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Memo to reporters: For immediate release December 13, 2010
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Should utilities get millions more profits for failed energy savings programs?

In its final meeting before Gov. Jerry Brown takes office and appoints two new Commissioners, the California Public Utilities Commission will vote whether to give utilities up to $77 million more "rewards" for energy efficiency programs that scored an "F" on their first-ever independent evaluations — and whether the "risk/reward" system will be extended, but with the "risk" of penalties removed. *CPUC meets 9 am Thurs., Dec. 16, 505 Van Ness Ave., San Francisco.*

Agenda Items 52, 52a and 52b Risk/Reward Incentive Mechanism Final True-Up for 2006-08 EE programs. Judge Thomas Pulsifer's Proposed Decision recommended zero profits/ zero penalties for all utilities; competing Alternates by Commissioner Bohn and Pres. Peevey would provide either $77.3 or $62.6 million additional profits to investor-owned-utilities (IOUs), even though they failed to meet the criteria laid out in the original 2007 "Risk/Reward Incentive Mechanism" or even the criteria that the Commission revised twice since then to make it easier for IOUs to meet their goals. None of the proposed decisions provide refunds to ratepayers for $143.7 m of prior awards the Commission granted in 2008 and 2009 despite early signs that the programs were failing. (See more details below, p. 4.)

Background: *The first-ever independent evaluations of EE programs, overseen by CPUC's own Energy Division staff, showed that Pacific Gas & Electric, So. Cal. Edison and San Diego Gas & Electric failed to meet even the minimum threshold for rewards (which had been lowered to 65% of EE goals);* PG&E failed so badly that its shareholders should pay a $77 million penalty.

Utilities demanded that the Commission reject these findings, even though ratepayers spent over $100 m for them, and consultants who did the studies were seasoned experts that utilities relied on when they were in charge of measuring their own programs, prior to 2006. CPUC forced staff to re-run the calculations for months, using different inputs to produce various "Scenarios."

Barbara George of WEM, who has been a party to EE proceedings since 2001, stated, "Each proposed decision jumbles the inputs differently, with mind-numbing complexity, but the purpose is the same — to avoid the penalties they owe for failing to meet their targets, and to justify the profits CPUC already gave them." She dismissed all three proposed decisions as betrayals of CPUC's duty to ratepayers to ensure just and reasonable rates.

"The proposed decisions can't agree on exactly how to justify screwing the public, because the record supports none of them. While WEM opposed the 2007 decision on the 'Risk/Reward Incentive Mechanism,' at least it gave clear instructions on how to measure the programs and calculate the rewards or penalties. CPUC staff and measurement contractors followed those instructions in good faith, and the results showed utilities missed their targets.

"That should have been the end of the story. Instead, the Commission spent three years trying to

cover up utility failures and provided $143.7 m dollars of undeserved profits. It wasted countless hours of staff and intervenors' time plus $100 m for evaluations which were virtually ignored."

Background on CPUC's "Shareholders' Incentives" policy. California regulators began giving profits on EE to Investor-Owned Utilities (IOUs) in 1990, based on NRDC's belief that profits would overcome IOUs conflict of interest. George points out that a much better solution is to *eliminate the conflict* by taking utilities out of the mix, like several states have done. *Local governments, non-profits and small businesses have saved more energy per dollar than utilities.*

George stated: "The worst thing about utility EE profits is that they drive all decisions in energy efficiency. Everything is focused on making sure that utilities get profits — this determines the kinds of programs and measures used, the timing and purpose of evaluations, and most importantly, who does and does not get to manage, design and execute programs."

"Utility control of EE hinders green job creation and economic development, which everyone wants and needs to see from these programs, especially in this troubled economy. California should get utilities out of the driver's seat so that people can run these programs who are free from conflicts of interest and really want them to succeed. When other states have made this decision, their programs survived and thrived. ***Why is California so scared of utilities??"***

"The bizarre circular reasoning behind the Risk/Reward Incentive Mechanism is that ***utilities must have monopoly control of EE, because only the utilities are eligible for EE profits, because they're the ones with a conflict of interest against saving energy***. WEM's investigation shows that EE profits actually *increase* rather than end utility conflicts of interest, and lead to corruption as well (see Misuse of EE, below). Utilities are still motivated to save as little energy as possible or reduce the impact of EE in other ways, to protect their much bigger profits on generation and transmission. EE profits also motivate utilities to see that *nobody else saves energy, or gets credit for saving energy* — which would "steal" utility profits. ***As monopoly administrators, utilities are able to put up roadblocks to everyone's success.***

Agenda Item 57: The decision on Future Risk/Reward Reforms would force ratepayers to continue providing utility EE profits in 2010-12. The "reforms" involve removing all risk of penalties, and essentially marking up most programs by approximately 5.5% profits (final numbers to be determined in future workshops). The decision blames the previous RRIM for being too "complex" and "contentious."

George commented, "The 'reformed' RRIM will remain highly contentious as far as ratepayers are concerned. IOUs' conflicts of interest with saving energy are becoming ever greater as the recession drags on, because energy demand is way down and utilities are having a hard time justifying new generation and transmission (where they make their biggest profits). The proposed decision would give utilities profits even if they meet just a fraction of their goals.

"In the meantime, thanks to the federal stimulus and other local initiatives, cities, counties and others finally have some funding for EE programs that are at least partially independent — even though IOUs have been scheming to control *all* EE programs in California."

More reasons why PG&E deserves penalties rather than rewards:
PG&E delays in 2006-08: *PG&E delayed 2006-08 programs for two years.* PG&E's quarterly reports showed that the utility failed to even try to save much energy for the first two years of its three year cycle — spending only 12% of its budget by Dec. 2007.

"Local Government Partners" (of utilities) including the City and County of San Francisco complained to CPUC in Feb. 2006 that PG&E slashed their budgets 60% and rewrote their program plans to make them little more than subcontractors to utility programs. Then it kept them waiting eight or nine months into the first program year before signing their contracts. "Third Party Programs" (run by small businesses and nonprofits chosen by utilities) received similar treatment. Thus at least 40% of PG&E's programs were offline most of 2006 — all through a summer of record heat waves. PG&E wasted most of the second program year (2007) quibbling about what measures could be used in EE work. Due to these long delays, cities and third parties lost experienced staff and customers, many of whom gave up on EE plans.

PG&E is delayed major programs in the current cycle too. WEM protested PG&E's new delays in rolling out programs in the current cycle. CPUC ordered utilities to conduct the first significant residential programs in decades, but they are stalled. (For years PG&E has severely shortchanged residential customers. It provided only 12% of the funds for residential programs in 2006-08, and 19% in the 2010-12 cycle, although residential customers pay 40% of the program funds. Utilities have provided hardly anything to them in recent years but compact fluorescent lights (CFLs) and a smattering of appliance rebates.)

Frustrated by utility delays in starting 2010-12 programs, EE Commissioner Grueneich approved staff's recommendation at the All-Party Meeting October 7th, for the Commission to cave in to PG&E's demands and ***give 100% credit to utilities for energy savings achieved by local governments using federal stimulus funds*** (whenever ratepayer funds are also used, which will be most of the time). ***This would enable utilities to claim profits on federal stimulus funds***, a travesty that WEM warned against in its 11-2-09 Application for Rehearing of the EE portfolios decision D0909047 (pending). See WEM videotapes of this and other EE events at http://www.womensenergymatters.org/video/video.htm

PG&E's misuse of Energy Efficiency funds
WEM finds it unconscionable that CPUC would even think about giving EE profits to PG&E. WEM's 2009 Application for Rehearing in the EE portfolios proceeding (A0807021), as well as its comments in the Risk/Reward proceeding (R0901019), called for CPUC to suspend PG&E administration of EE because of the company's flagrant misuse of EE funds in its efforts to prevent energy self-determination in Marin, San Francisco, Fresno and elsewhere. WEM and others have entered evidence of misuse into the record in all EE proceedings since at least 2008.

For example, in June 2009, WEM videotaped the lead lawyer in EE proceedings, Chris Warner, along with PG&E's "Local Government Affairs" rep Josh Townsend (a former aide to Marin's assemblyman Jared Huffman) offering "more" of nearly everything in its EE portfolio to the City of Novato, while urging the city to forgo joining Marin Clean Energy. PG&E denied that this constituted misuse, claiming that it was merely "responding to a customer's request."

The Commission has neglected to investigate these incidents. It issued a vaguely worded prohibition against misuse of EE funds in D0909047, and more specific restrictions on utility marketing practices in Resolution E-4250, in April, 2010; neither called PG&E to account for its

actions, and neither discussed fines or penalties for past or future violations.

WEM elicited sworn testimony in PG&E's rate case this year that the company's 270 "service and sales" reps were free to offer increased EE program funds to customers in the same meetings where they criticized local governments' Community Choice plans, or lobbied for Proposition 16. (PG&E has admitted spending $46 m on Prop 16 — on the June 2010 ballot — which was designed to make it virtually impossible to create or expand "Community Choice" or municipal power programs. Voters rejected it.)

WEM has demonstrated that PG&E habitually uses fairs and other EE sales efforts to fulfill a variety of corporate objectives. *WEM documented an event in Sept. 2006 where the ALJ who wrote both the 1994 and the 2007 risk-reward decisions teamed up with PG&E to conduct an EE fair in her tiny home town of Volcano, where she was a public official.*

In the EE Rulemaking, WEM, San Francisco, Marin and others described other types of misuse of EE in PG&E's war against Community Choice and municipalization, as well as its constant efforts to green-wash its image. All urged the Commission to establish an independent EE system and provide Community Choice energy providers with an opportunity to apply to administer EE program funds, as the Community Choice law allows. The Commission held a workshop on the matter this fall in the EE Rulemaking, but decided to postpone any decision until next year.

WEM believes the Risk/Reward decisions should also be held over for the new Commission to decide.

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Links to all documents in EE proceedings:

- Risk/Reward proceeding (see all proposed decisions; also second interim awards decision D0912045): http://docs.cpuc.ca.gov/published/proceedings/R0901019.htm
- 2006-09 EE Rulemaking (original Risk/Reward decision: D0709043; first interim awards decision: D0812059) http://docs.cpuc.ca.gov/published/proceedings/R0604010.htm
- Current EE Rulemaking: http://docs.cpuc.ca.gov/published/proceedings/R0911014.htm
- EE portfolios proceeding (for 2010-12 programs): http://docs.cpuc.ca.gov/published/proceedings/A0807021.htm
- EE portfolios proceeding (for 2006-08 programs): http://docs.cpuc.ca.gov/published/proceedings/A0506004.htm

More details on the Risk/Reward true-up for 2006-08

- Item 52 - The Proposed Decision by ALJ Thomas Pulsifer tweaked various inputs to the calculations, to keep all IOUs in the "deadband" where rewards and penalties are zero.
- Item 52a - Assigned Commissioner John Bohn's Alternate sidestepped the final Evaluation Report, proposing $77.3 million more profits — which was the amount "held back" in the second interim installment (D0912045). That 2009 decision had made six adjustments in the mechanism to justify awarding profits.
- Item 52b – President Michael Peevey's Alternate proposes to award $62.6 million more profits, based on "Scenario 3, Template 1." It based awards on utility estimates at the start of the program cycle of what they *intended* to save, rather than what final evaluations said they actually achieved. This Alternate used final evaluations only to verify that utilities achieved an 85% threshold (based on out-of-date parameters used in

utility estimates at the start of programs). Mr. Peevey's Alternate applied a 7% savings rate instead of the 9 or 12% rate envisioned in the RRIM.

Language regarding penalties (appears in all the Proposed Decisions):

(3) Scenarios 6 through 9 -- "Evaluated Net Savings"

These scenarios apply *ex post* savings as evaluated by the Energy Division yielding total shareholder incentive earnings of about $29 million for all the utilities for the 2006-2008 cycle… Since the Commission has already authorized $143.7 million in interim RRIM payments, and since there is no claw back provision, no further RRIM awards would be due. However, Scenario 7 calculates that PG&E accomplished less than 65% of its demand savings goal, which would place PG&E into the penalty zone, resulting in the refund of previous incentive payments of $74 million.[13]

[13] In its July 9, 2010 comments, DRA claims that the Energy Division penalty calculations for PG&E are understated, and offers corrected values. DRA points out that the PG&E penalty amount calculated by the Energy Division only includes repayment of the interim incentives, rather than the per unit penalty established in D.07-09-043 where energy utility savings are less than 65%. Energy Division calculated that PG&E only achieved 60% of its megawatt (MW) Goal. Applying the penalty of $25,000/MW to PG&E's deficit of 32 MW yields a penalty of more than $800,000. Energy Division also calculates that PG&E achieved only 63% of its MMtherm (MMTh) goal. Applying the per-unit penalty would result in a penalty of $450,000. DRA argues that these goal shortfalls should result in additional penalties of $1.25 million. Moreover, on Table 23, page 96, the Energy Efficiency Draft 2006-2008 Report calculates that SCE also fell short of its MW Goal at 64%. Using the per unit penalty formula established in D.07-09-043, a penalty of $175,000 would result. DRA notes that SDG&E is calculated as achieving only 37% of its MMTh Goal. At this level D.07-09-043 requires a dollar-for-dollar payback of negative net benefits. Thus, DRA argues that all three energy utilities should repay their interim incentive payments and be subject to penalties as well. ALJ Proposed Decision, pp. 14-15.

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