) for Approval of Its 2009-2011 Energy Efficiency Program Plans and Associated Public Goods Charge (PGC) and Procurement Funding Requests; and Related Matters*, filed July 21, 2008 (A.08-07-021, *et al.*); *Administrative Law Judge's Ruling Regarding Evaluation, Measurement, and Verification Issues*, filed November 20, 2009.

Commission in D.10-04-029 adopted the proposed dispute resolution process for EM&V issues, reasoning that “increasing contentiousness in this area requires the Commission to create a new EM&V dispute resolution process.”<sup>4</sup> D.10-04-029 affirmed, however, that “ED is not a party to Commission proceedings. If an EM&V dispute is made formal through a Motion or other action by a party, ED would not have a right to file comments disputing the party’s version of the dispute.”<sup>5</sup> No IOU ever sought use of the EM&V dispute resolution process.

However, a non-IOU contractor offering energy efficiency recently sought to invoke the EM&V dispute resolution process. A ruling denying that request made clear that the EM&V dispute resolution process was not intended for such circumstances, but was instead linked to the IOU shareholder incentive mechanism. That mechanism never applied to and was never intended for third parties implementing energy efficiency programs.<sup>6</sup> Issues raised by third party implementers are appropriately raised with and should be addressed by Energy Division, which continues to carry out the Commission’s policy through delegated authority. Energy Division should continue to have delegated authority to manage EM&V of energy efficiency programs.

We are considering the reasonableness of eliminating the EM&V dispute resolution process established in D.10-04-029. In establishing this process and thereby providing an opportunity for formal review and modification of Energy Division’s EM&V determinations, we departed from our standard practice of delegating implementation of Commission policy to Energy Division.<sup>7</sup> This was

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<sup>4</sup> D.10-04-029 at 29-34, Finding of Fact (FOF) 17 and Ordering Paragraphs (OP) 7-10.

<sup>5</sup> D.10-04-029, FOF 18.

<sup>6</sup> D.10-04-029 at 29-34.

<sup>7</sup> D.10-04-029 at 33 and OP 8.

an extraordinary action that the Commission found reasonable at the time, only because of the incredible degree of contentiousness around EM&V studies/reports in the context of the RRIM. The design of the adopted mechanism is necessarily awkward if not wholly impracticable, given that Energy Division is not a party and would not have a right to file comments disputing the IOU's version of the dispute. Finally, the Efficiency Savings and Performance Incentive (ESPI), which replaced the RRIM and is a much less contentious incentive mechanism,<sup>8</sup> has been suspended since November 2020.<sup>9</sup> In the event that the Commission lifts the moratorium on ESPI or establishes a new incentive mechanism, the Commission may at that time consider and invite comments on the reasonableness and feasibility of an EM&V dispute resolution process that appropriately aligns with the new or modified incentive mechanism.

**IT IS RULED** that Parties may file comments addressing whether the Commission should eliminate the evaluation, measurement, and verification dispute resolution process no later than April 29, 2024, and reply comments no later than May 13, 2024.

Dated March 27, 2024, at San Francisco, California.

/s/ VALERIE U. KAO  
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Valerie U. Kao  
Administrative Law Judge

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<sup>8</sup> D.13-09-023, *Decision Adopting Efficiency Savings and Performance Incentive Mechanism*, issued September 11, 2013. No IOU has ever requested EM&V dispute resolution (as provided by D.10-04-029).

<sup>9</sup> D.20-11-013, *Decision Imposing Moratorium on Efficiency Savings and Performance Incentive Program*, issued November 16, 2020.