

**Dissenting Statement of Commissioner Nancy E. Ryan  
Decision Regarding the Risk/Reward Incentive  
Mechanism Earnings True-Up for 2006-2008**

**R.09-01-019**

**December 16, 2010**

I do not support the Commission's decision today to approve additional payments to the investor-owned utilities for their energy efficiency programs from 2006 to 2008, and write this dissenting statement to set forth my reasons.

I strongly believe energy efficiency is a cornerstone of California's electricity and environmental policies. According to the California Air Resources Board's (CARB's) Climate Change Scoping Plan, more than forty percent of the greenhouse gas reductions associated with electricity is targeted to come from improved energy efficiency. That makes energy efficiency the single most important means to cut greenhouse gas emissions from electricity.

The Commission's policies also reflect this prioritization, as we have placed energy efficiency at the top of the loading order.

The Energy Division's evaluation of the utilities' energy efficiency programs demonstrates the substantial energy savings that have resulted from the Commission's focus on energy efficiency. As found in the Administrative Law Judge's (ALJ's) proposed decision, the utilities' energy efficiency programs resulted in over 5,000 gigawatt-hours of electricity savings; over 1,000 megawatts of peak savings; and over 80 million therms of gas savings. The Commission and utilities should be proud of these accomplishments.

However, the question presented to the Commission in this decision is whether the utilities' energy efficiency accomplishments merit additional rewards or penalties under the Commission adopted risk/reward incentive mechanism.

Prior to this decision, the utilities had already received \$143 million in two installments. Today's decision concerns the final true up payment. Sometimes the truth is hard to face, sometimes the truth is elusive, but on balance I think ALJ Pulsifer's proposed decision came closest to the right answer.

ALJ Puslifer's proposed decision found the utilities' performance was insufficient to merit further rewards under the terms of the commission adopted risk/reward mechanism.

I agreed with the ALJ's proposed decision's rationale for reaching its conclusion. Prior decisions clearly stated our expectation that the utilities would be judged based on ex post updates. The decision establishing the Risk Reward Incentive Mechanism program underscored the uncertainty about ex ante parameters, so the utilities were put on notice that these parameters were stale and likely to change.

We expected the utilities to continually adjust portfolio plans in response to all available information, not just the final and approved Energy Division evaluation reports. We expected the utilities to rely on the observations of alert and motivated program managers and insights gained from ongoing market research. I am convinced the utilities had sufficient information to act upon and modify their programs.

It is also important to recognize that the mechanism includes multiple cushions for the utilities. For example, energy savings can be as

low as sixty-five percent of the goals, and the utilities are still not subject to a penalty. Also, the Commission also adopted a no “clawback” provision for the interim rewards. This means that even if the final true-up found they had been overcompensated – as it indeed did – they would not be required to surrender earnings already accrued.

I am cognizant of the point of view that depriving the utilities of a third incentive payment will discourage them from making energy efficiency a core business function, as the incentive mechanism was intended to do. I do not see it that way.

For an incentive mechanism to work in practice – for it to drive organizational change and an aggressive pursuit of energy efficiency – rewards must be tied to demonstrated, measurable results. Otherwise, we are just rewarding effort, and that is not good enough to get where we need to go.

I agree, however, with the decision that 2009 performance needs to be measured and subject to rewards or penalties, but believe this issue is most appropriately addressed in the decision addressing reforms to the incentive mechanism.

My vote against this decision by no means implies I believe the Commission’s risk/reward mechanism is perfect as-is. In fact, I believe reforms are urgently needed going forward.

For all of these reasons I must vote against President Peevey’s decision, which approves additional payments to the investor-owned utilities for their energy efficiency programs from 2006 to 2008.

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

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/s/ NANCY E. RYAN  
NANCY E. RYAN  
Commissioner