Decision 10-12-054 December 16, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.	Application 08-07-021 (Filed July 21, 2008)
And Related Matters.	Application 08-07-022 Application 08-07-023 Application 08-07-031

DECISION ADDRESSING PETITION FOR MODIFICATION OF DECISION 09-09-047

1. Summary

This decision adopts modifications to Decision (D.) 09-09-047 regarding energy efficiency portfolios for 2010-2012. The adopted modifications are:

- Freeze *ex ante* values based on 2008 DEER version 2.05.
- Clarify that co-branding requirements with the Engage 360 brand apply to all energy efficiency programs provided through energy efficiency funds, but not provided solely through other funds. Also, clarify the timing for the start of the co-branding efforts.
- Reduce annual energy savings goals per home for the statewide Prescriptive Whole House Retrofit Program (PHWRP) from 20% in utility service territories to 10%, while retaining the annual energy savings goals per home for the utilities Whole House Performance Programs (WHPP) at 20%. We clarify that these are average annual savings goals per home; the annual savings at individual participant homes will fall below and above these levels.

- For the California Advanced Home Program, provide that the required $1,000 performance bonus applies only to single family units. Provide that a lower $200 bonus or a territory-specific incentive (e.g., marketing dollars, customized engineering reports, etc.) apply for each applicable multi-family unit.
- Add language to provide a State Action Doctrine defense for utilities engaging in certain joint energy efficiency activities which are consistent with state policy and supervised by the Commission.

This decision all defers other issues in the Petition to a subsequent decision in this docket.

2. Background

In Decision (D).09-09-047, the Commission adopted energy efficiency portfolios for 2010 through 2012 for Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) (collectively, Joint Utilities or Joint Investor-Owned Utilities (IOUs)). A subsequent Ruling on November 18, 2010 clarified a number of issues regarding evaluation, measurement and verification (EM&V) for the 2010-2012 portfolios. For example, the Ruling involved Energy Division review of *ex ante* value workpapers for energy efficiency measures after utility submission of these workpapers to Energy Division. D.10-04-029 required the IOUs to cooperate and collaborate with Energy Division in the development of these workpapers, consistent with the November 18, 2009 Ruling.

On September 17, 2010, Joint Utilities filed a Petition for Modification of D.09-09-047, seeking 28 separate changes to the Decision, in eight subject areas. Specific proposed modification language was included in the Petition. Joint Utilities requests are summarized as follows:

- Amend the Decision to remove ambiguity around *ex ante* assumptions and ensure its directives to freeze data are implemented.
- Modify IOU benchmarking requirements to exclusively promote the Energy Star Portfolio Manager (ESPM) tool for all IOU benchmarking activities; target larger facilities first; and remove the requirement to benchmark all facilities now specified in the Decision.
- Modify co-branding requirements for the new statewide brand to allow the Joint IOUs appropriate flexibility in using the brand.
- Modify requirements of the Prescriptive Whole House Retrofit Program (PWHRP)and Whole House Performance Program (WHPP) to ensure an appropriate aspirational energy savings and market penetration target.
- Adopt a reporting process for limited statewide program variations among IOUs to allow flexibility for appropriate regional and IOU differences.
- Clarify that sponsorships for energy efficiency events or activities that directly promote programs or partnerships (as opposed to solely providing company specific recognition) are considered allowable costs.
- Clarify that the $1,000 performance bonus mandated by the Decision for the California Advanced Homes Program (CAHP) applies only to single family units or that a more proportional incentive be offered for multifamily units.
- Clarify the specific collaboration that the Commission intends the Joint IOUs to undertake for energy efficiency activities so that the Joint IOUs will have the benefit of the State Action Doctrine as a defense against anti-competitive challenges.

Comments were jointly filed on October 18, 2010 by the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN), and comments were separately filed by EnerNOC, Inc. A Prehearing Conference (PHC) was held on October 22, 2010. A major theme of both the Petition and the

PHC involved Energy Division implementation of provisions of D.09-09-047, as that decision gave Energy Division the responsibility to work with the utilities to implement the decision.

At the PHC, it became clear that the utilities and Energy Division had been unable to reach agreement on determination of *ex ante* values and other matters during the past year. Because D.09-09-047 provided that Energy Division would have a number of significant tasks in implementing the decision, the assigned Administrative Law Judge (ALJ) determined that certain information concerning Energy Division's efforts should be placed on the record in order to provide perspective on the Petition. Energy Division staff provided insights into their process and implementation recommendations at the PHC, and parties were able to question Energy Division staff on the record. In a Ruling dated October 29, 2010, parties were given the opportunity to comment upon specific written Energy Division implementation recommendations concerning *ex ante* values discussed at the PHC (discussed below). Comments were filed by EnerNOC and DRA/TURN on November 5, 2010.

3. *Ex Ante* Values

The Commission and utilities use ex ante values for energy efficiency measures to determine whether a utility's forecasted energy efficiency portfolio is cost-effective. These values are also used to determine the ex ante savings from verified installed energy efficiency measures, and may be used as part of determining the level of rewards utilities can receive for successful energy efficiency efforts.

DEER[1] values are typical energy efficiency measures' net-to-gross ratios, effective useful life, unit energy savings, and load shapes values. These values are part of the input parameters used to calculate program/portfolio savings and cost-effectiveness. When a measure is not in the DEER dataset, it is called a non-DEER measure. A utility provides a non-DEER measure workpaper to estimate and justify the net-to-gross ratios, effective useful life, unit energy savings, and load shapes values.

D.09-09-047 stated (pp.42-44):

> We agree with SCE's and PG&E's comments that measure ex ante values established for use in planning and reporting accomplishments for 2010-2012 should be frozen. However, we do not agree with PG&E or SCE that those ex ante measure values should be frozen using the values found in the E3 calculators submitted with their July 2, 2009 applications. We agree with TURN's comment that frozen values must be based upon the best available information at the time the 2010-2012 activity is starting and that delaying the date of that freeze until early 2010 is a reasonable approach to better ensure that the maximum amount of updates is captured before the freeze takes effect.
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> The utilities' portfolio measure mix contains both DEER measures and non-DEER measures. As discussed in this decision (e.g., Sections 4.2 and 4.5), the Utilities have not always properly utilized current DEER measure values and assumptions in their submitted cost-effectiveness calculations. We note that the Utilities have commented that the documentation on the use of DEER is insufficient and that the Commission should be more specific about the version of DEER to be utilized. We clarify that the DEER 2008 values referred to by this decision are the complete set of data

[1] DEER stands for Database for Energy Efficient Resources.

denoted as 2008 DEER version 2008.2.05, dated December 16, 2008, as currently posted at the DEER website (http://www.deeresources.com) maintained by Energy Division.

Energy Division must provide the utilities with further detail and clarifications on the proper application of DEER so that the utilities are able to correct these problems. Additionally, as of this decision, Energy Division has not performed a review and approval of non-DEER measure ex ante estimates provided by the utilities. Energy Division must complete that review in a timely manner before those measure assumptions are frozen. It is therefore essential that the utilities work with Energy Division in its review and approval of their non-DEER measures ex ante values so that this activity can be completed as soon as possible. However, Energy Division must implement a review and approval process that balances the need for measure review with the utilities need to rapidly implement the portfolios approved by this Decision. We also recognize that the Energy Division or utilities may identify new measures appropriate for inclusion in the 2010-2012 portfolios that are not yet included in current DEER measure datasets. We also recognize that errors may be identified in frozen measure ex ante values. Energy Division, in consultation with the utilities, should develop a process by which new measures values can be added to the frozen measure datasets and mutually agreed errors in the frozen values can be corrected.

Therefore, in measuring portfolio performance against goals over the program cycle, we will freeze both DEER and non-DEER ex ante measure values as the 2010-2012 portfolio implementation begins. We concur with NRDC's comments that the use of these frozen ex ante values is only for this portfolio planning proceeding and implementation management. These frozen ex ante values may or may not be used for purposes of the incentive mechanism that is subject of another proceeding. Furthermore, the decision here to hold constant measure ex ante values for the purpose of measuring performance against goals, does not imply that we will cease from updating DEER and non-DEER measures for other purposes, and in particular for striving for the best estimates of actual load impacts resulting from the program cycle. Our EM&V activity will continue

> to develop ex post verified measure, program and portfolio impacts to inform future energy efficiency and procurement planning activities. The frequency and scope of DEER updates going forward is discussed further in the EM&V section below. As for non-DEER ex ante measure review and approval, we direct Energy Division to develop that review and approval process within 30 days from the date of this decision, to be issued in an ALJ ruling.

3.1. DEER Values

Joint Utilities contend that in March 2010 Energy Division informed the utilities of its intent to modify 2008 DEER version 2.05 as frozen by the Commission. Joint Utilities claim they agreed to correct certain errors identified by the Energy Division, but did not agree to implement other proposed updates that Joint Utilities considered as methodological changes.

Joint Utilities seek to modify D.09-09-047 to adopt 2008 DEER version 2.05, with corrections for the significant errors that were mutually agreed upon by the Energy Division and the utilities. Joint Utilities would limit corrections to the following:

- Correct the large office lighting schedule for linear fluorescent technologies;
- Account for HVAC package unit updates for 2008 Title 24/2010 Title 20; and
- Correct for general 2008 Title 24 updates (primarily HVAC).

DRA/TURN would not limit updates to 2008 DEER version 2.05 solely to mutually agreed upon errors, but would allow Energy Division to follow the language on pp. 42-43 of D.09-09-047, which directed Energy Division to consult with the utilities to "develop a process by which new measures are added to the frozen measure database" along with correcting mutually agreed upon errors. Thus, DRA/TURN would have Energy Division take the lead in the process based on best available information, and not grant "veto power" to the utilities.

Energy Division has not implemented the changes it suggested to the utilities in March 2010. At the October 22, 2010 PHC, Energy Division staff member Peter Lai described a process where staff discovered "some errors or bugs" in the DEER version 2.05 data. RT 252-253. He also described a variety of other specific changes to the database, including in the area of fluorescent lighting schedules, which Energy Division has considered updating to the 2008 DEER version 2.05. RT 253. Lai stated that the utilities did not agree to make certain changes recommended by Energy Division, because it would be very resource intensive to do so. RT 271-272. According to Lai, Energy Division now considers the DEER version 2.05 ex ante values to be frozen. RT 251. Thus, Energy Division recommends not to make any specific changes to 2008 DEER version 2.05, and to leave it as-is for this program cycle. RT 253, 270.

Our expectation in D.09-09-047 was that Energy Division would use the best available information to update 2008 DEER version 2.05, including consulting with the utilities on possible updates (including errors). The decision did not contemplate giving the utilities veto power over Energy Division updates. The language Joint Utilities cite concerning "mutually agreed upon errors" is found in the dicta of D.09-09-047, but not in any Conclusion of Law or Ordering Paragraph (OP).

At the same time, there was no specified method (e.g., Ruling, Decision, Resolution, informal document posting) for Energy Division to finalize modifications to 2008 DEER version 2.05. Thus, what might be considered a "stalemate" is now in effect. To resolve this impasse, Energy Division does not now support making the changes Joint Utilities recommend in their Petition (casting doubt on the applicability of the term "mutually agreed upon errors" in

this circumstance) but instead recommends simply freezing 2008 DEER version 2.05 in its current state.

We will deny the Joint Utilities' Petition on this point; instead, we will freeze *ex ante* values as they exist in 2008 DEER version 2.05.[2] We would have preferred to use the best available information to improve the database, as anticipated by D.09-09-047. However, while there is no doubt that the current DEER values are imperfect, there is a need to move on so as to provide certainty to utilities and their customers. While correction of errors is an appropriate part of determining the best available information, it would be inappropriate to take Joint Utilities' recommendation to make these changes, and not the many others which Energy Division appropriately identified as needing updates.[3] Further, we accept Energy Division's suggestion that only correcting certain errors without correcting the bugs in the underlying model would not effectively and substantially improve the database.

It is our expectation that DEER values be updated and set using the best available information for the next energy efficiency portfolio cycle (starting in 2013), and that these values be determined and frozen before the upcoming cycle begins.

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[2] In November 15, 2010 reply comments, SCE stated that the Joint Utilities are amenable to this option as a solution to freezing the DEER data for the 2010-2012 program cycle and note the criticality of ensuring the DEER data is in fact frozen immediately, and remains frozen through the end of the program cycle.

[3] Because Energy Division formally recommended freezing DEER values at the 2008 DEER version 2.05 levels, Energy Division's specific recommendations for other DEER updates were not sent out for comment in the October 27, 2010 Ruling.

3.2. Non-DEER Values (except Custom Projects)

D.09-09-047 at 43 allowed the Energy Division to conduct a non-DEER workpaper review process in order to finalize the non-DEER *ex ante* estimates, stating: "Energy Division must implement a review and approval process that balances the need for measure review with the utilities' need to rapidly implement the portfolios approved by this Decision."

A November 18, 2009 ALJ Ruling (Ruling) established a deadline of March 31, 2010 as the date by which the entire spectrum of *ex ante* estimates for 2010-2012 must be frozen.[4] According to the process established by the Ruling and subsequent Energy Division direction, the utilities submitted all required non-DEER measure workpapers in advance of the March 31, 2010 deadline. Energy Division rejected or required major changes to all reviewed workpapers. At this time, there is not yet a final set of frozen *ex ante* measure values.

Joint IOUs urge the Commission to clarify that the non-DEER workpapers that have been submitted, and for which Energy Division has not concluded its review, will be dealt with in the following manner:

(a) The *ex ante* values in IOU workpapers submitted by March 31, 2010 would be frozen for the duration of the program cycle.

(b) Those workpapers which are impacted by the corrections to DEER accepted by the Joint Utilities would be updated accordingly immediately after the release of the corrected DEER data. The workpapers would then be frozen for the duration of the program cycle.

[4] Administrative Law Judge's Ruling Regarding Non-DEER Measure *Ex Ante* Values, dated November 18, 2009, p.4.

(c) Corrections of errors would be made to workpapers during the program cycle if they are mutually agreed upon by the Energy Division and the IOUs.

During the course of a program cycle, Joint IOUs expect they will implement new measures and/or modify existing program strategies that will require additional workpapers beyond the frozen DEER or non-DEER datasets. The November 18, 2009 Ruling outlines a process that gives Energy Division a 15-day review period in which to provide comments on these additional workpapers. Joint IOUs submitted workpapers pursuant to this process since the post-March 31, 2010, deadline, but claim they did not receive a response from Energy Division. Joint IOUs request that the Commission modify the Decision to clarify the process for new workpapers the utilities have submitted post-March 31, 2010 for which no response has been received, as well as for new workpapers that will be submitted on a going forward basis.

Joint IOUs propose the following:

- The *ex ante* values in IOU workpapers submitted after March 31, 2010, and before the Commission rules on this Petition will be frozen for the duration of the program cycle.
- During the program cycle, Energy Division can make recommendations to the Joint IOUs to correct any significant errors in these workpapers.
- Only new measures that utilize different technologies and calculation approaches not already reviewed would require a workpaper submission as a new measure.
- The Joint IOUs will provide Energy Division a copy of newly developed or significantly modified workpapers for their review. As set forth in the Ruling, Energy Division will have 15 days to review and provide comments. If the Energy Division does not provide any comments within 15 days, the *ex ante* values as set forth in the workpapers will be frozen, pending any changes that the IOUs agree to revise.

DRA/TURN oppose the Joint Utilities' request because freezing *ex ante* values strictly based on what the utilities filed on March 31, 2010 would eliminate the meaningful review role for Energy Division as envisioned by D.09-09-047. The result of this would be to ignore the concerns expressed in D.09-09-047 about utility data, and simply adopt whatever the utilities proposed without regard to the quality of the underlying data.

At the October 22, 2010 PHC, Peter Lai of Energy Division described its process of review for the Joint Utilities non-DEER workpapers submitted March 31, 2010. He described separate processes for review of high-impact measure (HIM)[5] workpapers and non-high-impact measure (non-HIM) workpapers. For non-HIM workpapers, Lai stated that Energy Division and the utilities agreed that these workpapers would be frozen for the 2010-2012 program cycle without review. RT 283-284. However, if any non-HIM measures became an HIM measure during the program cycle, then it would be subject to the HIM Phase 2 Retrospective Review process for the submission, review, and acceptance/approval of new non-DEER measures workpapers, which was outlined in the November 18, 2009 Ruling. Therefore, for non-HIM workpapers, Energy Division and Joint Utilities are in agreement.

For HIM workpapers, Lai described an interactive process of Energy Division and utility discussion and review of the March 31, 2010 utility submission which lasted until July 12, 2010. RT 284-285. On July 12, 2010, Energy Division mailed to the utilities its position on which workpapers would be approved, which would be approved with recommendations, and which

[5] High-impact measures are defined as those which contribute to more than 1 percent of portfolio energy efficiency savings.

would not be approved. RT 285. The utilities' response to the Energy Division position is the Petition we consider here.

In the October 29, 2010 Ruling, Attachment 1 summarized Energy Division's proposed disposition of non-DEER HIM workpaper review. Attachment 2 provided a detailed listing of the non-DEER workpapers reviewed by Energy Division and Energy Division's proposed disposition of the specific workpapers. Attachment 2 lists the non-DEER workpapers reviewed by Energy Division and its proposed disposition of those workpapers, into the following three categories:

- *Approved* – Energy Division recommends approval of workpapers at this time.
- *No Approval at this time* – Energy Division recommends that the measure or group of measures workpapers not be approved at this time and provides documentation supporting its finding. This means the workpaper is not acceptable, and thus measure *ex ante* value cannot be frozen. The workpaper would need to be corrected per Energy Division's recommendation and resubmitted for review.
- *Approval Upon Inclusion of Revisions* – Energy Division recommends approval of measure workpapers after the revisions listed are incorporated into the workpaper and provides documentation supporting its finding. This means the workpaper is in general acceptable to Energy Division except for some minor issues. Once these issues are revised per Energy Division's suggestion, the workpaper will be completely acceptable and the *ex ante* value can be frozen.

In comments filed November 5, 2010, DRA/TURN recommend considering two general points in our review of the Petition and the related Energy Division materials. First, DRA/TURN contend D.09-09-047 was very clear that ex ante values for 2010-2012 should be frozen, based upon the best available information at the time the 2010-2012 activity is starting. Second,

DRA/TURN note that when D.09-09-047 was issued, the 2006-08 evaluation, measurement and verification (EM&V) process was approaching its conclusion, with the final results likely to be available in late 2009 or early 2010. Therefore, DRA/TURN contend that all parties should have understood that the 2006-08 EM&V process would have substantial impacts on the ex ante values for use in planning and reporting accomplishments.

In November 15, 2010 reply comments, SCE stated that the Joint Utilities agree with some of the Energy Division's recommended non-DEER HIM revisions. However, SCE contends the Joint Utilities were unclear how to respond to some of Energy Division's recommendations, as SCE claims many of the requests were contradictory to previous Commission directives, or were otherwise unclear. For example, SCE contends that many of the requests contained direction to implement changes when fundamental disagreements still existed between Energy Division and the IOUs, or provided unclear recommendations that were based on review of one IOU's workpapers, but implied changes to all IOU workpapers for the measure.

D.09-09-047 at 22 stated: "As for non-DEER ex ante measure review and approval, we direct Energy Division to develop that review and approval process within 30 days from the date of this decision, to be issued in an ALJ ruling." Energy Division did begin its review within the anticipated timeframe. There has been a dialogue on non-DEER HIM workpapers between the utilities and Energy Division, which has not been resolved to date. Put another way, the utilities do not accept the outcomes determined by Energy Division.

At this time, we will defer making a determination on this issue to allow an opportunity for further consideration. This issue will be addressed in a forthcoming decision on the Petition.

3.3. Custom Projects

Customized projects, by their nature, require unique calculations for each project, as they do not rely on fixed DEER or workpaper values. While the values themselves cannot be "frozen," Joint IOUs believe it is reasonable and consistent with Commission policy to freeze the approach (or methodology) to calculating customized projects for the 2010-2012 program cycle. Further, Joint IOUs propose that the values determined at the time of installation of a customized project be frozen for purposes of determining whether the utilities have met their goals. They claim this enables the same predictable and consistent process for customized projects.

Joint IOUs claim Energy Division has greatly expanded data requirements related to customized projects. For example, they claim Energy Division has asked the utilities to aggregate savings in real time from all measures from all programs at a given customer site during a three-year period and notify Energy Division within one business day when the project savings reaches a certain trigger level. Energy Division has also asked the utilities to provide a detailed archive and non-industry standard analysis of engineering tools that Joint IOUs claim they may not be legally able to perform and that would also require numerous project specific details that may not be universally applicable.

In order to ensure a fixed process for customized projects and to avoid significant additional administrative and systems-related expenses, the Joint IOUs request the Commission adopt a customized project approach (outlined detail in Appendix C of their Petition). This approach includes:

- Custom measure/project calculation methodologies based upon DEER methodologies as frozen for 2008 DEER version 2.05 when possible or practical.
- The utilities would provide Energy Division with a list of the common preferred engineering tools used for customized projects on a quarterly basis. The list will indicate the source of the tool, source of the documentation (where available), and the general applications of the tool.
- The utilities would keep an electronic archive of the customized Project application data that will be available for subsequent Energy Division data requests.
- For applications that meet or exceed specified trigger points, the utilities would provide custom project applications and ex ante and incentive estimate supporting documentation in electronic format to Energy Division.

Joint Utilities claim this approach to customized projects strikes an appropriate balance between the Energy Division's oversight role and the Commission's intent to reduce the regulatory administrative burden on the utilities and ensure a predictable process.

DRA/TURN sought to have Energy Division's input on the customized energy efficiency project review process placed in the record. This was done at the October 22, 2010 PHC and through the October 29, 2010 Ruling. At the PHC, Energy Division staff Peter Lai discussed Energy Division's interactions with the utilities, including the production of a document outlining Energy Division's approach to reviewing customized projects. RT 309-312. This document was included as Attachment 3 of the October 29, 2010 Ruling. Further, Energy Division has also provided its proposed revisions to the Joint IOU proposal in the Petition. This document was included as Attachment 4 of the October 29, 2010 Ruling.

EnerNOC is interested in resolution of ambiguity in determination of values for customized projects, so that it can move forward in working with the utilities to provide customized energy efficiency services to commercial, institutional and industrial customers. To this end, EnerNOC seeks clarity in the working relationship between the utilities and Energy Division. EnerNOC also seeks certainty about what the trigger point should be to review non-DEER customized projects, with the objective of eliminating delay to customer implementation and payments.

In its comments on the Ruling, EnerNOC states that it reviewed Attachment 4 to the Ruling concerning Energy Division's review process for customized projects. EnerNOC recommends that, before approving any process for reviewing "customized projects," the Commission should:

- Direct the utilities and/or Energy Division to explain how the determination was made that Customized Projects that meet or exceed certain trigger points require additional Energy Division review;
- Determine that it is necessary and important to review Non-DEER Customized Projects above a certain trigger point;
- Direct the utilities to modify the Joint IOUs' Petition to include timelines for the Non-DEER Customized Project review, with the objective of eliminating delay to customer implementation and payments; and
- Adopt a process for communicating the impacts of any new review process to customers and program implementers.

In comments on the Ruling, DRA/TURN generally support the process proposed by the Energy Division.

D.09-09-047 did not speak directly to *ex ante* values for customized projects, rather including this issue under the overall non-DEER discussion. As with DEER values and non-DEER HIM workpapers, D.09-09-047 called for

making determinations based on best available information. Energy Division has proposed a detailed custom measure and project review process that we believe ensures that the *ex ante* values for a full range of types and sizes of custom measures and projects will be reviewed. Energy Division plans that this review will take place based upon utility submitted customer, measure and site specific data along with the utility proposed calculation methodology as submitted. In particular Energy Division has proposed to review the customer specific data, the measure and site specific data, and the calculation methodology, including how codes and standards or industry standard practice baselines are utilized in the calculation process.

At this time, we will defer making a determination on this issue to allow an opportunity for further consideration. This issue will be addressed in a forthcoming decision on the Petition.

4. Benchmarking

This issue will be addressed in a forthcoming decision on the Petition.

5. Co-Branding

In 2009, under the direction and guidance of the Commission staff, the utilities assessed the Statewide Marketing Education & Outreach (SW ME&O) program brand known as Flex Your Power (FYP). The assessment resulted in the creation of a new statewide "smart energy living" brand, called Engage 360, encompassing energy efficiency, demand response, and the flexibility to possibly include other demand side management options at a later date. D.09-09-047, OP 34 (sixth bullet point), directed the utilities to "use the brand alone or in a co-branded capacity across all energy efficiency marketing efforts for all programs."

While Joint IOUs state that they fully support the use of the new Engage 360 brand, Joint IOUs seek to modify D.09-09-047 regarding co-branding in order

to minimize confusion in the marketplace regarding whom a given communication is from. Joint IOUs argue that the decision requires an IOU to develop marketing collateral for any Energy Efficiency program with an IOU logo alongside the new statewide brand, but this requirement is not always appropriate.

There are several instances that Joint IOUs request modification of the co-branding requirements:

- Joint IOUs seek flexibility to approve any co-branded material prior to its publication. For example, in any instance where an IOU does not approve the use of its logo in co-branded material, the statewide ME&O Program should use only the new ME&O brand.
- For all other statewide programs, Joint IOUs request the opportunity to approve the use of their brand in any co-branding material prior to its publication. In the event that an IOU does not approve, only the utility logo should be used.
- Joint IOUs propose several exceptions to the co-branding requirement where they propose only an IOU logo should be used:
    - Any program not funded by energy efficiency funds;
    - Campaigns and collateral that bundle energy efficiency and non-energy efficiency programs;
    - Advertising solely funded by IOU shareholder funding and used at discretion of IOU; and
    - Energy efficiency local and third-party program-specific marketing funded by energy efficiency funds.

Finally, in order to support the introduction and evolution of the new brand, Joint IOUs propose that co-branding of Engage 360 with IOU brands begin in conjunction with the launch of the mass media phase of the ME&O campaign and after awareness of the new Engage 360 brand is established.

These co-branding efforts should begin at the determined threshold according to above guidelines and should preserve IOU ownership of the use of their respective corporate brands.

DRA/TURN urge the Commission to reject the request for "unfettered unilateral discretion" to determine when to use the Engage 360 brand. They argue that such discretion would be inconsistent with the Commission's intent that the new brand be used as directed by D.09-09-047 in OP 34. DRA/TURN contend that allowing the IOUs to decide when to use (or not to use) the brand would undermine the goal of providing clear, consistent information about energy efficiency and ways that Californians can reduce their energy use and greenhouse gas emissions.

At the October 22, 2010 PHC, Cope representing Joint Utilities stated that the IOUs did not seek the flexibility to unilaterally say when they would and would not use the Engage 360 brand, but instead to have some discretion as to when to use it on local programs. For example, Cope cited the current local governmental energy efficiency partnership pilot program with the City of Palm Desert as a situation where there could be confusion between Engage 360 and a local brand. On all statewide programs, he stated that Engage 360 would be used. RT 288-290.

The intent of D.09-09-047 regarding co-branding is clear: the utilities are to "use the brand alone or in a co-branded capacity across all energy efficiency marketing efforts for all programs." The context of this requirement is stated as follows in D.09-09-047 at 236 (footnotes not in original):

> We agree with the parties' comments to have the brand scope include all IDSM[6] (including low-income) and renewable self generation options. However, we will use the market research studies to determine the most effective pragmatic approach to launch and evolve the scope of the brand beyond energy efficiency/conservation.
>
> We direct the utilities, working under the direction of Energy Division, to complete the brand assessment studies and to implement the recommendations of that study in compliance with the direction provided herein and consistent with the Strategic Plan.[7]

The utilities state that they intend to use the Engage 360 brand on all statewide energy efficiency programs, as intended by D.09-09-047. There is no need to modify the decision on this point to allow utility pre-approval or veto. Joint Utilities provide little justification for exceptions to D.09-09-047 for other programs funded by energy efficiency funds, other than vague assertions of potential confusion. As there is no evidence of actual or likely confusion, we will not grant this request.

We will deny the Joint Utilities' Petition on this topic on all but one point. We will modify D.09-09-047 in one respect. There may be some IOU energy efficiency programs not funded by energy efficiency funds in 2010-2012 (although no specifics were given by Joint Utilities). In such cases, the requirements of D.09-09-047 are not binding. We will modify D.09-09-047 to make this clarification.

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[6] IDSM stands for integrated demand side management.

[7] The completed brand assessment study can be found at: http://www.cpuc.ca.gov/NR/rdonlyres/93CB5008-7AED-4BB3-A940-138B84824FA9/0/SWMEO_Brand_Assessment_Report.pdf.

On a related issue regarding co-branding, the Joint Utilities claim it is essential to introduce co-branding in a phased approach that aligns with the marketing plan for the brand. The marketing plan was developed by DraftFCB, as shown in Attachment A to the Joint Utilities' November 15, 2010 filing (filed by SCE).

A key component of DraftFCB's strategic approach for brand implementation is to introduce this brand through a "grassroots movement," rather than initially launching it via a more traditional mass media campaign. In the initial phases of the groundswell movement that DraftFCB will build, Engage 360 will rely on Ambassadors and Leaders to personally carry its message. Later phases planned for the first quarter of 2012 will focus on transmitting the message through traditional mass media, after brand recognition and understanding of the brand have been established. As such, DraftFCB has recommended that co-branding with the IOUs be delayed until this time.

This request is reasonable and will be approved.

6. Whole House Programs

D.09-09-047, OP 21(a) states: "Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall include a Prescriptive Whole House Retrofit Program (PWHRP) in their statewide residential program, consistent with guidance provided in this decision." The new statewide PWHRP was to be in addition to the utilities' respective local Whole House Prescriptive program (WHPP). These programs are collectively referred to as "Whole House Programs" and are designed to comprehensively address the potential for energy savings in residential buildings.

Since the issuance of D.09-09-047, Joint IOUs state that they have worked closely with Energy Division to further develop the Whole House Program designs. A program implementation plan was filed via Advice Letter on January 29, 2010 seeking Commission approval of the Whole House Program.[8] The Commission issued final approval of the Whole House Program on March 29, 2010. In collaboration with Energy Division, the Joint IOUs are currently continuing analysis on this program to determine the technical potential for energy savings, program cost effectiveness, and other parameters.

Joint IOUs state that they, along with Energy Division, have determined it is technically infeasible for the PHWRP to achieve an average of 20% annual energy savings by the end of 2012. Joint IOUs request the Commission modify the requirement to reach an average of 20% annual energy savings for the Whole House Programs by the end of the cycle, to an average of 10%[9] for the Prescriptive (PWRHP or "Basic" Program) strategy by the end of the cycle. The Joint IOUs do not request a lowering of the annual savings target for the WHPP (average savings per home), which would therefore remain at 20% Joint IOUs state they will also continue to evaluate an appropriate average savings per home threshold for the PHRWP program.

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[8] PG&E 3087-G/3608-E, SCE Advice 2430-E, SDG&E Advice 2144-E/1926-G, SCG Advice 4070. PG&E's advice letter was supplemented by PG&E Advice 3087-G-A et al on March 5, 2010.

[9] PG&E requests the CPUC's approval to measure savings for a subset of Prescriptive homes/units to properly characterize baseline energy consumption and modeled savings improvements. After properly measuring and determining appropriate savings estimates for Prescriptive homes, PG&E will work with Energy Division to properly set the Prescriptive Deemed Savings.

For the Advanced Home Program Portion of their respective local WHPPs, Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) request a minimum 10% energy savings per treated home/unit for the Advanced Home Program portion in their respective local WHPP. PG&E requests a15% minimum energy savings for its customers.

Additionally, the Joint IOUs' Whole House Program implementation plan acknowledges the importance of the low income, middle income, and multifamily customers and commits to seeking to expand the program offering during the 2010-2012 program cycle to potentially include multifamily housing units.[10] However, currently there is no identified process for approval of such a plan. Thus, Joint IOUs propose a modification to clearly require the Joint IOUs to file a supplemental Advice Letter outlining program plans for such an expansion if the utilities deem such an expansion is appropriate and feasible.

Lastly, Joint IOUs request the language be modified to clarify the decision's guidance for the IOUs to "aim at reducing the annual energy consumption of 130,000 homes over three years by 20% through comprehensive retrofits." D.09-09-047 at 9. Joint IOUs request a modification to clearly state that these market penetration and energy savings figures represent an aspirational goal and are for the entire state, not specific to the IOUs.

DRA/TURN agree that the requirements for the Statewide Whole House Program should be modified, but not to the extent that the Joint Utilities request. DRA/TURN do not oppose the reduction of the savings goal for the PWHRP,

[10] Advice 3087-G et al, Attachment 1 at 13.

but recommend denial of the request to lower the goals for the Advanced Home Program. DRA/TURN reasons that the higher incentives and additional expenditures authorized for the WHPP should produce a higher level of savings than achieved under the Basic Program. DRA/TURN claim that there is insufficient information to support the Joint Utilities' request on this point.

We will adopt the uncontested proposed modifications to the Statewide Whole House Program for the PWHRP. We agree that the annual savings goals for this program, while reasonable at the time adopted, may be technically infeasible at this time. For the WHPP, as noted above, the Joint Utilities did not request to lower the annual savings goals for this program from the current 20% (average per home); therefore, as stated in D.09-09-047, the WHPP's should continue to "seek to drive the market to retrofit at least 1% of California homes in the utility service areas to at least 20% annual savings by the end of the program cycle." We note the Joint Utilities intent to lower the threshold for the WHPP to 10% for SCE, SDG&E and SoCalGas and for PG&E, to 15% annual energy savings. These lower incentive thresholds are consistent with an annual average goal of 20% energy savings per home and thus do not require explicit approval herein.

7. Statewide Reporting Requirements

This issue will be addressed in a forthcoming decision on the Petition.

8. Sponsorship Costs

This issue will be addressed in a forthcoming decision on the Petition.

9. California Advanced Homes Program

The California Advanced Home Program (CAHP) is described in D.09-09-047 at 160-161 as follows:

CAHP encourages single and multi-family builders of all production volumes to construct homes that exceed California's 2008 Title 24 energy efficiency standards by a minimum of 15%. In this program, multi-family, single-family, and low-income projects are approached identically. CAHP is proposed as a redesigned program continuation from 2006-2008 and attempts to address some key barriers identified by internal program evaluations. Specifically, the CAHP program proposes to improve the demand for high efficiency homes by assisting builders with marketing efforts and leveraging consumer awareness of "green" products rather than re-educate in terms of efficiency. Further, the CAHP aligns its participant entry point (15% above code) with that of the New Solar Homes Program (NSHP), administered by the California Energy Commission.

D.09-09-047, OPs 24(a) and (b) state:

(a) Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall adjust the per-unit (kilowatt-hour, kilowatt, therm) incentive levels within their proposed incentive structure such that the CAHP program provides participants an average of 50% of the incremental measure cost at 20% above Title 24; and

(b) For the CAHP program, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall offer a $1,000 performance bonus per unit that is built at or above Title 24 by 30% and participates in the NSHP at the Tier 2 level.

Joint IOUs contend it is unclear whether the Decision is meant to apply only to single family units, or to multifamily units as well. Joint IOUs claim that while multifamily units have been eligible for solar electric incentives through

NSHP since it was established (July 2007 Standards), the $2,000 per unit NSHP Tier 2 energy efficiency bonus has only been available to single family homes.

Joint IOUs argue that offering the same level of incentive for both single family and multifamily homes introduces considerable free-ridership concerns. The average typical incentive for multifamily homes is much lower than for single family homes, and thus a $1,000 bonus for multifamily homes is disproportionally high. For example, a typical single family home in climate zone (CZ) 10 would earn an incentive of $1,500, or 63% of the incremental measure cost (IMC) at $2,370. A typical multi-family unit in CZ 10 would earn an incentive of $600 or 69% of IMC at $864. Therefore, while adding $1,000 per unit is a bonus of 66% per single-family unit, adding $1,000 per multi-family unit is 166% per multi-family unit or 185% of IMC.

Joint IOUs request that D.09-09-047 be modified to clarify that the $1,000 bonus is to be offered to single family units only. If the Commission adopts a performance bonus for multifamily units, Joint IOUs suggest granting the utilities the latitude to offer a more proportional $200 incentive for multifamily units, or a territory-specific incentive, such as marketing dollars, or customized engineering reports, to more appropriately address this market segment.

DRA/TURN agree that a $1,000 performance bonus for multifamily units appears excessive. DRA/TURN recommend that the performance bonus applies only to single family units, and that the Energy Division work with the utilities to evaluate how to effectively increase the adoption of the CAHP within the multifamily market.

We agree with the parties that D.09-09-047 should be clarified to state that the $1,000 performance bonus applies only to single family units. For

multifamily units, we agree with the Joint Utilities' proposal to offer a lower, more proportional, incentive.

10. Joint Contracting

In D.09-09-047 and in other decisions and directions, the Commission has ordered the utilities to collaborate to further the implementation of a number of statewide Energy Efficiency programs. While the overarching directive to coordinate is clear, Joint Utilities argue that it is not apparent which specific activities the Commission is authorizing the utilities to engage in to further this directive. Joint IOUs request further Commission direction to address a legal issue regarding joint-utility cooperation posed by the antitrust laws that Joint IOUs contend could impede their ability to comply with these directions unless the Commission specifically grants the Joint IOUs state action immunity for such cooperation.

Specifically, Joint IOUs argue that agreements between competitors such as the utilities concerning core elements of the competitive process, including agreements on price and output, could be viewed as unlawful under the antitrust laws under certain circumstances,[11] thus subjecting the ratepayers or shareholders to the significant costs of defending an antitrust lawsuit and the potential of treble damages if the lawsuit is successful. Joint IOUs therefore have concerns regarding coordinating their activities or otherwise working cooperatively in order to contract with third parties, absent direct and explicit

[11] The IOUs believe there are important pro-competitive reasons why joint negotiations about energy efficiency programs and contracts would be deemed lawful. While the absence of state action immunity does not mean that an antitrust violation has occurred, the significant legal risks that the IOUs would face without such immunity are too great.

Commission authorization to do so, as well as continued supervision by the Commission over such activities. To mitigate against these potential risks and to promote implementation of statewide energy efficiency programs, and consistent with the decision reached in D.10-06-009 (modifying D.09-12-024),[12] Joint IOUs request that the Commission address the issue in this Petition and make certain explicit findings.

A State Action Doctrine defense to an antitrust action exists where: (a) the challenged conduct is a result of directions clearly articulated and affirmatively expressed as state policy; and (b) there is continued active supervision of the utilities' activities in this regard.[13] Here, Joint IOUs ask the Commission to explicitly state, that implementation of the statewide energy efficiency programs as called for in D.09-09-047 represents a state policy goal and that the Commission intends the utilities to work collaboratively to achieve this goal.

In particular, Joint IOUs ask the Commission for a finding that explicitly authorizes the utilities to engage in certain specific activities which they feel will be necessary to collaboratively implement the energy efficiency statewide programs as ordered by the Commission. These activities include:

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[12] Petition to Modify Decision (D.) 09-12-014, which approved SCE's request to co-fund and participate in a feasibility study to determine the technical feasibility and commercial reasonableness of an integrated gasification combined cycle ("IGCC") facility with carbon capture for use in enhanced oil recovery ("EOR") with sequestration. The facility is commonly referred to as Hydrogen Energy California ("HECA"). SCE is participating in the study with Hydrogen Energy International LLC ("HEI").

[13] See D.10-06-009, at 8, citing *Nugget Hydroelectric, Inc. v. Pacific Gas & Electric Co.*, 981 F.2d 429, 434 (9th Cir. 1992).

(a) Joint and cooperative consultations between and among the Joint IOUs and energy efficiency contractors to assist with determination of the contract requirements of their jointly administered and jointly funded energy efficiency programs;

(b) Joint cooperative process among the Joint IOUs for the sourcing and negotiation (including program requirements, performance, price, quantity and specifications) of joint contracts for energy efficiency to be managed and run by one lead IOU, subject to approval and review by the other IOUs;

(c). Joint submission to the Commission for its approval of proposed energy efficiency contracts pertaining to implementation of statewide programs; and

(d). Other joint and collaborative activities pertaining to the collaboration and joint contracting for statewide energy efficiency programs as the Joint IOUs may determine is necessary for implementation of the statewide programs, subject to the Commission's oversight.

Finally, the Joint IOUs ask the Commission for an explicit finding that the Commission intends to actively supervise and is supervising the Joint IOUs in this regard. For instance D.10-04-029, Attachment 2 describes in detail Energy Division's ongoing oversight of the IOU process for planning IOU-managed studies and selection of contractors. Furthermore, Energy Division has been actively working and providing feedback to the utilities through statewide working groups for each of the twelve statewide programs. An example is Energy Division staff's regular monthly meetings with IOU staffs regarding the implementation of the Integrated Demand Side Management (IDSM) cost effectiveness project and the development of the integrated audit tool.

The Joint IOUs believe it is important for the Commission to make these explicit findings to mitigate the risk of potential allegations of antitrust violations resulting from their adherence to Commission-ordered collaboration, and

ultimately, to further the effective implementation of the energy efficiency statewide programs.

Courts have articulated the State Action Doctrine to determine whether a state's legislative and regulatory actions remove certain private commercial conduct from scrutiny under the federal antitrust laws:

> "Private party conduct is immune from antitrust liability only if the party claiming immunity shows that its conduct satisfies two requirements. First, it must be 'clearly articulated and affirmatively expressed as state policy.' [*California Retail Liquor Dealers Ass'n v. Midcal Aluminum*, 445 U.S. 97, 105, 100 S.Ct. 937, 63 L.Ed.2d 233 (1980)(*Midcal)*] (internal quotation marks omitted.) This may be satisfied if the conduct is a 'foreseeable result' of the state's policy. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 38-39, 42, 105 S.Ct. 1713, 1716-17, 1718, 85 L.Ed.2d 24 (1985). Second, the conduct must be 'actively supervised by the State itself.' *Midcal*, 445 U.S. at 105, 100 S.Ct. at 943 (internal quotation marks omitted). This is satisfied only if 'state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.' (remaining citations omitted.)" *Nugget Hydroelectric, Inc. v. Pacific Gas & Electric Co.*, 981 F.2d 429, 434 (9th Cir. 1992).

For the first prong of the test for state action immunity, it is sufficient for general state statutory or state constitutional authority to authorize a state agency, such as the Commission, to then specifically address the anticompetitive conduct.[14] Article XII, section 6 of the California Constitution and numerous sections of the California Public Utilities Code (e.g., §§ 451, *et seq.*) clearly reflect such general authorization for state regulation of the rates of electric utilities. In

[14] *See, Trigen-Oklahoma City Energy Corp. v. Oklahoma Gas & Electric Co.* (10th Cir. 2001) 244 F.3d 1220, 1226-1227 (State does not have to point to a specific, detailed legislative authorization for the challeged conduct. The State's Constitution or statute may merely manifest the State's intent to displace competition with regulation of electric utilities.)

addition, in Assembly Bill 32 (Stats. 2006, ch. 488),[15] and Senate Bill 1368 (Stats. 2006, ch. 598),[16] the Legislature has also made clear by statutory provisions the importance of the Commission's efforts to reduce greenhouse gas emissions.

We agree with Joint Utilities that we should provide a State Action Doctrine defense against potential allegations of antitrust violations resulting from their collaboration on the Commission-ordered energy efficiency efforts they have identified. Our energy efficiency program is a public interest program intended for the benefit of all of California. The Energy Action Plan places energy efficiency at the top of the loading order. The California Energy Efficiency Strategic Plan, adopted in D.08-09-040, makes clear that our energy efficiency program is intended as a part of a larger statewide policy effort to reduce greenhouse gases, as well as to promote cost-effective energy efficiency as a substitute for traditional energy procurement. We have specifically provided that the utilities should coordinate their activities or otherwise work cooperatively in order to contract with third parties. Coordination and collaboration among utilities and with our Energy Division is critical and required in order to ensure the full realization of the benefits of our program.

Our modifications concerning active state supervision, the second prong of the test for State Action immunity, require, among other things, that the IOUs make regular progress reports on the progress and status of the IOU activities in support of energy efficiency activities. In D.09-09-047, we have provided for multiple reports from the IOUs on a number of aspects of the adopted 2010-2012 energy efficiency portfolios, and Energy Division oversight of many areas of the

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[15] *See,* Cal. Health and Safety Code §§ 38501(g) and 38592.

portfolios.[17] Additionally, we make clear that parties who actively participated in all phases of the underlying matter which led to D.09-09-047, shall also have access to any confidential reports and other appropriate documents pursuant to the confidentiality restrictions of Public Utilities Code Section 583 (for DRA) or the non-disclosure agreements provided in the Procurement Review Group process (for TURN). Thus, DRA and other parties will have access to confidential information regarding this process and can also monitor it.

In light of the requirements necessary to demonstrate immunity under the State Action Doctrine, we believe it is prudent to modify D.09-09-047 to clarify that the cooperative activities the Commission expects among the IOUs related to certain energy efficiency activities shall be deemed to be undertaken at the express direction and under the supervision of the Commission in furtherance of an expressly articulated state policy. We therefore modify D.09-09-047 as set forth below in the OPs.

11. Comments on Proposed Decision

The Proposed Decision of ALJ Gamson was mailed to the parties on November 16, 2010, in accordance with Section 311 of the Public Utilities Code.

Comments were filed by DRA/TURN, SCE, PG&E, County of Los Angeles, EnerNOC, the National Association of Energy Service Companies (NAESCO), and the California Building Performance Contractors Association. We make several changes in response to comments.

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[16] *See,* Cal. Pub. Util. Code §§ 8340 and 8341.

[17] OP 8, OP 11, OP 12, OP 15, OP 20, OP 22, OP 24, OP 29, OP 33, OP 36, OP 39, OP 43, and OP 46 provide for utilities to provide reports or file Advice Letters to implement portions of D.09-09-047. OP 14, OP 27, OP 34, OP 39, OP 50 and OP 59 provide for Energy Division oversight of utility energy efficiency efforts.

Several parties (including NAESCO, which had not previously participated in this part of the proceeding) commented on the Proposed Decision's treatment of non-DEER *ex ante* values, for both custom and non-custom projects. Sections 3.2 and 3.3 of the Proposed Decision are modified to allow further consideration of these matters. Certain Findings of Fact, Conclusions of Law and OPs of the Proposed Decision are deleted.

In Section 5 we discuss the Joint Utilities' request in their Petition to allow a phased-in timing for co-branding, and approve this request by adding a new Finding of Fact, Conclusion of Law and OPs.

Section 6 and associated Findings of Fact, Conclusions of Law and OPs of the Proposed Decision are modified to clarify that a 10% annual energy savings goal per home for the PWRHP and a 20% annual energy savings goal per home for the WHPP are reasonable and consistent with D.09-09-047, and are understood to signify average savings expected per home, not minimum thresholds.

12. Assignment of Proceeding

This proceeding is assigned to Commissioner Dian M. Grueneich and ALJ David M. Gamson. ALJ Gamson is the Presiding Officer.

Findings of Fact

1. D.09-09-047 adopted energy efficiency portfolios for 2010 through 2012 for Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company. That decision established, among other things, that DEER and non-DEER *ex ante* values should be frozen using best available information.

2. The utilities and the Energy Division have not been able to agree on how to freeze many DEER *ex ante* values and non-DEER *ex ante* workpapers, which were to have been frozen based on best available information per D.09-09-047.

3. It is important to establish clear frozen *ex ante* values in order to ensure the utilities can fully implement the energy efficiency measures approved in D.09-09-047.

4. Branding or co-branding utility energy efficiency-funded projects with the Engage 360 brand is a crucial part of the marketing, education and outreach effort envisioned by D.09-09-047.

5. The Engage 360 brand is expected to focus in the first quarter of 2012 on transmitting its message through traditional mass media, after brand recognition and understanding of the brand have been established.

6. It is technically infeasible at this time to attain a 20% annual energy savings goal for the Prescriptive Whole House Retrofit Program by the end of 2012.

7. The Joint Utilities have not requested to modify 20% annual energy savings goals associated with the Whole House Prescriptive Program.

8. D.09-09-047 was not clear whether the $1,000 performance bonus for the CAHP applies only to single family units, or to multifamily units as well.

9. The utilities' energy efficiency portfolios are important to California's ability to meet its clean energy goals and to provide a cost-effective alternative to energy procurement.

10. The utilities' energy efficiency portfolio is actively supervised by the Commission.

Conclusions of Law

1. Freezing 2008 DEER version 2.05 values at their current levels is consistent with the dual goals of using best available information and achieving finality.

2. It is reasonable to freeze 2008 DEER version 2.05 values at their current levels.

3. The Engage 360 brand should not be required to be used alone or as co-branding for programs which use no energy efficiency funds.

4. Since D.09-09-047 did not specify minimum energy savings goals per home for the WHPP, it is not necessary to modify that decision to reflect the Joint IOUs preference for 10% or 15% minimum energy savings per treated home for this program.

5. A 10% annual energy savings goal per home for the PWRHP and a 20% annual energy savings goal per home for the WHPP is reasonable and consistent with D.09-09-047, and is understood to signify average savings expected per home, not minimum thresholds.

6. D.09-09-047 should be clarified to state that the $1,000 performance bonus for the CAHP applies only to single family units.

7. It is reasonable to allow a lower performance bonus for the CAHP that applies to multifamily units.

8. D.09-09-047 should be modified to include specific language addressing the State Action Doctrine as set forth in the OPs below.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 48 of Decision 09-09-047 is modified to read: "Both DEER 2008 and non-DEER measure ex ante values established for use in planning and reporting accomplishments for 2010-2012 energy efficiency programs shall be frozen. ~~based upon the best available information at the time the 2010-2012 activity is starting~~. The frozen version of DEER shall be 2008 DEER version 2.05, dated December 16, 2008, as currently posted at the DEER website (http://www.deeresources.com) maintained by Energy Division."

2. Conclusion of Law 26 of Decision 09-09-047 is modified to read:

   "Measure *ex ante* values established for use in planning and reporting accomplishments for 2010-2012 ~~should~~ shall be frozen ~~based upon the best available information at the time the 2010-2012 activity is starting~~. The frozen version of DEER should be 2008 DEER version 2008.2.05, dated December 16,2008, as currently posted at the DEER website (http://www.deeresources.com) maintained by Energy Division."

3. Ordering Paragraph 21(b) of Decision 09-09-047 is modified to read:

   "Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall file a program implementation plan for the Prescriptive Whole House Retrofit Program referenced in subsection (a) of this Ordering Paragraph by Advice Letter by December 15, 2009~~;~~. If Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company determine it feasible to expand this program offering to multifamily customers during the 2010-2012 program cycle, they shall jointly seek approval for this component through an Advice Letter."

4. The text of Decision 09-09-047 on page 120 is modified to read as follows:

   "The Utility's Whole House Home Performance Programs shall seek to drive the market to retrofit at least 1% of California homes in the utility service to 20% annual savings by the end of this program cycle (i.e., December 2012). The Prescriptive Whole House Program (Basic Program) will contribute to this goal by driving participating

homes in the utility service territories to an average of 10% annual savings, while the local Whole House performance Programs (Advanced Program) will contribute to this goal by driving participating homes in the utility service territories to an average of 20% annual savings."

5. Ordering Paragraph 34 of Decision 09-09-047 (sixth bullet point) is modified to read:

"use the brand alone or in a co-branded capacity across all energy efficiency marketing efforts for all programs which use energy efficiency funds, all or in part. Co-branding with Investor-Owned Utility brands shall begin in conjunction with the launch of the mass media phase of the Marketing Education and Outreach campaign and after awareness of the new statewide brand is established."

6. Ordering Paragraph 24(b) of Decision 09-09-047 is modified to read:

"For the CAHP program Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company shall offer a $1,000 performance bonus per single family unit and a $200 bonus or a territory-specific incentive (e.g., marketing dollars, customized engineering reports, etc.) per for each multi-family unit that is built at or above Title 24 by 30% and participates in the NSHP at the Tier 2 level."

7. Ordering Paragraph 61 is added to Decision 09-09-047 as follows:

"In recognition of the need for affirmative steps to provide effective and efficient joint investor-owned utility management of the California utilities' statewide energy efficiency programs, so they can better meet the state's energy efficiency goals, the Commission authorizes Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company to engage in the following activities:

(a) Joint and cooperative consultations between and among these utilities and energy efficiency contractors to assist with determination of the contract requirements of their jointly administered and jointly funded energy efficiency programs;

(b) Joint cooperative process among the four utilities for the sourcing and negotiation (including program requirements,

performance, price, quantity and specifications) of joint contracts for energy efficiency to be managed and run by one lead utility, subject to approval and review by the other utilities;

(c) joint submission to the Commission for its approval of proposed energy efficiency contracts pertaining to implementation of statewide programs; and

(d) other joint and collaborative activities pertaining to the collaboration and joint contracting for statewide energy efficiency programs as the four utilities may determine is necessary for implementation of the statewide programs, subject to the Commission's oversight."

8. Conclusion of Law 104 is added to Decision 09-09-047 as follows:

"In further recognition of the importance of the state's investor-owned utilities' energy efficiency programs to California's ability to meet its clean energy goals, the Commission hereby determines that Southern California Edison Company, Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company should jointly implement certain energy efficiency programs and that their exchange of confidential and/or competitively-sensitive information related to such implementation shall be deemed to have been undertaken at the express direction and under the supervision of the Commission in furtherance of an expressly-articulated state policy."

9. Application (A.) 08-07-021, A.08-07-022, A.08-07-023, and A.08-07-031 remain open.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners