Decision 08-12-059 December 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to examine the Commission's post-2005 energy efficiency policies, programs, evaluation, measurement, and verification, and related issues.	Rulemaking 06-04-010 (Filed April 13, 2006)

DECISION GRANTING IN PART AND DENYING IN PART THE PETITION FOR MODIFICATION

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1. Summary

On August 15, 2008 Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) (collectively Petitioners), filed a joint Petition for Modification to Decision (D.) 07-09-043 and D.08-01-042, seeking changes to the Energy Efficiency Risk Reward Incentive Mechanism. Specifically, Petitioners ask that in instances where Energy Division has not met the established schedule for the completion of the verification reports used to validate interim claims, the Commission authorize interim incentive payments based on utility submitted savings reports. To that end Petitioners ask that for the first interim claim covering the 2006 and 2007 period the Commission authorize payments of $77.1 million, $45.9 million, $20.1 million, and $9.6 million for PG&E, SCE, SDG&E and SoCalGas, respectively. In addition, Petitioners ask the Commission to modify D.08-01-042 to eliminate the requirement that the *ex ante* savings parameters, used in calculating interim claims, be updated. Lastly, Petitioners ask that the evaluation, measurement and verification reports developed by Energy Division be subject to review by the Commission rather than left to the discretion of Energy Division, as is current policy.

This decision grants in part and denies in part the petition for modification. With respect to the request to allow interim payments to be based on the Investor-Owned Utilities' (IOUs) quarterly savings reports in light of the delays encountered in the completion of Energy Division's verification reports and ongoing concerns with respect to the process by which these reports and the underlying assumptions are developed, we will authorize payments in the

amounts of $41.5 million, $24.7 million, $10.8 million, and $5.2 million for PG&E, SCE, SDG&E and SoCalGas, respectively for the 2006 and 2007 periods. This reflects the amounts Petitioners' request adjusted to include a higher holdback of 65% to address the increased risk of overpayment ratepayers bear as a result of relying on utility submitted reports. Similarly, for the second interim claim (covering 2008 program performance), should Energy Division's verification reports be delayed such that any interim claims that may be owed cannot be authorized in 2009 pursuant to the schedule established in D.07-09-043, interim claims will be based on the IOUs' submitted quarterly savings reports subject to a holdback amount of at least 65% with the specific holdback amount determined at the discretion of the assigned Commissioner based on the risk of overpayment. To further reduce the risk of overpayment, for the 2006-2008 period, we will adjust the framework to "reinstate" the deadband, such that if the *ex post* review indicates that utility performance falls between 65% and 85% of the adopted goals, rather then continuing to earn incentive payments at the 9% shared savings rate, as is current policy, no additional incentives will be earned beyond what they IOUs have already received in interim claims. We deny Petitioners' request to eliminate the existing requirement under which the *ex ante* values used to calculate interim claims are updated. We grant Petitioners' request regarding Commission review of earnings-related issues by requiring the verification and final true-up reports developed by Energy Division to be issued by resolution, including the current draft verification report that was issued on November 18, 2008.

2. Background

In September of 2007, the Commission adopted D.07-09-043, establishing the Energy Efficiency Risk/Reward Incentive Mechanism or RRIM. This

mechanism was developed with the objective of providing incentives to encourage deployment of energy efficiency measures such that energy efficiency would be viewed by the IOUs as comparable to investments in supply side resources. The mechanism is composed of two primary elements, the minimum performance standard (MPS) and the performance earning basis (PEB). The MPS represents the minimum percent of the energy efficiency goals, as adopted by the Commission, the IOUs must have met through the execution of their programs in order to be eligible for rewards. If a utility is eligible for rewards, the specific amount is determined by applying a "shared savings rate" associated with a given level of goal achievement to the PEB, where the PEB represents an estimate of the costs ratepayers would have otherwise born but for the deployment of energy efficiency. The same basic framework is used to determine penalties if utility program performance falls below a certain threshold.[1] D.07-09-043 also established an earnings claim and recovery process that afforded the IOUs the opportunity to file interim claims based on estimated performance achieved in Years One and Two of the three-year program cycle. These interim claim amounts were to be based on verified measure installation and cost reports combined with *ex ante* performance estimates. Thirty percent of the interim claims were subject to holdback, with this amount being trued-up based on an *ex post* review of performance after the close of the three-year cycle, using updated performance estimates. Under these rules, the IOUs could be required to return interim payment received if the *ex post* review indicated the IOUs had received in excess of what was warranted based on those updated planning assumptions. Similarly, if the *ex post* review indicated that the IOUs should

[1] For a more detailed description of the incentive mechanism, refer to D.07-09-043 in its entirety.

receive more in rewards than was assumed for purposes of the interim claims, the final payment would be adjusted accordingly. The Commission also established a schedule, subject to change as deemed necessary by the assigned Administrative Law Judge (ALJ) in consultation with the assigned office, for the submission, review and payout of incentive claims.

On October 31 and November 7, 2007, Petitioners filed a Petition for Modification and Amended Petition for Modification specifically asking that the interim claim process be modified such that any interim incentives provided to the IOUs would not be subject to potential "claw-back" should the *ex post* review find that overpayment had occurred. Petitioners argued that the uncertainty created by potential "claw-back" prevents booking of any interim claims and thus undermined the value of any interim incentives, thus compromising the effectiveness of the incentive mechanism. In D.08-01-042, the Commission granted Petitioners' request, modifying the interim claim process to reduce the uncertainty associated with interim payments. Specifically the decision allows the IOUs to retain any interim incentives received except in circumstances where *ex post* review indicates that the IOUs' performance fell within the penalty band. Under these circumstances any interim incentives received would have to be returned in addition to whatever penalties are owed. Furthermore, the decision established that if the *ex post* review indicates that utility performance falls within the "deadband," the utility would continue to earn at the 9% shared savings rate, applied to the *ex post* PEB.[2] Because this decision reduced the share of IOU incentive claims that would be subject to *ex post* review and true-up, all else equal, it necessarily increased the risk of incentive overpayment. To address

[2] D.08-01-042, Ordering Paragraph 2.

this concern, the Commission further modified the RRIM in two ways. First, for interim claims, D.08-01-042 increased the holdback amount from 30% to 35%. Second, the decision required that the *ex ante* assumptions used to calculate interim claims be updated with 2008 and 2009 Database for Energy Efficiency Resources (DEER) measure savings parameters including updated net-to-gross (NTG) ratios and expected useful lives.

In February of 2008 the IOUs filed their interim quarterly savings reports. Since then, Energy Division has encountered delays in the completion of the verification reports and updates to the ex ante assumptions including updates to the DEER. To that end, on October 20, 2008, ALJ Gamson issued a ruling exercising his prerogative to adjust the schedule for the completion of Energy Division's final verification reports.

On August 15, 2008, Petitioners filed the instant petition. Specifically, Petitioners ask that the Commission authorize interim incentive payments to the utilities reflecting their performance in deploying energy efficiency measures in 2006 and 2007 based on the quarterly savings reports submitted by the utilities rather than on Verification Reports Energy Division is in the process of developing. In addition, Petitioners ask the Commission to modify D.08-01-042 to eliminate the requirement that the *ex ante* savings parameters used to calculate interim claims, specifically the assumptions included in DEER, be updated. Lastly, Petitioners ask that any updates to the assumptions used to evaluate energy efficiency measure and program performance be reviewed by the full Commission rather than left to the discretion of Energy Division as is current policy. The justification offered by Petitioners for each of these changes is provided below.

With respect to authorizing interim payments based on utility submitted performance reports rather than Energy Division verification reports, Petitioners argue that the effectiveness of the mechanism is dependent on timely receipt of any interim incentives that might be owed. Thus, the delays experienced in completing the verification reports and the *ex ante* updates, as described above, and the associated delay in the ability of the IOUs to book interim incentive payments, undermines the ability of the mechanism to provide meaningful incentives for the deployment of energy efficiency measures.

Regarding the requested elimination of the requirement to update the *ex ante* DEER values used in calculating interim claims Petitioners allege that the studies underlying these updates are limited and outdated. This concern dovetails with their third request, namely that the Commission retain the ability to review "earnings related issues raised in evaluation measurement and verification reports."

On August 22, 2008, the assigned Commissioner issued a ruling imposing an *ex parte* ban through September 15, 2008, the deadline for submitting responses to the Petition to Modify (PTM). This ban was imposed to give parties the opportunity to pursue alternative dispute resolution (ADR). ADR was specifically supported by the assigned Commissioner and ALJ. To that end the Commission offered ADR resources to facilitate a mediated solution. No settlement or mediated outcome was reached.

Responses to the petition were filed by the Natural Resources Defense Council (NRDC), as well as the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and the California Environmental Council (CEC) (Joint Respondents), who filed jointly on September 15, 2008.

In its response, NRDC articulates general support for Petitioners' request to authorize interim claims such that the IOUs can receive interim incentive payments consistent with the schedule established in D.08-01-042. In NRDC's view, allowing the delays in Energy Division's verification reports and updates to the DEER database to prevent issuance of interim incentive payments will compromise the effectiveness of the incentive mechanism in "[making] the incentive mechanism credible to both company managements and a financial community that are unused to any material relationship between the utilities' earnings and their energy efficiency achievements." NRDC goes on to acknowledge concerns regarding potential overpayment reliance on utility submitted performance reports invites and provides its assessment of the likelihood such overpayment would occur. NRDC finds that the results reported by PG&E, SCE, and SoCalGas that serve as the basis for the requested interim claim amounts, "represent robust lower bounds for the final total incentive payment entitlement," if those results are not updated to reflect adjustment to the NTG ratios. For SDG&E, NRDC cannot, on the basis of its analysis, assert that SDG&E's results are sufficiently conservative to support interim incentive payments. NRDC also suggests that for purposes of implementing the incentive mechanism for the 2006-2008 program cycle, the Commission should retain the *ex post* true-up provisions, but exclude updates to the NTG ratios from that assessment.

Joint Respondents oppose the PTM and recommend that the Commission reject it in its entirety. Joint Respondents argue that granting the PTM would alter the careful balance embodied by the incentive mechanism between ratepayer and utility interests, dramatically shifting that balance in favor of the utilities. By basing interim claims on unsubstantiated reports submitted by the

utilities themselves as well as removing updates to the *ex ante* DEER estimates on a going-forward basis, Joint Respondents argue that the petition seeks to remove key elements that play a crucial role in limiting the extent to which ratepayers provide incentives under the incentive framework where such incentives cannot be credibly attributed to the utility programs. With respect to the specific amounts requested by Petitioners for 2006 and 2007, Joint Respondents assert that were the mechanism applied as currently designed, the utilities would earn far less than the $152 million and could conceivably earn nothing. Joint Respondents also argue that the Commission already considered and rejected a proposal by the IOUs to allow interim claims to be awarded on the basis of the IOU performance reports in the event the schedule established in D.07-09-043 encountered delays.

Petitioners filed a Reply to the Responses to the Petition for Modification September 25, 2008.

On October 3, 2008, the assigned ALJ convened a prehearing conference to discuss the PTM and any updates to parties' respective positions on the issues raised therein.

On October 28, 2008, the assigned Commissioner issued a ruling taking Judicial Notice of the Final DEER 2006-2007 Measure Updates, as well as all comments and Energy Division responses developed in the process leading up to final adoption of the updates, thereby incorporating this information into the record of this proceeding.

3. Discussion

In D.08-01-042, the Commission agreed with the Petitioners that in order for the incentive mechanism to be effective in motivating the utilities to treat energy efficiency investments as comparable to supply side investments, it must

provide the opportunity for the utility to recognize and book incentives on a regular basis. The decision accepted the IOUs' argument that if incentives are not booked at regular intervals they will be excluded from operating revenues, and will instead be treated as a one-time adjustment, and thus will not factor into a company's financial valuation, greatly diluting the value of the incentive mechanism.[3] The IOUs argue in this petition that the schedule established in D.07-09-043 for the submission, verification and payment of interim claims has experienced significant delays, and thus will postpone the timing of when they will receive any interim payments that may be owed to them. Petitioners associate these delays with two activities that Energy Division was tasked with pursuant to D.07-09-043 and D.08-01-042: measure installation and expenditure verification reports and updates to the *ex ante* assumptions included in the DEER. No one disputes that there have been delays in the completion of these activities. Because of these delays, any interim awards to which the IOUs may be entitled will fall outside of the schedule established in D.07-09-043. This fact has been formally recognized by the assigned ALJ, who, on October 20, 2008, issued a ruling extending the timeline for the issuance of Energy Division's final verification reports to January 15, 2009. As a result of this delay, Petitioners suggest that one of the key characteristics that the Commission has accepted as being necessary for the incentive mechanism to be effective, namely its timeliness, has been compromised. To address this, the IOUs suggest that the Commission allow them to earn incentives based on the measure and cost reports they have submitted rather than waiting for the final verification reports to be completed by Energy Division.

[3] D.08-01-042 pp. 9-10.

Taken together, D.07-09-043 and D.08-01-042 sought to create a balance between providing IOUs, and by extension the financial community, certainty that investments in energy efficiency will yield regular and meaningful returns, while simultaneously ensuring that ratepayers only pay incentives where the efforts of the IOUs have provided real and additional savings beyond what would have otherwise occurred. D.08-01-042 modified the earlier decision in response to IOU concerns that 100% true-up of the interim claims would prevent the IOUs from being able to book interim claims in light of the significant risk that these interim amounts would be "clawed back." The CPUC agreed in principle with the IOUs that the risk of interim claim "claw-back" compromised the value of the mechanism and accordingly altered the incentive framework to remove "full, *ex post* true-up," under which all incentives received by the IOUs throughout a given program cycle, including interim amounts received, would be adjusted to reflect the results of an *ex post* evaluation of program performance. Instead, under the provisions established in D.08-01-042, the IOUs were allowed to retain interim claim amounts, except in circumstances where the *ex post* evaluation indicated that program performance fell within the penalty band. Furthermore, if the *ex post* evaluation resulted in the IOU program performance falling in the deadband, the IOUs would continue to earn incentives at the 9% shared savings rate, but that rate being applied to a fully trued-up PEB. However, in making these adjustments to the mechanism, the decision recognized that the risk to ratepayers of incentive overpayment necessarily increased. To mitigate this risk, D.08-01-042 increased the "holdback" amount from 30% to 35% and, furthermore, clarified that the *ex ante* factors and DEER estimates used in determining IOU performance and incentives under the incentive framework would be updated. Combined with Energy Division

measure installation and verification reports as required by D.07-09-043, the Commission concluded that these elements would be sufficient to allow IOUs to book and retain interim payments without unduly exposing ratepayers to risk of overpayment.

The petition before us suggests that the approach adopted in these two decisions has, in the context of the 2006 and 2007 interim claims, resulted in a process that fails to meet a key criterion that the Commission has accepted as necessary for the energy efficiency incentive mechanism to be effective, namely its timeliness. In order to preserve this feature of the mechanism, Petitioners request that the Commission rely on the IOUs' fourth quarter savings reports in lieu of Energy Division Verification reports. The risk that the schedule for the issuance of verification reports, and thus the provision of interim claim amounts, might not be strictly adhered to was specifically recognized by the Commission in D.07-09-043, in which the Commission stated:

> However, the actual due dates for those claims are tied to the issuance date of Energy Division's reports, as discussed in Section 8.4 below. Our staff is fully committed to meeting the deadlines established by our EM&V protocols for their reports. Nonetheless, no one can guarantee that unforeseen circumstances will never require some delay to that schedule. Therefore, should circumstances warrant, we permit the assigned ALJ to modify the schedule set forth in Attachment 6, in consultation with the assigned Commissioner.

On October 20, 2008, ALJ Gamson issued a ruling exercising his prerogative to adjust the schedule for the completion of Energy Division's final verification reports.

It is worth noting that Petitioners were well aware of the uncertainty surrounding the specific timing of any interim claim awards. Parties present uncontroverted evidence that the utilities' own statements in their Securities and

Exchange Commission filings anticipated potential delays in Commission authorization for any earnings. For example, SCE's 10-K report dated February 27, 2008 stated: "Timing of progress payment claims is linked to the completion of CPUC reports. Delays in CPUC reports could cause delays in recognizing earnings for these claims." In an August 6, 2008 10-Q Report referencing the unsuccessful ADR attempt initiated by NRDC, PG&E stated: "It is uncertain whether this alternative dispute process will be successful or whether the CPUC will issue a decision by the end of 2008." We find that the utilities were aware of potential delays in the Energy Division review process and understood that earnings claims might not be finalized in 2008.

Furthermore, the Commission specifically addressed and rejected an earlier proposal to rely on unverified utility savings reports in circumstances where the schedule for the verification reports had encountered delays.

> Some parties to this proceeding suggest that we authorize the utilities to submit earnings claims and pay out some portion of the estimated savings if those Energy Division reports are delayed in any way. We do not adopt this suggestion. Ratepayers' interests are best served when the payout of earnings (or imposition of penalties) occurs only after the installations, program costs and (for the final claim) load impacts have been verified by our staff and its contractors.[4]

As explained, in D.08-01-042 the Commission accepted the notion that regularity and timeliness of interim claims is part and parcel of an effective incentive mechanism. The language noted above, however, appears counter to this notion in that it essentially allows for interim payments to be postponed indefinitely, based on the completion of the verification reports. The provisions adopted in D.08-01-042 further tie the schedule for when interim payments, if

[4] D.07-09-043, pp. 120-121.

owed, would actually be made to the ability of Energy Division to complete updates to the *ex ante* parameters and DEER estimates.

DRA, TURN and CEC argue that the lengthening of the schedule resulting from delays in the completion of the verification reports and *ex ante* parameter updates are relatively modest, at only a few months.[5] Furthermore, whatever adverse consequences such delays might have is more than offset by the substantial potential benefits to ratepayers in terms of avoiding overpayment of incentives.[6]

In contrast, NRDC suggests that providing incentives on a timely basis is a critical element in making the incentive mechanism "credible to both company managements and a financial community that are unused to any material relationship between utilities' earnings and their energy efficiency achievements." As explained below, NRDC specifically supports the IOUs' proposal to authorize interim claims based on the quarterly savings reports filed by the utilities with the exception of SDG&E.

In an effort to evaluate the extent to which authorizing interim claims as proposed in the PTM would put ratepayers at risk for overpayment, in its response to the PTM NRDC attempted to assess the risk of overpayment by comparing the claims sought by the Petitioners and the claim amounts that would be provided were the assumptions updated to reflect the proposed 2006-2007 DEER updates, excluding NTG adjustments. NRDC found that the

[5] DRA, TURN, CEC Joint Response to Petition for Modification, p. 2.

[6] DRA, TURN and CEC suggest that the entire interim claim amount sought by the IOUs in their petition should be treated with great skepticism as this amount, $152 million is based on unverified claims by the IOUs. Furthermore, DRA et al., suggest that if the *ex ante* parameters and DEER updates were updated as established in D.08-01-042, the IOUs interim performance may fall within the deadband, and thus would not be eligible for any incentives. *See* Response of DRA, TURN and CEC, p. 10.

interim earnings amounts requested by PG&E, SCE, and SoCalGas are reasonably conservative as the amounts that would be earned were the assumptions updated as described would exceed the amounts the IOUs request in the petition. For SDG&E, NRDC found that because SDG&E's 2006 and 2007 performance puts them at 87% of goal, there remains substantial risk of overpayment; a relatively modest change could easily put SDG&E's interim performance within the deadband and thus reduce the amount of incentive payments to which SDG&E would be entitled to zero. In the Petitioners' reply to the responses to the Petition for Modification, SDG&E and SoCalGas assert that NRDC's analysis is unfair in that it doesn't account for 2004 and 2005 savings that, in SDG&E's estimation, are appropriately included given Commission direction on the use of cumulative savings in assessing utility performance under the incentive mechanism. According to SDG&E and SoCalGas were a cumulative savings approach used, SDG&E's goals achievement would be 110%, corresponding to a shared savings rate of 12%. In comments NRDC observes that in D.07-10-032, the Commission "redefined the definition of cumulative to be counted back to 2004." Additionally in a data response NRDC specifically characterizes SDG&E's and SoCalGas' inclusion of cumulative savings in their 2006-2007 interim claim as a reasonable interpretation of relevant Commission decisions. NRDC concludes that if SDG&E's and SoCalGas' interim claim is assessed on this basis the amounts sought are reasonable.

Needless to say, because the interim claim amounts proposed by the IOUs have not been verified by Energy Division as required pursuant to D.08-01-042, we, like DRA, TURN, and CEC, have profound concerns that accepting the IOU proposal as is would subject ratepayers to significant risk of overpayment. This concern is compounded by the fact that the utilities' respective claims are not

consistent in terms of their treatment of 2004 and 2005 program performance. PG&E and SCE excluded 2004 and 2005 performance from their interim claim while SDG&E and SoCalGas included it. Therefore, despite NRDC's assertions that the interim claim amounts sought by the IOUs are sufficiently conservative, we remain uncomfortable with the prospect of making payments on this basis. However, we also believe that allowing the schedule for interim payments to slip such that any incentives that may be owed cannot be booked in the same year the interim claim was filed undermines the effectiveness of the mechanism. While it is clear, based on statements made in their respective SEC filings, that the utilities were well aware of the significant potential for such delays, that recognition is not, in of itself, a reasonable or logical counterargument to the concern that such delays undermine the effectiveness of the incentive mechanism. Thus we find ourselves confronted with the apparent dilemma of either choosing to proceed with the process we approved in prior decisions, which places a premium on protecting ratepayers from overpayment, but compromises timeliness; or choosing to grant interim payments as proposed by the IOUs, which places a premium on timeliness, though potentially to the detriment of ratepayers.

However, this need not be an either/or proposition. Although Energy Division has not yet finalized its verification report, we believe the quarterly reports submitted by the utilities can serve as a meaningful basis for interim claim amounts provided the increased risk of overpayment this necessarily engenders is taken into consideration. One means of mitigating this risk is via the holdback amount applied to interim claims. With the verification reports and *ex ante* updates in place, the Commission found that a holdback of 35% was

reasonable.[7] Absent these protections it follows that the holdback amount would need to be increased. After reviewing comments submitted with regard to the risk faced by ratepayers we believe that allowing the utilities to earn interim incentives based on their savings reports could be reasonable provided the holdback amounts are increased substantially. A higher holdback amount will reduce the risk that overpayment occurs by subjecting a greater amount of the interim claims to *ex post* true-up. We believe a holdback of 65% can substantially protect ratepayers from the risk of overpayment. These increased holdback amounts when applied to the interim claim amounts proposed by the IOUs result in payments of $41.5 million, $24.7 million, $10.8 million, and $5.2 million for PG&E, SCE, SDG&E, and SoCalGas, respectively.

To further reduce the risk of overpayment, we also amend the framework as it relates to the *ex post* true-up for the 2006-2008 period. In D.08-01-042 the Commission determined that if the IOUs earned interim payments in a given program cycle, but the *ex post* true up for that cycle finds that the IOUs' performance falls within the deadband, they would continue to achieve earnings at the 9% shared savings rate applied to the fully trued-performance earnings basis.[8] Given that we are relying on utility-submitted data as the basis for determining incentive amounts for this interim claim we think it is reasonable for the 2006-2008 period to remove this provision, and, in effect, reinstate the deadband for the *ex post* true up for this cycle. In the event the *ex post* true-up reveals that the IOUs should not have received anything, this will prevent further overpayment.

[7] D.08-01-042, p. 14.

[8] D.08-01-042, Ordering Paragraph 2.

Relying on utility submitted data subject to the higher holdback amounts as the basis for determining incentives under the RRIM is a significant departure from the process the Commission has developed and only applies to the first interim claim covering program performance in 2006 and 2007. However, a similar approach may be used for the second interim claim (covering program performance through 2008) in the event that Energy Division's verification reports are delayed and any associated rewards or penalties that may be warranted cannot be assessed in 2009 pursuant to the schedule established in D.07-09-043. In this case, interim payments will be based on the utilities' savings reports subject to a holdback of at least 65% with the specific level to be determined at the discretion of the assigned Commissioner. In such instances, the assigned Commissioner shall issue a ruling notifying parties of his/her intent to rely on the utilities' savings reports as the basis for determining interim claim amounts and solicit comments from parties on those reports and what holdback amounts should be applied. Once comments have been submitted, the assigned Commissioner will issue a final ruling adopting interim payment amounts. We note that this may create a perverse incentive whereby the utilities are motivated to delay the process so that their incentives under the RRIM are based on utility-submitted data rather than on Energy Division's verification reports. Should the assigned Commissioner find that delays in the schedule for issuance of Energy Division's verification reports were in whole or in part the result of delays caused by the utilities, no interim incentive payments will be made to the utilities until the final verification report for 2008 is adopted by the Commission.

The IOUs also ask that on a prospective basis we eliminate the requirement that the *ex ante* savings parameters used to calculate interim claims be updated with more recent savings parameters and DEER estimates. This

request is made largely on the grounds that the rigor of the studies underlying those updates is limited. To that end, the IOUs also ask that updates to the measurement assumptions be elevated to the Commission level for review. NRDC, while not taking a position on Petitioners' proposal to wholly eliminate the *ex ante* update requirements, does specifically support eliminating updates to the NTG values.

At this point we do not think it would be reasonable to remove, in part or in whole, the requirement that the *ex ante* assumptions used to assess interim claims be updated. This updating is part and parcel of the balance that was struck in D.08-01-042 between providing utilities the ability to book interim rewards without the uncertainty that they would have to return these interim amounts after the fact, and limiting the risk to ratepayers of overpayment.

Regarding updates to the *ex ante* assumptions used to assess interim claims, in D.08-01-042 we clarified what specific *ex ante* assumptions would be relied upon for purposes of calculating the 2006-2008 interim claims. Ordering Paragraph 3 of D.08-01-042 states:

> For the 2006-2008 program cycle, the following *ex ante* assumptions of energy savings and demand reductions shall be used in conjunction with verified installations and verified costs to calculate the 1st and 2nd Claims:
>
> (a) Except as otherwise provided for below, the *ex ante* measure savings parameters that are contained in the utilities' E3 calculators, as of the 4th quarter 2007 report for the 1st Claim and as of the 4th quarter 2008 report for the 2nd Claim.
>
> (b) For measures contained in the Database for Energy Efficient Resources (DEER), the 2008 and 2009 DEER updates of *ex ante* measure savings parameters, including net-to-gross ratios and expected useful lives. The 2008 DEER update

shall apply to the 1st Claim and the 2009 DEER update shall apply to the 2nd Claim.

(c) For customized measures or customized projects that represent aggregated measures in the E3 calculator, Energy Division shall identify the appropriate installed measure(s) based on its measure verification results and develop the associated *ex ante* load impact values. For this purpose, Energy Division may use the utilities' tracking system information, engineering workpapers, DEER values and methods, or other current measurement and verification results that are available."

For the first interim claim, representing 2006 and 2007 performance under the incentive mechanism, today's decision, which relies on the utility submitted savings reports subject to higher holdback amounts, renders this direction moot. The second interim claim of the 2006-2008 program cycle, representing program performance through 2008, will be based on Energy Division's verification reports incorporating updated *ex ante* assumptions consistent with what is described above and as amended below, unless Energy Division encounters significant delays.

While we deny Petitioners' request to wholly eliminate the updates to the *ex ante* assumptions, we share the concerns expressed regarding the robustness of assumptions and updates thereof used to assess utility performance under the incentive mechanism. For example, the NTG ratio has engendered substantial controversy throughout this proceeding. This can be largely attributed to the inherent difficulty in developing a robust number that quantifies the level of energy efficiency measure deployment that would have occurred in the absence of utility programs. Unlike many of the other parameters used in assessing program performance, which lend themselves to sampling methodologies and direct measurement, estimates of the NTG ratio rely on surveys in which

upstream and downstream program participants are asked to assess the impact of utility programs on their behavior or that of their customers.

Although these concerns are particularly notable with respect to the NTG ratios, such concerns are not limited to the NTG ratios, but include other assumptions as well. In light of these concerns, we believe it is reasonable to elevate the level of review to which these assumptions and the resulting reports they inform are subject. Currently, updates to the energy efficiency performance metrics embodied in DEER are left to the discretion of Energy Division. Beginning with the draft verification report that was issued on November 18, 2008 and going forward, we will require that Energy Division issue these reports via draft resolution for consideration and adoption by the Commission before those reports are used to determine incentive payments or penalties under the RRIM.[9] This direction applies to both the verification reports used to assess interim claims as well as those used for the final true-up. These resolutions should include detailed information regarding the underlying assumptions used and supporting documentation that provides the basis for those assumptions. For the current verification report, we direct Energy Division to issue the final report, by draft resolution no later than January 15, 2009. Going forward, the Energy Division shall issue its draft verification reports via resolution such that they can be adopted by the Commission in the same timeframe as envisioned in D.07-09-043 for the issuance of the final verification reports. In order to ensure efficiency and timeliness, the procedural language in Attachment 7 of D.07-09-043 will be modified to clearly outline the process. The resolutions, both

[9] Energy Division should issue its draft verification reports via resolution such that these resolutions can be adopted by the Commission in the same timeframe as envisioned in D.07-09-043 for the issuance of the final verification reports.

for the current draft report and going forward should include detailed information regarding the underlying assumptions used and supporting documentation that provides the basis for those assumptions.

Within 30 days of this decision, the assigned ALJ shall issue a ruling providing a more detailed schedule, consistent with the schedule adopted in D.07-09-043 that incorporates the resolution process established herein.

If the resolution process is to be compatible with the direction provided in D.08-01-042 regarding what *ex ante* assumptions are to be used for the purpose of calculating interim claims, a slight modification is in order. Specifically, Ordering Paragraph 3 of D.08-01-042 should be changed from:

> For the 2006-2008 program cycle, the following *ex ante* assumptions of energy savings and demand reductions shall be used in conjunction with verified installations and verified costs to calculate the 1st and 2nd Claims.

to

> For the 2006-2008 program cycle, the following *ex ante* assumptions of energy savings and demand reductions ~~shall be used,~~ in conjunction with verified installations and verified costs, shall be used as the basis for ~~to calculate~~ the 1st and 2nd Claims.

4. Comments on the Alternate Proposed Decision

Comments on the Alternate Proposed Decision (APD) were filed jointly by PG&E, SCE, SDG&E and SoCalGas (Joint Petitioners), as well as by NRDC, TURN and DRA. Reply comments were filed by PG&E, SCE, SDG&E, SoCalGas, DRA, TURN, and NRDC.

Joint Petitioners support the APD but suggest certain modifications. These include the following: eliminating *ex ante* updates and, in particular, adoption of NRDC's proposal that the NTG ratios remain fixed for the duration of a given program cycle; application of a 50% holdback across all IOUs for purposes of

determining interim claim amounts for the 2006-2007 program period, and establishment of a more specific schedule for vetting the methodology and data used for evaluating all future claims.

NRDC supports the APD, but also suggests modifications including language changes to ensure that the process established applies irrespective of whether the IOU's earn incentives or are subject to penalties, and adoption of NRDC's proposal to not update the NTG ratios for purposes of evaluating IOU program performance. NRDC also explains that its analysis and conclusion regarding the relatively greater risk of overpayment associated with SDG&E's claim is predicated on including only 2006 and 2007 savings. NRDC further notes that were the analysis to include savings realized in 2004 and 2005, SDG&E's performance may be sufficiently conservative to justify similar treatment to the other IOUs.

DRA opposes the APD arguing the following: basing interim payments on unverified, utility-submitted data is not a reasonable basis to evaluate performance and award incentives; in light of the draft verification report issued by Energy Division which indicates that the IOUs may not be owed anything or may be subject to penalties, the increase in the holdback amount does nothing to protect ratepayers from overpayment; the importance ascribed to timely issuance of incentives is overstated and unsupported, and ignores the more fundamental issue of whether or not performance is being accurately measured; the APD incorrectly characterizes the intent of the RRIM as being to create supply side equivalence for investments in energy efficiency; the APD's statement regarding whether savings should be assessed on a cumulative basis including savings from 2004-2005 are erroneous inasmuch as they imply this is an open question; failure to definitively resolve the utilities' request regarding updates to the

ex ante values invites future litigation; and granting the relief requested would violate Rule 16.4 of the Commission's Rules of Practice and Procedure. Lastly DRA points out various clerical errors.

TURN also opposes the APD. The arguments presented by TURN include a reiteration and expansion of the argument that the petition for modification, and by extension the APD, fails to meet the evidentiary standard established in rule 16.4 of the Commission's rules of practice and procedure and therefore cannot be granted; the APD's emphasis on timely issuance of incentives exposes ratepayers to an unacceptable level of overpayment risk; the APD commits legal error by inappropriately second-guessing how the Commission dealt with the issue of delays in the verification process in prior decisions without making the necessary showing that the factual circumstances have changed; the resolution process established in the APD will create further delays increasing the likelihood that interim claims will be based on unverified utility submitted data.

5. Assignment of Proceeding

The assigned Commissioner is Dian M. Grueneich and the assigned Administrative Law Judge is David M. Gamson.

Findings of Fact

1. In D.07-09-043, the Commission established the RRIM which sought to put investments in energy efficiency on equal footing with supply side investments by creating a comparable earnings opportunity for the successful deployment of energy efficiency measures.

2. D.07-09-043 determined that interim claims under which the utilities could receive incentives for mid-cycle program achievements would enhance the overall effectiveness of the mechanism.

3. Regular and timely issuance of incentive payments is critical to the ability of the RRIM in creating a meaningful linkage between utility investments in energy efficiency and utility earnings.

4. Under the provisions established in D.07-09-043 as modified by D.08-01-042, payment of interim claims are based on Energy Division Verification Reports reflecting updates to the *ex ante* planning assumptions and validation of measure installation and costs.

5. The interim claim provisions include a holdback of 35% as a means of reducing the risk to ratepayers of overpayment.

6. To date there have been significant delays to the completion of the verification reports on which interim claims to the utilities are to be based such that any interim award, to the extent owed, would not be approved until 2009.

7. All else equal, relying exclusively on utility submitted quarterly savings reports as the basis for determining interim claim amounts necessarily exposes ratepayers to more risk of overpayment than if interim claims were based on energy division verification reports.

8. NRDC offers an analysis that it believes shows that the interim claim amounts sought by PG&E, SCE, and SDG&E, SoCalGas are reasonably conservative and, thus, combined with the existing holdback provisions are unlikely to result in overpayment.

9. Notwithstanding NRDC's analysis, relying on utility-submitted savings reports that have not been verified by Energy Division as a basis for assessing interim claims increases the risk of overpayment.

10. All else equal, imposing a higher holdback amount can help mitigate the risk of incentive overpayment.

11. Reinstating the deadband for purposes of conducting the *ex post* true-up for the 2006-2008 program cycle will further reduce the risk of overpayment.

12. Updates to the DEER energy efficiency performance assumptions and the methodologies supporting those updates have been the subject of considerable controversy over the course of this proceeding, particularly with respect to NTG ratios.

Conclusions of Law

1. In the interest of preserving the timeliness and efficacy of the incentive mechanism while still protecting ratepayers from the risk of overpayment, in circumstances where the issuance of Energy Division's 2006-2007 verification report has encountered significant delays, the Commission should authorize interim payments to the IOUs based on their quarterly performance reports but subject to a higher holdback amount.

2. Although NRDC has provided an analysis indicating that the interim claim amounts requested by PG&E, SCE, SDG&E and SoCalGas are reasonably conservative, because reliance on these reports as the basis for assessing interim claim necessarily involves greater risk of overpayment, a higher holdback amount of 65% is warranted and reasonable.

3. Similarly, the Commission should reinstate the deadband for purposes of conducting *ex post* true-up to further reduce the risk of overpayment.

4. The Commission should deny Petitioners' request to eliminate the requirement that the *ex ante* assumptions used in the calculation of interim claims be updated.

5. The Commission should grant the Petitioners' request regarding review of earnings-related issues by requiring the verification reports developed by Energy Division to be issued by resolution.

O R D E R

IT IS ORDERED that**:**

1. The Petitioners request that, since the Energy Division has not completed its 2006-2008 verification report used to validate interim claims, and because there are serious questions concerning the validity of *ex ante* assumptions used to validate the Investor-Owned Utilities' (IOUs) 2006-2007 interim incentive claims, the Commission authorizes interim incentive payments to be based on the utility submitted performance reports for the 2006 and 2007 interim claim period, subject to the higher holdback amounts as described herein.

2. For the 2008 interim claim, should Energy Division's verification reports be delayed such that any interim incentives or penalties that may be warranted cannot be authorized in 2009 pursuant to the schedule established in D.07-09-043, interim claims will be based on the IOU submitted quarterly savings reports subject to a holdback amount of at least 65%, with the specific holdback amount to be determined at the discretion of the assigned Commissioner based on the risk of overpayment. In such instances, the assigned Commissioner shall issue a ruling notifying parties of their intent to rely on the utilities' savings reports as the basis for determining interim claim amounts and solicit comments from parties on those reports and what holdback amounts should be applied. Once comments have been submitted, the assigned Commissioner will issue a final ruling adopting interim payment amounts.

3. If there are delays in the schedule for issuance of Energy Division's verification report for the 2008 program year that, in the opinion of the assigned Commissioner were in whole or in part the result of delays caused by the utilities, no interim incentive payments will made to the utilities until the final verification report for 2008 is adopted by the Commission.

4. For the 2006-2008 program cycle, the *ex post* true-up provisions are hereby amended such that if a utility's performance is found to fall within the deadband, defined as a utility achieving less than 80% of goal for any individual savings metric or less than 85% for the average savings threshold but greater than 65% of the commission's goal for each individual metric energy savings and demand reductions, the utility will not be entitled to any additional incentive rewards beyond what they already received in interim payments.

5. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company are authorized interim incentive rewards in the amounts of $41.5 million, $24.7 million, $10.8 million, and $5.2 million, respectively, reflecting their estimated mid-cycle performance for the 2006 and 2007 periods under the Energy Efficiency Risk Reward Incentive Mechanism.

6. All verification reports shall be issued via draft resolution that includes detailed information regarding the underlying assumptions relied upon as well as supporting information and documentation that provides the basis for those assumptions.

7. The Energy Division draft verification report covering the 2006-2007 interim claims shall be issued by resolution no later than January 15, 2009.

8. Beginning with the draft verification report currently scheduled for issuance in August 2009, the process adopted in D07-09-043 and as identified in Attachment 7 should be modified as follows:

> Attachment 7 is changed from (only the enumerated sections below will be modified – all else remains the same):
>
> 3. Energy Division aggregates evaluation contractor reports for each utility to quantify the portfolio resource benefits and uses that quantity in connection with the audit team reports to develop the draft Verification Report, which is posted on a publicly accessible website. Energy Division notifies the CPUC Energy Efficiency service lists and lists of other interested stakeholders[3] maintained by Energy Division of the availability of the draft Verification Report and the website posting location. Energy Division also notifies all of those stakeholders of the conference described in the next Step.
> 5. Stakeholders have an opportunity to provide written comments to Energy Division identifying any errors in the draft Verification Report. Stakeholders will be required to include in the written comments at least a brief description of every point in the draft report which they believe needs correction, even if discussed at the conference.
>
> To (underlined added to highlight additions and crossover added to highlight deletion):
>
> 3. Energy Division aggregates evaluation contractor reports for each utility to quantify the portfolio resource benefits and uses that quantity in connection with the audit team reports to develop the draft Verification Report. Energy Division shall issue the draft Verification Report via a draft resolution, which shall be served on all appropriate service lists including ~~is posted on a publicly accessible website. Energy Division notifies~~ the CPUC Energy Efficiency service lists and lists of other interested stakeholders[3] maintained by Energy Division. ~~of the availability~~

[3] "Stakeholders" refers to those listed on one of the CPUC's Energy Efficiency service list or who have notified Energy Division of their interest.

~~of the draft Verification Report and the website posting location.~~ Energy Division also notifies all of those stakeholders of the conference described in the next Step.

5. Stakeholders have an opportunity to provide written comments to Energy Division identifying any errors in the draft Verification Report or concerns with the assumptions that inform that report via formal comments submitted on the draft resolution and subject to appropriate rules of practice and procedure. Stakeholders will be required to include in the written comments at least a brief description of every point in the draft report which they believe needs correction, even if discussed at the conference.

9. Within 30 days of this decision, the assigned Administrative Law Judge shall issue a ruling clarifying how the issuance of Energy Division's verification reports by resolution will be incorporated into the schedule adopted in D.07-09-043.

10. Ordering Paragraph 3 of D.08-01-042 shall be changed from:

> For the 2006-2008 program cycle, the following *ex ante* assumptions of energy savings and demand reductions shall be used in conjunction with verified installations and verified costs to calculate the 1st and 2nd Claims.

to

> For the 2006-2008 program cycle, the following *ex ante* assumptions of energy savings and demand reductions ~~shall be used,~~ in conjunction with verified installations and verified costs, shall be used as the basis for ~~to calculate~~ the 1st and 2nd Claims.

11. Petitioners' request that the requirement to update the *ex ante* planning assumptions be eliminated is denied.

12. Rulemaking 06-04-010 remains open.

This order is effective today.

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

MICHAEL R. PEEVEY
President
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

I will file a dissent.

/s/ DIAN M. GRUENEICH
Commissioner

I reserve the right to file a concurrence.

/s/ RACHELLE B. CHONG
Commissioner

I will file a concurrence.

/s/ TIMOTHY ALAN SIMON
Commissioner

Dissent of Commissioner Dian M. Grueneich
December 18, 2008 Commission Meeting

I dissent from the majority decision because its $82 million, nonrefundable award to utility shareholders de-links shareholder earnings for energy efficiency from utility performance in delivering savings. The majority decision awards earnings based on utility self-reported filings that differ sharply from the findings of our staff and experts, are internally inconsistent, have not been tested in an evidentiary setting, and are not subject to refund when our staff's final analysis is completed. I supported instead the Proposed Decision of the Administrative Law Judge which would have provided utility shareholders with the ability to book earnings of $47 million this year, the ability to earn additional amounts in 2009 based on completed staff review and Commission oversight, and would have protected ratepayers from overcharges.

The two documents available to us as a basis for this decision indicate vastly different results in terms of justified shareholder earnings for utility 2006-2007 energy efficiency programs. The utilities self-report total earnings due to their 2006-2007 energy efficiency programs in excess of $150 million. Our Energy Division's Draft Verification Report suggests 2006-2007 interim earnings due to energy efficiency at or near zero dollars.

There are significant disputes concerning our Energy Division's Draft Report findings, and there are a small number of known errors which when corrected will likely change the results significantly. The utilities' own submissions, however, are also marked by known inconsistencies and, more importantly, known overstatements of savings, and should not be taken whole cloth as the basis for interim earnings. This is particularly so in light of our prior

decisions on this matter, which have anticipated the perverse incentive to overstate savings if incentives are to be based on self-reporting.

Given the stark difference between the savings claimed by the utilities in their self-reporting and the draft results of our independent evaluation of those achievements, a prudent approach would have been to ensure that any interim, nonrefundable payment be conservative. As the Assigned Commissioner in this matter, I have examined the numbers closely, and while it is true that there are a number of issues pending to resolve in the final Verification Report which may well change the results from the draft staff Report, the degree of change which would be necessary to justify the $80 million nonrefundable payout in the majority decision stretches beyond plausibility. It also sets a precedent with regards to our willingness to accept utility assertions over our own staff's findings, and to award incentives on the basis of asserted, rather than verified performance.

Perhaps more importantly, payment of awards to utility shareholders for incentive-based savings is a one-way street. If we underestimate the level of shareholder earnings due immediately, and our independent verification finds that we have underpaid, utilities have every right to be paid the difference in the next claim. Unfortunately, this does not hold true for ratepayers. If this interim payment overshoots the target – which appears almost certainly to be the case - there is no opportunity for correction down the road, and ratepayers will have overpaid by the millions, with no opportunity for recourse. At a time of such ubiquitous economic strain, I do not support unsubstantiated rate increases.

The ALJ Proposed Decision that I supported struck a middle ground. It allowed for conservative interim payments in 2008, subjecting the utility claims to an 80%, rather than the current 35%, hold back. This outcome balanced

concerns regarding overpayment and objectivity against the Commission's commitment to ensuring a viable mechanism overall. However, the majority decision requires a hold back of only 65%, allowing an immediate payout to utility shareholders of $80 million. There is no justification in the record to conclude that a payout of this magnitude, which is not subject to refund upon completion of the final staff analysis, protects ratepayers from overpayment.

The majority decision changes our rules to provide that the final staff report for the interim 2006-2007 claims will be subject to Commission review and approval via resolution. Commission oversight of these complicated matters is appropriate. However, because the payouts to utility shareholders in the majority decision are not subject to refund, Commission and staff review is likely to be subjected to significant pressure to justify the $80 million shareholder payout. If we had taken a more conservative payment approach in this decision, it would decrease dramatically the pressure to justify the $80 million, nonrefundable payment.

For these reasons, I dissent from the majority decision.

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

/s/ DIAN M. GRUENEICH

Dian M. Grueneich

Commissioner

Concurrence of Commissioner Rachelle Chong
Decision Granting In Part and
Denying in Part the Petition for Modification – Item 61a
December 18, 2008

I support this alternate decision because I believe that the energy efficiency programs are making a significant dent in our use of energy as a state. Both the California Public Utilities Commission and California Energy Commission have a commitment to a strong energy policy in California that favors energy efficiency as the primary resource under our loading order. Energy efficiency is a "low hanging fruit" in our efforts to reduce harmful greenhouse gases, to reduce our dependence on fossil fuels, and to reduce the need for unnecessary power plants. Thus, the work of the utilities to implement energy efficiency strategies through the many programs that they administer is critically important.

We articulated our goal in D.07-10-032 that energy efficiency is the resource of first choice to meet California's growing energy demand. That decision recognized that energy efficiency is also projected to deliver a large portion of the greenhouse gas emissions reductions necessary to achieve the goals of the California Global Warming Solutions Act of 2006.[10] We further bolstered our goals in the September 2008 Strategic Energy Plan with specific requirements that call for a dramatic scaling-up of efforts by the utilities on behalf of their customers.

We will be looking carefully at the currently filed applications from the utilities that seek authorization for over $3.7 billion of energy efficiency

[10] California Health & Safety Code, §§ 38500 *et seq.* (AB 32); *see*, Climate Action Team Report to the Governor, April 2006, http://www.climatechange.ca.gov/climate_action_team/reports/2006-04-03_FINAL_CAT_REPORT.PDF.

programs for the 2009-2011 timeframe. We fully expect the utilities to make energy efficiency an integral part of "business as usual" that will engender market transformations.

I also note that California's regulated energy utilities are viewed as national leaders in energy efficiency among their peers. We have seen that our utilities' efforts on energy efficiency have strengthened in recent years, due to commitment to energy efficiency policies from the top senior executives down to the program directors. So I expect that the regulated utilities will "fire on all cylinders" to improve on their energy efficiency programs so the amounts rewarded in this decision as interim payments are indeed earned when the final true up is calculated.

I support a risk-reward system if, and only if, it gets us real, verifiable results. I also believe our program cannot be a success unless the rules are clear and unambiguous to all concerned. I expect the utilities to show real savings to earn the rewards, and I am quite troubled with the outcome of the current procedure to determine proper incentive payments. The draft verification report has been issued late, causing a mismatch in how the rewards get calculated.

We need to simplify and reform the process before we have to go through a similar painful effort again next year. I believe that there are problems with the complex and confusing methods and rules that we have either implicitly or explicitly established thus far to determine the amount of incentive payments. But to be fair, this is the first time we have had to wrestle our way through the risk-reward methodology and schedule. So I am hopeful that we have learned some valuable lessons and will greatly improve the risk-reward incentive mechanism going forward.

One thing is abundantly clear to me. I recommend we simplify the process, such as considering one year cycles, clear goals and objectives, and verifiable measures. We need to build in enough time in the process to get it right. The lateness of the draft verification report made it impossible for the Commission to make a clearly confident decision on the amount of incentive payment to be set. I think we have spent too much time and too much money trying to determine the appropriate incentive payments, and without coming to a clear answer. So the facts speak for themselves; the system is broken and we need to fix it.

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

/s/ RACHELLE B. CHONG

RACHELLE B. CHONG
Commissioner

Concurrence of Commissioner Timothy Simon to Item 61a
[8086] ALTERNATE TO ITEM 8083
December 18, 2008 Commission Meeting

I support the Alternate Proposed Decision. This is without a doubt a critical threshold matter, and one that has been subject to a tremendous amount of scrutiny and debate here for some time now. The Commission has been at a crossroads between particularly challenging policy tradeoffs with regard to the administration of the Energy Efficiency Shareholder Incentive Mechanism.

Our persistent and lengthy efforts to find a reasonable solution to disagreements among parties about the validity and timeliness of independently verified energy savings data is an example of our occasionally rigorous policy-making process. And in this particular case, it is representative of the substantial weight and import of our energy efficiency program in advancing California's Energy Action Plan and procurement policies. Our national leadership in the area of efficiency is evident, and the world is watching our progress.

Given the options before us, I believe that the Alternate Decision has allowed us to chart a path that strikes an appropriate balance between the risks of overpayment of incentives and the consequences of inadvertent delays in the verification process. But first, let me be clear that although I support the Alternate, I do not condone the unnecessary exposure of ratepayers to the risk of overpayment and rate increases through this incentive mechanism. Without the ability to "claw back" awarded incentives upon verification and true up, there is significant pressure on the accuracy and timeliness of the verification process, which is complex and voluminous.

As an interim solution, the 65% holdback of the Investor Owned Utilities' claim attempts to partially mitigate the potential for unintended ratepayer consequences while recognizing the utilities' efforts in advancing the considerable interests of this Commission in the development of energy efficiency. Widely viewed as a national leader in efficiency, it is incumbent upon us to resolve differences that arise out of the complexities of our program, and to keep our IOUs on track toward verifiable savings and innovation. The Commission set forth an incentive mechanism in D.07-09-043 that allows the utilities to earn money, on an annual basis, for their progress in meeting the state's energy efficiency goals.

If the State of California is to sustain its enviable position of leading the nation and the world in energy efficiency, we must ensure that our efforts are on par with investments made in generation and transmission. We have attempted to narrow the gap between supply side investments and our demand-side programs, and we must deliver on the promise of their theoretical financial equivalence.

There has been controversy surrounding the performance metrics that determine these earnings, but it should not derail the progress that we have made thus far. Going forward, I want to make it clear to all stakeholders in this process that we need a greater level of cooperation and commitment to finding an amicable resolution to any impasses in the verification process. I expect clear timelines and follow through on the receipt of necessary data from the utilities, as well as discretion, organization, and good judgment by our staff to keep this process functioning in a timely and efficient manner, as intended. To the extent that this review process can be streamlined without compromising the integrity of the energy efficiency program, we should explore such options. It is incumbent upon all stakeholders in this process to collaborate, or this will continue to be an issue.

However, we should not by any measure be expected to place a higher value on utility shareholder investments than we do on ratepayer investments in our energy efficiency programs. This is an interim solution that seeks to balance these competing interests. But over the long term, we must reach a workable solution that minimizes the uncertainty and complexity of the utility claims verification process. Quite simply, we must have stakeholders develop clear and accurate data on which to base our decisions. We cannot resolve these differences going forward without transparency in this process and reliable savings and incentives. Doing so is truly paramount to the success of our procurement policies.

After the flurry of activity surrounding the Commission's attempt to reach consensus on this matter, I want to recognize my colleague, Commissioner Grueneich, for her unflagging commitment and leadership in energy efficiency policy. The process of resolving this issue has been lengthy, and I respect her continued efforts to promote this essential resource, shape policy, and keep California at the forefront. I also want to commend ALJ Gamson for his thorough Proposed Decision and the Energy Division for their hard work in evaluating utility performance. This is no small task by any means, and we should encourage their ongoing efforts in this area.

However, let me be perfectly clear here that it is incumbent upon all parties and stakeholders to this proceeding to break the bottleneck that is preventing this tribunal from making a timely decision based on conclusive empirical evidence. This program is bigger than any one participant, and our global leadership demands the discipline and objectivity to ensure the timely delivery of verification data.

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

/s/ TIMOTHY ALAN SIMON
Timothy Alan Simon
Commissioner