Decision 05-10-041 October 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) for Authority to Increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand-Side Management Program Year 1994 and 1997, and Low-Income Program Years 2002 and 2003 in the 2004 Annual Earnings Assessment Proceeding ("AEAP").	Application 00-05-002 (Filed May 1, 2000)
And Related Matters.	Application 00-05-003 Application 00-05-004 Application 00-05-005 Application 01-05-003 Application 01-05-009 Application 01-05-017 Application 01-05-018 Application 02-05-002 Application 02-05-003 Application 02-05-005 Application 02-05-007 Application 03-05-002 Application 03-05-003 Application 03-05-004 Application 03-05-009 Application 04-05-005 Application 04-05-010 Application 04-05-008 Application 04-05-012

FINAL OPINION ADOPTING SETTLEMENT AGREEMENTS REGARDING ENERGY EFFICIENCY SHAREHOLDER EARNINGS CLAIMS

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FINAL OPINION ADOPTING SETTLEMENT AGREEMENTS REGARDING ENERGY EFFICIENCY SHAREHOLDER EARNINGS CLAIMS

1. Summary[1]

Today's decision adopts settlement agreements that pertain to shareholder earnings claims for energy efficiency programs between the Office of Ratepayer Advocates (ORA) and each of the following utilities: San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) Southern California Gas Company (SoCalGas) and Pacific Gas and Electric Company (PG&E). We refer to SDG&E, SCE, SoCalGas and PG&E collectively as "the utilities" throughout this decision.

In the above-captioned proceedings, the utilities have submitted earnings claims associated with Commission-adopted shareholder incentive mechanisms for energy efficiency. Most of those claims represent installments under the "shared-savings" incentive mechanism in place for resource programs initiated prior to electric industry restructuring. For program activities undertaken during the 1999-2001 timeframe, the utilities have also submitted earnings claims based on program accomplishments under the "milestone-based" incentive mechanism put in place for those years. And finally, the utilities have submitted earnings claims in this consolidated proceeding to recover "performance adder" based earnings associated with low-income energy efficiency programs over the 1999-2003 timeframe.

As discussed in this decision, these earnings claims have been pending for several years, while additional expert testimony and independent evaluations of

[1] Attachment 1 describes the abbreviations and acronyms used in this decision.

program savings estimates have been submitted for our consideration. Based on the extensive record in this proceeding, we find that the settlement agreements between ORA and the utilities are reasonable in light of the whole record, consistent with law and in the public interest. Accordingly, we authorize the recovery of approximately 90% of the earnings claims, for the four utilities combined. Table 1 presents the outstanding earnings claims and the settlement amounts, by type of incentive mechanism, program year and by utility.

The shareholder earnings that we authorize today total $271.6 million for the four utilities combined, not including interest and franchise fees and uncollectibles.[2] In keeping with the concept of a "shared-savings" incentive mechanism, the shareholder earnings we authorize today via the settlements are much less than the savings ratepayers have already received by deferring or avoiding more costly supply-side investments with energy efficiency. Conservatively, we estimate that the energy efficiency programs undertaken to generate this level of earnings have produced $670 million in total net resource benefits to all ratepayers, i.e., resource benefits minus costs. This level of net resource benefits is derived by applying the shared-savings formula to the pending earnings claims associated with programs subject to the pre-1998 shared-savings mechanism. It does not reflect the savings or net resource benefits associated with the pending low-income energy efficiency programs or

[2] To translate earnings claims into revenue requirements, they are adjusted upwards by a factor to reflect franchise fees and uncollectibles or "FF&U". In AEAPs, the utilities are permitted to earn interest on their shareholder incentives, calculated at the 90-day commercial paper rate, beginning on July 1 of the year following the program year. Therefore, the earnings claims are also adjusted upwards to reflect accrued interest, when revenue requirements are calculated.

non-low income energy efficiency programs subject to milestone incentives from 1999-2001.

In terms of rate impacts, the settlement agreements call for amortizing authorized earnings over time or consolidating them with other rate changes, in order to minimize or completely eliminate the need for any rate increases. In addition, the utilities have clarified that no additional interest will be added to the settlement amounts that are amortized for rate recovery purposes.

Today's decision resolves all outstanding issues in the above-captioned proceedings and closes this consolidated docket.

2. Background and Procedural History

In 1990, this Commission adopted experimental shareholder incentive mechanisms for the energy efficiency programs administered by the utilities.[3] In the following years, we determined that the experimental mechanisms were successful and that the shareholder incentives should be continued on a uniform basis for all four utilities. We directed that future shareholder incentives be tied to the results of measurement and evaluation studies, and proceeded to establish clearly defined protocols for verifying the performance of energy efficiency programs.[4]

By Decision (D.) 93-05-063 and D.94-10-059, we established a uniform shared-savings shareholder incentive mechanism for energy efficiency equal to 30 percent of the portfolio net resource benefits (savings benefits minus costs), once a minimum threshold of performance was achieved. Under the adopted

[3] See D.90-08-068 and D.90-12-071.

[4] See D.93-05-063 and D.93-09-078.

approach, the net resource benefits and associated earnings are projected at the start of each program year, but the utilities collect their earnings in four equal installments over a 10-year measurement period. For each installment, both the projection of net resource benefits and associated earnings are adjusted to reflect *ex post* (post-installation) measurement results. Each time, a new lifecycle savings estimate is produced to use in calculating net resource benefits, and the utility is only paid an amount that will bring its shared savings earnings up to the appropriate cumulative 30% share of the updated net resource benefits.

More specifically, projections of net resource benefits and associated earnings for a particular program year are adjusted for the first earnings claim by verifying *ex post* the actual number and type of energy efficiency measures installed, as well as actual program costs. The first (one-fourth) installment of earnings is based on those results. For the utility's second earnings claim, the net resource benefits and associated incentive amounts are adjusted to reflect the true-up of the energy savings estimates based on *ex post* (post-installation) load impact studies. The savings estimates (and associated earnings) for a particular program year are further adjusted during the third and fourth earnings claims based on the results of longer-term measure retention and energy savings persistence studies. In essence, any revisions are retroactive, and earnings are "trued up" to account for over- or under-claiming of earnings in previous claims for a particular program year.

For example, suppose a utility with a performance earnings basis (based on net resource benefits) of $100 million in the first earnings claim has that amount adjusted to $80 million in the second earnings claim, and then back to the original $100 million in the third earnings claim. This could happen if the first-year load impact study revealed per measure savings less than projected,

but the savings retention/persistence assumptions, including expected measure useful life, underestimated those parameters by a commensurate amount. According to the protocols, the utility would earn 25 percent on the first earnings claim, then 50 and 75 percent on previously uncollected amounts for the second and third earnings claims, respectively. Therefore, in this example, the utility's first, second and third earnings claims would amount to $25, $15 and $35 million, respectively. Assuming no change in the results from the final retention/persistence study, the fourth claim would amount to $25 million, for a total of $100 million in earnings over the 10-year measurement period for energy efficiency activities undertaken in that prior program year.

Since 1990, we have also experimented with incentive mechanisms designed to encourage the utility to offer energy efficiency information and direct assistance equitably and without discrimination. As a result, we have expanded funding for Low-Income Energy Efficiency (LIEE) programs and rewarded utilities in modest amounts for administering them. Performance adder mechanisms were put in place by D.90-08-068 to apply to programs funded primarily for equity reasons, such as LIEE, or in which the link between programs and savings is difficult to measure. These mechanisms are similar to a "management fee" incentive. They generally calculate earnings by multiplying the amount of recorded program expenditures by some percentage, usually five percent.[5]

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[5] See Attachment 3 for a brief description of these LIEE incentive mechanisms. Further information on their development can be found in D.94-10-059, D.95-12-054, D.96-12-079 and D.01-06-082.

In 1997, the Commission shifted its energy efficiency emphasis from resource procurement to transforming the energy efficiency market and creating a self-sustaining energy efficiency services market. More specifically, by D.97-12-103, we determined that the utility energy efficiency programs would shift toward longer-term market transformation goals, and shareholder incentives for the 1998 program year would be based on agreed-upon milestones that were adopted in the decision. Similar milestone incentives were adopted for program years 1999 (Resolution E-3592), 2000 (D.00-07-017) and 2001 (D.01-01-060). Earnings under these milestone incentive mechanisms were generally paid out in a single installment following program implementation.

By D.01-11-066, as confirmed in D.02-03-056, we effectively ended the provision of utility energy efficiency shareholder incentives for non-low income programs beginning with the 2002 program year. The utilities continue to earn a financial incentive on the implementation of LIEE program activities, although the management fee structure and level has been modified in recent years.

We established the Annual Earnings Assessment Proceeding (AEAP) as the forum for evaluating the utilities' earnings claims for energy efficiency and LIEE programs, with the following review procedures: (1) the utilities file the results of their measurement and verification studies and associated earnings claims, (2) ORA and its consultant(s) independently review those results, and (3) Energy Division's independent consultant(s) reviews the claims, focusing on disputed issues between ORA and the utilities. Program funds have been allocated to ORA and Energy Division for the purpose of hiring technical consultants to perform this independent review.

In accordance with Commission decisions, the utilities file their AEAP applications on the first working day of May, commencing in 1994 through the

present. For the 1994-1999 AEAPs, the utilities received timely decisions acting on and approving the requested shareholder incentives.[6] However, when the electric crisis emerged in full force in 2000, the Commission focused its resources and proceedings on issues related directly to addressing that crisis. This delayed both the scheduling of evidentiary hearings on AEAP matters as well as the allocation of staff and consultant resources to verify the utilities' earnings claims through savings measurement studies or review of milestone achievements.

Review of the utilities' pre-1998 earnings claims was also delayed pending Commission consideration of whether to reopen the rulemaking/investigation that established the 30% shared-savings mechanism. By D.03-10-057, we determined that the type of extraordinary circumstances that would warrant a reopening of that proceeding and a modification/rescission of the adopted incentive mechanism did not exist in this instance. Based on the best estimates of savings to date, we also concluded that (1) the energy efficiency programs implemented (or initiated) during 1995-1997 have paid for themselves and will yield substantial net benefits to ratepayers after the payout of shareholder incentives, and (2) the costs avoided by the pre-1998 energy efficiency programs under a restructured industry are higher than expected when these programs were initiated, to the benefit of ratepayers.[7]

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[6] D.94-12-021 (1994 AEAP), D.95-12-054 (1995 AEAP), D.96-12-079 (1996 AEAP), D.98-03-063 (1997 AEAP), D.99-06-052 (1998 AEAP), and D.00-09-038 (1999 AEAP).

[7] D.03-10-057, *mimeo.*, p. 31; Conclusion of Law 9, 12.

By ruling dated May 6, 2005, the 2000, 2001, 2002, 2003 and 2004 AEAPs were consolidated into a single docket, which we refer to as the "pending AEAPs" in this decision.

The procedural history of the pending AEAPs is presented below:

- On October 13, 2000 ORA submits a partial report on the utilities' 2000 AEAP incentive claims that addresses the pre-1998 energy efficiency program claims. Because of time and personnel constraints, ORA's report does not address the earnings claims for program year 1999 energy efficiency milestone accomplishments or the LIEE earnings claims for 1998 and 1999. On October, 18, 2000, in consultation with the Assigned Commission, assigned Administrative Law Judge (ALJ) Bytoff postpones the 2000 AEAP proceeding until further notice.
- By ruling dated May 9, 2001, the Chief ALJ consolidates the 2000 and 2001 AEAP applications. A Prehearing Conference (PHC) is held on June 8, 2001. At the PHC, ORA reports that its' consultants have begun working on the review of completed first-year load impact studies and verification activities. ALJ Bytoff establishes a schedule for the filing of testimony and Case Management Statement. On July 25, 2001, the consolidated 2000/2001 AEAP is reassigned to ALJ Walwyn.
- Intervenor testimony is filed by ORA and the California Energy Commission (CEC) on September 4, 2001 addressing the specific earnings claims for the 2000/2001 AEAP.[8] All disputed issues are subsequently resolved among the utilities, ORA and CEC in the October 15, 2001 Case Management Statement.
- ALJ Walwyn holds a further PHC on November 23, 2001 and requests supplemental information regarding:
    - How each of the milestones for energy efficiency for program years 1999 and 2000 was verified, what documentation is available, and

[8] We note that Women Energy Matters (WEM) also submitted "Preliminary Comment/Testimony" on the 2000/2001 AEAP applications on September 4, 2001, along with a "Protest to Scoping Memo." See our discussion of those filings in Section 5.2.2 below.

whether an independent (ORA/CEC) review of milestone achievements was conducted.

  - What verification activities and reports were conducted by ORA for the pre-1998 earnings claims.
  - Further explanation on the large size of PG&E's third year earnings claim for program year 1995, and
  - How adjustments in earnings for commitments that are forecasted, but do not materialize, should be addressed.

- ALJ Walwyn holds a further PHC on November 20, 2001 and requests additional information to assist the Commission in understanding how program earnings relate to program accomplishments over time. The utilities file supplemental tables and written summaries on December 18, 2001 and January 18, 2002.
- In consultation with Assigned Commissioner Lynch, ALJ Walwyn issues a ruling on March 13, 2003 requesting comments on whether the Commission should reopen Rulemaking (R.) 91-08-003/Investigation (I.) 91-08-002 to modify the shared savings incentive mechanism adopted in D.94-10-059 for the pre-1998 shareholder incentives being addressed in the pending and future AEAPs.
- On February 7, 2003, the pending AEAPs are reassigned to ALJ Gottstein, who consolidates the 2000, 2001 and 2002 AEAPs and holds a further PHC on February 27, 2003. The March 19, 2003 scoping memo identifies several procedural steps for resolving the pending AEAP issues.
- Per the scoping memo, and as authorized in D.03-04-055, Energy Division issues request for proposals (RFPs) to 1) evaluate underlying retention and persistence studies for pre-1998 claims and to 2) evaluate the milestone accomplishments for program years 1999-2002.
- On August 21, 2003, the Commission issues D.03-08-028 addressing LIEE earnings claims. The Commission authorizes partial awards for the pending claims. Energy Division is directed to verify LIEE installations for 2000 and expenditure data for 1999, 2000 and 2001 for further Commission consideration.
- On October 16, 2003, the Commission issues D.03-10-057 concluding that the shared-savings incentive mechanism adopted in D.94-10-059

should not be reconsidered, and R.91-08-003/I.91-08-002 should not be reopened for that purpose.

- On June 30, 2004, Energy Division's consultant team, headed by Skumatz Economic Research Associates, Inc. (SERA) completes an assessment of the retention and persistence studies supporting the pending 3rd and 4th year AEAP earnings claims for pre-1998 programs. On September 22, 2004, the consultant team completes its draft review of the technical degradation factors also used to support the pre-1998 earnings claims.
- On September 24, 2004, Energy Division's consultant team submits its final review of the milestone achievements for the utilities' 1999-2002 energy efficiency programs.
- A further PHC is held on September 24, 2004 to address procedural steps for considering the consultant team's findings. ALJ Gottstein adopts a two-phase approach to evidentiary hearings: Phase 1 to address the pre-1998 earnings claims, and Phase 2 to address milestone-related earnings claims for 1999-2001 programs. Evidentiary hearings on pre-1998 earnings claims (Phase 1) are scheduled to begin on December 13, 2004.
- Energy Division holds a public workshop with SERA to address parties' questions regarding consultant team's assessment of pre-1998 earnings claims, and to incorporate pending data requests into the team's final report on technical degradation factors. This workshop is held on October 12, 2005. Final reports on retention/persistence studies, including technical degradation factors, are submitted on October 20, 2004.
- As directed by ALJ Gottstein, the utilities jointly supplement their 2000-2002 AEAP earnings claims applications on October 25, 2005 to reflect their pending pre-1998 earnings claims in a consistent format, including a consistent calculation of interest.[9] On November 8, 2004, the utilities

[9] Since there were no pre-1998 earnings claims associated with the 2003 AEAP proceeding (A.03-05-002 et al.) subject to further ex post measurement true-up, the December evidentiary hearings were scheduled and noticed only in the 2000-2002 AEAP consolidated docket. We note that PG&E did submit a third-year earnings claim

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file supplemental testimony on pre-1998 claims that specifically address the consultant team's reports.

- ORA files intervenor testimony on November 22, 2004, recommending that the Commission authorize for recovery the earnings claims associated with pre-1998 programs identified by the utilities in their November 8, 2004 testimony.
- ALJ Gottstein takes the Phase 1 hearings off calendar based on the lack of factual disputes in the testimony and in light of pending settlement discussions between ORA and the utilities.
- On December 30, 2004, ORA, SoCalGas and SDG&E file a joint motion for adoption of a settlement agreement regarding the earnings claims of SoCalGas and SDG&E in the pending AEAPs.
- On April 4, 2005, ORA and PG&E file a joint motion for adoption of a settlement agreement regarding the earnings claims of PG&E in the pending AEAPs.
- On June 20, 2005, ORA and SCE file a joint motion for adoption of a settlement agreement regarding the earnings claims of SCE in the pending AEAPs.

As indicated in the chronology above, the Commission's review of earnings claims associated with the pending AEAPs have been delayed due to (1) limited resources in the wake of the electric crisis, (2) the Commission's inquiry into whether to reopen and reconsider the pre-1998 shared-savings mechanism, and (3) the necessary process undertaken to supplement the record

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in the 2003 AEAP for its 1994 Nonresidential new Construction Program, which was subject to a pre-1998 performance adder mechanism. However, as PG&E also explained, the third and fourth year claims for this program were part of a negotiated settlement accepted by the Commission in D.00-09-038. Our reading of D.00-09-038 conforms with PG&E's interpretation and no party has asserted otherwise. See Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo in A.03-05-002 et al., pp. 10-12 and Attachment 3.

with Energy Division's verification of retention and persistence study results, technical degradation factor assumptions and program milestone accomplishments. As discussed below, we consider this information along with the testimony and comments submitted in this proceeding in evaluating the reasonableness of the settlement agreements before us today.

As a context for our discussion of the settlement agreements, we describe in Attachment 2 how the pre-1998 shared savings mechanism functions based on the results of *ex post* verification and measurement studies, and present a numerical illustration of how it works for a specific program. Attachment 3 provides a description of the specific incentive mechanisms that have applied to LIEE programs since 1999, and Attachment 4 presents background and a description of the 1999-2001 milestone incentive mechanisms.

3. The Settlement Agreements

Table 1 presents the earnings claims covered by the settlement agreements, by utility and AEAP proceeding. ORA has settled all the outstanding earnings claims of the utilities that relate to the pre-1998 shared-savings incentive mechanism for (non low-income) energy efficiency programs. As indicated in Table 1, this encompasses the third and fourth installments of the earnings claims associated with programs implemented over the 1995-1997 timeframe, as well as the earnings claims associated with measures implemented between 1998 and 2000 that were the result of pre-1998 program commitments.[10]

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[10] For example, SoCalGas' "Energy Edge" program involves some contracts that were entered into in 1997 under the pre-1998 incentive mechanism but were installed in subsequent years, e.g., 1999. The earnings claims submitted by PG&E for pre-1998 program activities in 1998 and 1999 are for the longer lead-time programs, specifically, residential and nonresidential new construction, and commercial and industrial

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In addition, ORA has settled all the outstanding earnings claims of the utilities that relate to LIEE program activities in this consolidated proceeding. As indicated in Table 1, this encompasses the first and second installments for program year 1999-2003 activities. For years in which the claims are zero, the utility did not meet the minimum performance requirement associated with the incentive mechanism for that year, and therefore, no earnings are requested.

Finally, the settlement agreements cover all outstanding earnings claims associated with the milestone mechanisms in place for the 1999, 2000 and 2001 program years. In the table below, we summarize the outstanding earnings claims and settlement amounts presented in the settlement agreements, by type of incentive mechanism and by utility:[11]

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incentives programs. In addition, PG&E completed activities related to the Integrated Bidding Pilot program in 2000. A summary of Commission authorization for applying the pre-1998 incentive mechanism to these activities is presented in the March 17, 2003 Joint Filing of PG&E, SDG&E, SCE and SoCalGas in the previously consolidated 2000-2002 AEAP proceeding (A.00-05-002 et al.).

[11] From Exhibit 141A.

Outstanding Claims and Proposed Settlement Amounts for Energy Efficiency (EE) and LIEE (millions of nominal dollars, including interest and FF&U)

	Pre-1998 EE	1999-2001 EE	LIEE	Total Claims	Proposed Settlement	Difference	% claim
PG&E	$171.783	$33.172	$1.702	$206.657	$186.000	$20.657	90%
SCE	$22.883	$21.340	$1.467	$45.690	$42.035	$3.655	92%
SDG&E	$73.308	$9.582	$0.652	$83.542	$73.100	$10.442	88%
SoCalGas	$7.718	$6.581	$2.231	$16.530	$14.300	$2.230	87%
Totals:	$275.692	$70.675	$6.052	$352.419	$315.435	$36.984	90%

As indicated above, the ORA and the utilities are proposing to settle the outstanding earnings claims at approximately 90% of amounts claimed, including interest and franchise fees and uncollectibles (FF&U).[12] While the settlement agreements would obviate the need for the Commission to further review these outstanding claims, they would still require the utilities to perform all measurement and evaluation studies required by previous Commission decisions for prior program years, in order to inform future program and resource planning.

The settlement agreements call for amortizing these earnings claims over time or consolidating them with other rate changes, in order to minimize or

[12] To translate earnings claims into revenue requirements, they are adjusted upwards by a factor to reflect the utility's franchise fees and uncollectibles, or "FF&U". In AEAPs, the utilities are permitted to earn interest on their shareholder incentives, calculated at the 90-day commercial paper rate, beginning on July 1 of the year following the program year. Therefore, the earnings claims are also adjusted upwards to reflect accrued interest, when revenue requirements are calculated.

completely eliminate the need for any rate increases.[13] The utilities have also clarified that no additional interest will accrue as these amounts are amortized for rate recovery purposes.[14]

In presenting the settlements to the Commission, ORA and each of the utilities argue that the pending AEAP proceedings establish a large, detailed and consistent record justifying the total AEAP incentive payments for prior program years. However, they also recognize that some of the AEAP claims have been pending for nearly five years, and at least six more years will pass before the last AEAP claims will be resolved under the adopted installment schedule. To save the time and expense of further regulatory proceedings, to gain the benefit of the time value of money be collecting some incentives before their scheduled recovery period, and to reflect the uncertainty of whatever may happen in the next six years, ORA and the utilities believe that it is reasonable to settle the outstanding claims as proposed. Moreover, they argue that settling these matters will allow the Commission to call a "clean end" to the various and complicated current and future shareholder earnings claims that would be made under already approved Commission mechanisms.

4. Comments in Response to Settlement Agreements and Replies

No parties filed comments in protest of the settlement agreements between ORA and SDG&E/SoCalGas or ORA and SCE.[15] On May 4, 2005, WEM filed

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[13] ORA/PG&E Settlement Agreement, pp. 7-8; ORA/SCE Settlement Agreement, pp. 10-11; ORA/SDG&E and SoCalGas Settlement Agreement, pp. 5-6.

[14] Exhibit 141, response to Question 3.

timely comments urging the Commission to reject the ORA/PG&E settlement. WEM contends that the settlement relies upon savings and persistence data that is recognized as being inaccurate, referencing as an example to recent revisions to the useful life assumptions associated with compact fluorescent lamps (CFLs) for future program savings projections. In addition, WEM claims that updates currently being planned for the Database for Energy Efficient Resources (DEER) reveal that the system has been using inaccurate savings for much of the period covered by the pending AEAP claims.[16] In addition, WEM argues that the settlement inaccurately calculates shareholder incentive claims because it does not discount them to account for the time value of money.

Finally, WEM argues that non-savings issues need to be considered before the settlement is accepted. In particular WEM contends that a recent independent audit reveals serious problems related to utility administration of energy efficiency programs from 1998-2002. WEM argues that adopting the settlement would preclude the Commission from evaluating how these audit results should impact the pending shareholder incentive claims.

On May 25, 2005, PG&E and ORA jointly responded to WEM's comments. PG&E and ORA claim that WEM is mixing up the measures and the studies required for the programs included in the AEAP covered by the settlement

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[15] We note that SCE filed brief comments in support of the Settlement Agreements reached by ORA and the other utilities.

[16] DEER provides estimates of the gross energy-savings potential, costs and other performance parameters (e.g., expected useful life information) for energy efficiency measures and technologies in residential and nonresidential applications. DEER has been jointly developed by this Commission and the CEC, and is funded through ratepayers via the public goods charge.

agreement with newer technologies and measures. In particular, they argue that the CFLs installed during the program years included in the settlement agreement have significant technological differences from those included in the programs covered by the study that WEM cites. In their view, the study WEM cites for program year 2003, applied to a limited population of 60 sites, using a different mix of CFL technologies for different purposes, should not be applied to a broader population. PG&E and ORA also refute WEM's representation of the findings of the audit WEM refers to in its comments. Finally, PG&E and ORA contend that WEM's method for calculating the present value of the shareholder incentive claim is inaccurate. Rather than starting with a discounted number and reducing that as a pure settlement discount, PG&E and ORA argue that they settled on an overall number that accommodates both a settlement discount and the time value of money.

5. Discussion

Rule 51.1(e) of the Commission's Rules of Practice and Procedure establish the legal standard applicable to our review of the settlement agreements:

> "The Commission will not approve stipulation or settlements, whether contested or uncontested unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

Accordingly, in the sections that follow we consider whether the settlement agreements are consistent with this standard. First, we review the record in this proceeding regarding the evaluation and verification of the utilities' pending earnings claims. Next, we address WEM's protest. Finally, we discuss our conclusions regarding the reasonableness of the proposed settlement agreements.

5.1. The Record on Reasonableness of Earnings Claims

The record in this proceeding includes a broad range of independent evaluations of the utilities' earnings claims. Some of these evaluations were performed by ORA's consultant, others by CEC staff and still others by the consultant hired by Energy Division at the direction of the Commission. We summarize the record on these activities, below.

5.1.1. Pre-1998 Earnings Claims Under Shared-Savings Mechanism

In considering the record on earnings claims associated with the pre-1998 shared-savings mechanism, it is important to keep in mind that important verification issues associated with these claims have already been addressed in our previous AEAPs. For example, for the second earnings claims submitted in the 2000 AEAP for program year 1998 activities, the Commission has already reviewed the estimates of program costs and program participation underlying the utilities' lifecycle earnings claims, and has made any appropriate adjustments to those estimates during its evaluation of first-year earnings claims in an earlier AEAP. For most of the third and fourth earnings claims submitted in this consolidated proceeding, the Commission has also reviewed the results of *ex post* studies on first-year load impacts in earlier AEAPs, when the utilities' second earnings claims were filed and considered. For these submittals, the AEAP review focuses on whether estimates of lifecycle earnings need to be further revised based on *ex post* retention studies (also called measure life or persistence studies). Retention studies gather information from homes or businesses in which the measures were installed to determine how long the measures operated and whether the measures are being removed earlier than expected—a difference that would affect the program's value. In this way, the record in this

consolidated proceeding builds upon the record and findings of the Commission in prior AEAPs.

To build upon this record, ORA's consultant completed a total of 37 reports related to the earnings claims associated with the pre-1998 shared savings mechanism: 11 verification reports on the second earnings claims (load impact studies), 20 reports on the third earnings claims (retention studies) and 6 reports of fourth earnings claims (retention studies). ORA's consultant also independently reviewed first year claims for pre-1998 programs that were filed in the 2000 and 2001 AEAPs. As discussed above, these represent pre-1998 program commitments that resulted in measure installations during 1998-2001. Table 2 presents the verification documentation completed by ORA's consultant during the 2000/2001 AEAPs. The consultant's review process is summarized below:[17]

- For first earnings claims, ORA's consultant evaluated each application for the presence of necessary documentation such as invoices, coupon payments, etc. The files were then examined for consistency with the earnings claim filing for that application, including the data on measure types, project costs, incentive payments and load impact calculations.
- For second earnings claims, ORA's consultant evaluated 11 load impact studies by conducting verification reports, which attempt to replicate the findings of the load impact study.[18] The verification report process includes the assessment and replication of the sampling, billing data,

[17] ORA Report on Pre-1998 DSM Programs, August 2001; Additional Testimony of Scott Logan, ORA, November 2001. (Exhibits 143, 144.)

[18] For one of the load impact studies presented in the 2000 AEAP, ORA conducted a less extensive review (i.e., SCE's load-impact study on Non-Residential New Construction). Referred to as a "review memo," this form of review represents a paper review of the study, only.

and modeling procedures used in the utility study or a detailed replication of engineering-based, project-specific calculations used in the study.

- For third and fourth earnings claims, ORA's consultant verified retention studies supporting those claims by: 1) evaluating the data, documentation and programming codes used in the modeling process and 2) replicating and assign the analytical procedures used in the study.

Based on this review, ORA originally recommended that PG&E's lifecycle earnings request for program year 1999 be adjusted downwards from $11.185 million to $7.441 million, for an earnings adjustment of $3.74 million. This adjustment was based on issues ORA identified with respect to the engineering calculations, customer file information and program participation documentation for PG&E's first-year claim in the 2000 AEAP. During further discussions and information exchange, ORA and PG&E reached agreement to reduce PG&E's claim from $11.185 million to $9.971 million, for a lifecycle earnings adjustment of $1.2 million.[19] ORA recommended no other adjustments to pre-1998 earnings claims in its 2000/2001 testimony.

During 1998 and 1999, the California Demand-Side Management Advisory Committee (CADMAC) Persistence Subcommittee contracted to conduct a series of statewide studies to measure the technical degradation of energy efficiency measures included in the utilities' earnings claims. These studies evaluate how program savings are affected over time by changes in the technical performance of efficient measures compared to the technical performance of the standard measures that they replace. ORA sponsored one of its consultants to participate

[19] See Case Management Statement of PG&E, SDG&E, SCE, SoCalGas, ORA, CEC and WEM, dated October 15, 2001, and filed in the 2000/2001 AEAPs. (Exhibit 9.)

on the Persistence Subcommittee. Therefore, ORA did not focus its verification effort on these technical degradation studies during the 2000-2001 AEAPs, but did review the utilities' implementation of the technical degradation factors from those studies.

The record in this proceeding also includes ORA's explanation of why PG&E's third earnings claim for 1995 programs (submitted in the 2000 AEAP) was so substantially higher than the first and second claims in earlier AEAPs. In particular, PG&E's incremental third year claim was $33.8 million, or approximately $20 million (145%) higher from PG&E's incremental second claim authorized during the 1997 AEAP. At the request of the assigned ALJ, ORA supplemented its testimony with an independent investigation of the factors contributing to this large increase, in order to verify its accuracy. ORA reported most of the large jump in PG&E's third earnings claim was the result of the statewide technical degradation studies. These studies conclude that PG&E assumed much faster "persistence decay" in its original lifecycle estimates than the *ex post* studies now indicated. Coupled with the fact that the *ex post* expected useful life (EUL) estimates from the retention studies were not statistically different from the *ex ante* assumptions used by PG&E, the net result was to substantially increase its third-year claim.

In addition, PG&E had a large industrial customer install a gas energy savings project in 1995. This customer subsequently left PG&E's system, using their own source of energy, and PG&E did not claim energy savings for this customer in the following AEAP. In February of 1998, however, this customer returned and continued service with PG&E. As a result, PG&E included the energy savings associated with this customer in its program year 1995 third earnings claim.

ORA's consultants also conducted an extensive review of PG&E's third earnings summary tables ("E-tables"), and found that (1) PG&E's E-tables were properly constructed and consistent with previous E-tables submitted as part of its second earnings claims and (2) PG&E's approach to revising the calculation of life cycle savings was consistent with the methodology stated in the protocols.[20]

In D.03-04-055, the Commission requested a third-party review of the retention/persistence studies and the program milestone accomplishments submitted by the utilities in support of the pending AEAP earnings claims. Energy Division issued a Request for Proposal and selected Skumatz Economic Research Associates Inc. (SERA) to lead the review. SERA worked with a project team that included Summit Blue Consulting, LLC, Quantec, LLC (Quantec), Global Energy Partners, EMCOR Energy and Technology and the Northwest Research Group. As described in Section 2 above, SERA's final reports on the review of retention/persistence studies, including technical degradation factors, were submitted on October 20, 2004. The detailed review analyzed the approach, data, methods and conclusions associated with 54 reports representing 94 studies. Six percent of the studies were third year studies, 47% were fourth year studies, 25% were sixth year studies and 23% were ninth year studies. Eighteen covered agricultural measures, 22 covered commercial, 25 covered industrial and 35 covered residential measures, and some studies covered more than one sector.

[20] ORA Supplemental Testimony, Pre-98, p. 7, attached to Additional Testimony of Scott Logan, November 2001. (Exhibit 144.)

The review evaluated the following: (1) conformance with Commission-adopted protocols, (2) sampling approach, sample sizes and data collection procedures, (3) modeling approach, estimation method, and consideration of alternative models, and (4) results and implications. The analysis yielded eight studies where adjustments to EULs are recommended. These results are summarized in Table 3. Computations of claim dollars at risk were also provided in the report. As indicated in Table 3, these computations indicate that approximately $399,000 in SDG&E's shareholder earnings claim dollars were affected by the findings, with the "net" being potentially *higher* claims for SDG&E. The report identified zero claim dollars at risk for PG&E, SCE or SoCalGas.

In addition, SERA and Quantec reviewed the CADMAC statewide technical degradation studies that were used, among other things, to support PG&E's large third-year earnings claims. SERA and Quantec reviewed and evaluated the methodology of the studies in detail, as well as the use of secondary sources. Overall, they found that the studies provided credible estimates of technical degradation. However, there were two measures for which the Technical Degradation Factor (TDF) analysis received a low score based on their evaluation, and would have an impact on the pending earnings claims. For "Measure 3" (Oversized Evaporative Cooler Condenser) they found that the TDF resulting from the studies would potentially underestimate savings and associated earnings. For "Measure 20" (Agricultural Pump Repair/Replacement), they found that the TDF resulting from the studies would potentially overestimate savings and associated earnings.

The net impact of substituting a TDF of 1.0 (no difference in technical degradation relative to the standard measure) for the study values for these two

measures is presented in Table 4. As indicated in that table, these measures do not have a large combined impact on the pending AEAP claims, however the net direction of the impact would be to *increase the claim*. The use of the study TDF values led to lower claims on the order of $0 to $43,000 for each utility. SERA and Proctor conclude that the associated claims could have been (minimally) higher for at least PG&E, and the potential level of adjustments to past claims would be very small.

As described above, the record in this proceeding provides an extensive review of the pre-1998 earnings claims. No aspect of this review refutes the reasonableness of these claims and, in fact, the SERA reports indicate that the utilities may have slightly underestimated the lifecycle savings associated with these energy efficiency programs, and therefore underestimated their earnings claims.[21]

5.1.2. Post-1997 Earnings Claims Under Milestone-Based Mechanisms

As described in Attachment 4, the Commission shifted from shared-savings to milestone-based incentive mechanisms for post-1997 energy efficiency activities. By 1999, the shared-savings mechanism was completely phased out, and all utility earnings were based on milestone accomplishments. From 1999 through 2001, the utilities pursued a variety of different milestone types, each with a unique set of measurement metrics and award mechanisms. As described

[21] We note that the utilities did not revise their claims upwards in the November 2005 testimony in light of the SERA report findings. They simply reiterated the claims submitted in their applications, as adjusted during the development of the 2001 Case Management Statement.

in Attachment 4, the milestones can be categorized into three major groups: (1) Expenditure-based, (2) Energy savings and (3) Miscellaneous.

Expenditure-based milestones are dependent upon the utilities spending most or all of the approved program budgets (including "commitments" that reserve funds for later payment to program applicants). Beginning in program year 2001, Energy savings milestones were also defined for each relevant energy savings category (kW, kWh and therms) within the residential, non-residential and new construction program areas. The maximum award for these milestones could be earned for meeting the goals, and a minimum award equal to 50% of the maximum could be earned for achieving 80% of the primary target. Awards for intermediate achievements were determined through linear interpolation as approved by the Commission. The utilities were also eligible to earn a "bonus" energy savings award if they met all of their program area and kWh, MW and therm savings targets.

The miscellaneous category includes all those milestones classified as "administrative," "base," "activity" or "market effects" milestones. Administrative, base, and activity milestones depend on the accomplishment of a certain goal within a specified time frame. Examples of these milestones are: "Complete a statewide energy booklet for small commercial and industrial customers by July 30 (for superior award) or September 30 (satisfactory award)" and "Conduct 6 workshops for duct and window training by May 31 (for superior award) or June 30 (satisfactory award)." Market effects milestones concentrate on the achievement of a measurable market impact and are tied to specific performance requirements of key programs. An example of a market effects milestone is "Increase the ratio of high efficiency water heaters sold by 5% over current level. Award scales from 2% (satisfactory) to 5% (superior)."

As discussed in Attachment 4, the incentive mechanism in place during 1999 and 2000 emphasized expenditure-based milestones and those described above under the miscellaneous category, whereas in 2001, the Commission shifted to a milestone incentive mechanism that relied predominantly on energy savings accomplishments.

During the course of the 2000/2001 AEAP proceeding, the CEC provided substantive testimony on verification issues related to a selected number the utilities' milestone-related earnings claims for program year 1999 and 2000 program accomplishments. CEC's review focused on approximately 75 milestones applicable to those program years. Taking into account the utilities rebuttal testimony and subsequent discussions and exchange of documentation, CEC and the utilities reached agreement on the contested issues. The Case Management Statement lays out the basis for agreement on a milestone-by-milestone basis. This process resolved all of the issues raised by CEC in its testimony, and resulted in minor adjustments to the 1999/2000 milestone performance award claims of PG&E and SDG&E.[22]

Per D.03-04-055, the record on post-1997 earnings claims in this proceeding was augmented by Energy Division's independent review of milestone accomplishments for program years 1999, 2000 and 2001. SERA managed the project team consisting of SERA staff, in association with Summit Blue Consulting LLC and Global Energy Partners, LLC.

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[22] For SDG&E: 2000 claim of $2,591,572 was reduced to $2,588,020; for PG&E: 1999 claim of $11,262,000 was reduced to $11,165,000, and 2000 claim of $9,796,000 was increased to $9,804,000. For SCE, the 1999 claim of $8,923,000 was reduced to $860,000. See Case Management Statement (Exhibit 9), October 15, 2001, pp. 5-16, 18-21.

As described in SERA team's report, there were more than 400 individual milestones between the four utilities for program years 1999-2001, worth more than $65 million in potential earnings. The SERA team prioritized milestones for detailed evaluation and conducted detailed assessments on 125 individual milestones worth more than $32 million. In particular, the SERA team selected all of the "aggressive implementation" and "performance adder" expenditure-based milestones for detailed assessment, since these milestone types accounted for a significant portion of all claims (typically 10-20% of annual claim dollars). In addition, the SERA team evaluated all energy savings milestones (which were for program year 2001 only), since these milestones accounted for 80% of the value of award claims in program year 2001. For miscellaneous measures (of which there were 350 over the three year period), the SERA team selected a sample that was prioritized based on dollar value, and spanned all program areas.

Table 5 summarizes the results from this detailed assessment of claim values potentially at risk for program years 1999-2001, by utility and milestone category. The SERA team defines claims potentially "at risk" as those for which supporting documentation provided by the utilities may not be sufficient to warrant payment of the related milestone incentive awards. The SERA team's analysis of PG&E and SCE documentation concludes that only about 4% (PG&E) and 6% (SCE) of the claimed dollars were potentially at risk. For SoCalGas and SDG&E, a total of 11% of the claim value for each of the utilities may be potentially at risk, based on the SERA report. Overall, the SERA team found that 94% of the $65.5 million in earnings claims were supported by their assessment of the documentation provided, leaving 6%, or $4.1 million, potentially at risk.

In addition to the issue of whether the utilities achieved the milestones established for their programs, ORA raised several issues related to the policy rules that governed post-1997 programs. At the PHC for the 2003 AEAP, ORA expressed the view that *ex post* program cost-effectiveness, commitments true-ups and other policy rules could affect the milestone incentives, and should be considered by the Commission. The utilities presented a different interpretation of these policy rules. The Assigned Commissioner directed the utilities and ORA to compile and review the relevant rules, hold a public workshop on the issues raised by ORA, and submit a post-workshop joint report on any remaining areas of disagreement.[23]

As a result of this review and further workshop discussion, ORA reported that there were no longer any differences in interpretation of the policy rules that would require Commission resolution. In particular, based on the language of the relevant rules, ORA and the utilities agreed that the cost-effectiveness rules applicable to the post-1997 program years applied only prospectively (or *ex ante*). In other words, the policy rules did not require an *ex post* true-up of program or portfolio cost-effectiveness based on subsequent studies, except to verify the level of program participation. ORA and the utilities presented their compilation of the policy rules and conclusions in a Joint Report on September 22, 2003.[24]

At the direction of the assigned ALJ, on January 14, 2004 the utilities submitted a summary of the record concerning the milestone incentives for

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[23] See *Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo*, August 7, 2003, pp. 13-19.

[24] *Joint Report on Policy Rules and Areas of Agreement and Disagreement*, September 22, 2003, filed in A.03-05-002 et al. (Exhibit 31.)

program years 1999, 2000 and 2001. The summary provides a tabular crosswalk presenting information in the Case Management Statement, the SERA report and blueConsulting audit,[25] and the September 22, 2003 Joint Report. ORA concurs with this presentation. With respect to the issue of truing up commitments, ORA and the utilities reached agreement that "based on the results of both the blueConsulting and SERA reports that the commitment and true-up issues have no impact on the earnings associated with the outstanding milestones claims…."[26]

Attachment 5 presents the Milestone Incentive Crosswalk tables, by utility.

5.1.3. LIEE Earnings Claims Under Performance Adder Mechanism

The settlement agreements also include amounts earned under the performance adder mechanisms applicable to LIEE. The amount claimed in the pending AEAPs for 1999-2003 associated LIEE earnings totals $616, 748 for SDG&E, $2,100,290 for SoCalGas, $1,368,000 for SCE and $1,544,000 for PG&E, not including interest and FF&U. (See Table 1.)

Attachment 3 describes the LIEE performance adder mechanisms adopted by the Commission for these programs. As described in that attachment, the utilities' LIEE earnings claims are recovered over a two-year payout period: The first earnings claim (50% of the total award) is paid out upon verification of measure installations and expenditure data, as well as the review of the earnings

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[25] See our discussion of the blueConsulting audit in Section 5.2.2.3 below.

[26] See Exhibit 138: January 14, 2005 submittal to ALJ Gottstein Re: Milestone Incentive Crosswalk, 2000-2002 AEAPs, cover letter, p.1. This document was also served electronically to the service list in A.00-05-002 et al.

calculations for mathematical accuracy. The second earnings claim for certain program years (for which a load impact study is required) is contingent upon completion of that study.

By D.03-08-028, the Commission addressed the LIEE earnings claims submitted by the utilities in their 2000, 2001 and 2002 AEAPs, which encompassed the second-year claims for program year 1998 program activities, first and second-year claims for program year 1999 and 2000 program activities and first year claims for program year 2001 program activities. In reviewing the record for those claims, the Commission found that ORA had reviewed and verified the number of installations claimed by the utilities for program years 1999 and 2001 to its satisfaction. With respect to the second year claims, the Commission found that the utilities completed their load impact studies for program years 1998, 2000 and 2001 in compliance with the protocol requirements, and therefore had met that contingency.

However, because of the structure of the experimental performance adder mechanism in place for program year 2000, the Commission found that ORA's review approach for measure installations was not sufficient for that program year. In addition, the Commission found that the utilities' expenditure data for program years 1999, 2000 and 2001 required further examination. As a result, the Commission authorized recovery of the utilities' 1998 second year claims, but deferred consideration of the pending 1999-2001 claims until Energy Division could verify LIEE installations for program year 2000 and expenditure data for program year 1999, 2000 and 2001. Because of resource limitations, Energy Division has been unable to commence this work.

In sum, the record in this proceeding to date is limited with respect to information concerning the reasonableness of the pending LIEE earnings claims.

However, we note that overall level of these claims is relatively small, amounting to approximately 2% of the total pending claims.[27]

5.2. WEM's Comments in this Proceeding

WEM submitted comments during two different stages of this consolidated proceeding. First, WEM submitted comments in response to the utilities' 2000/2001 AEAP applications and supplemental testimony. Second, WEM submitted comments in response to the PG&E motion for approval of a settlement agreement with ORA. We discuss these two sets of submittals, below.

5.2.1. WEM's Comments in Response to 2000/2001 AEAP Applications

WEM submitted preliminary comment/testimony on September 4, 2001 in response to the utilities' 2000/2001 AEAP applications. We note that this submittal makes no individual recommendations regarding the appropriate level of those claims. Instead, much of it recounts conversations with Commission personnel detailing the difficulties WEM encountered because the Commission's filing system is kept by application and advice letter number, and not be subject matter. The rest of the submittal consists of (1) quotes from a 15-year old book about the complexities of the regulatory process, (2) references to other intervenors in past program planning proceedings, raising program issues in those proceedings, and (3) accusations concerning the utilities' handling of energy efficiency funds and other matters. PG&E filed a point by point response to WEM's submittals on September 28, 2001. We concur with PG&E's assessment that WEM's September 4 2001 submittal is not responsive to the

[27] Total LIEE claims of $5.6 million divided by Total claims of $271.6 million (not including interest or FF&U) equals .02 or 2%.

issues in this proceeding and has not contributed to the record. We find WEM's November 16, 2001 comments on the utilities' supplemental testimony to be similarly unresponsive to the issues addressed in that testimony. Accordingly, we give these WEM submittals no weight in our deliberations over the settlement agreements before us today.

5.2.2. WEM's Response to the ORA/PG&E Settlement Agreement

WEM's comments on the ORA/PG&E settlement agreement do not address the validity of ORA or SERA's review of the studies underlying PG&E's pending earnings claims, but rather asks us to reject the settlement terms based on (1) the results of other studies concerning energy savings assumptions, (2) inaccuracies in the calculation of PG&E's earnings claims and (3) a recent financial audit of PG&E's management of energy efficiency programs. We find no merit to WEM's objections, for the reasons discussed below.

5.2.2.1. Recent Studies and DEER Updates

WEM references the results of the 2003 Express Efficiency Program Evaluation[28] to argue that the PG&E/ORA settlement relies upon savings and persistence data which "is already recognized as being inaccurate." We note that this study was submitted to the Commission in March 2005, and covers installations made in program year 2003, for which there are no shareholder incentives. Hence, the settlement agreements being considered today do not include any earnings claims for the programs covered by this study. Moreover,

[28] Exhibit 154.

we are persuaded by the arguments of ORA and PG&E that this study has very little relevance to the savings impacts of PG&E's pre-1998 program activities.

First, we note that PG&E's residential CFL program was exclusively an information-only program, designed to educate residential customers about this technology. Second, with respect to non-residential programs, ORA and PG&E explain that the CFLs installed during the program years included in the ORA/PG&E settlement agreement have significant technological differences and applications from those included in the studies that WEM cites[29]:

> "CFLs installed during the program years covered by the earnings claims in the Settlement Agreement were mostly expensive, modular screw-in lamps, where the ballast and lamp are separate component, and hardwired fixtures common at the time that averaged only about two percent of the total program energy savings. The energy crisis brought a flood of new CFL screw-in technologies to the California market in 2001, including many lamps where the ballast and lamp were a single, disposable entity. The study for Program Year 2003 that WEM cites primarily included integral screw-in CFLs (lamp and ballast combined in one unit). The different technologies for each kind of CFL would result in different assumptions and results about the lights, especially the effective useful lives (EULs)."[30]
>
> "The 2003 Express Efficiency program evaluations, which included a task for collecting CFL hours of use from a small sample size of the population, mainly examined CFL installations in hotels. In contrast to previous years, where CFLs were mostly installed in hotel lobbies and other high-use areas, by 2003 they were becoming so

[29] Exhibit 140.

[30] Reply Comments of PG&E and ORA to WEM Comments on Joint Parties Settlement Agreement, pp. 3-4.

> commonplace they now were being installed in hotel rooms which have significantly lower operating hours."[31]

Moreover, as PG&E and ORA point out in their reply comments, the 2003 Express Efficiency Evaluation applies to a limited population of 60 sites. We conclude that this study is too limited in scope and uses a different mix of CFL technologies for different purposes to be relevant to PG&E's pending earnings claims.

More generally, WEM argues that the data "just now coming available" to update DEER inputs on savings persistence should be considered and used in evaluating the PG&E/ORA settlement agreement.[32] In particular, WEM points to PG&E's presentation of the impacts of DEER changes to useful life estimates for CFLs on *future* program energy savings as evidence that the pending earnings claims are inflated. However, we concur with PG&E and ORA that these updates are not applicable to the earnings claims being considered today. As ORA and PG&E acknowledge, CFLs have become a large enough portion of overall program savings to result in the percentage reductions presented recently by PG&E to its advisory group members for prospective programs. However, it does not follow, as WEM asserts, that these reductions (on the order of 39-49% for residential applications and 20-23% for non-residential applications compared to 2003-2004 program projections) are applicable to the pre-1998 program savings estimates, where CFLs composed less than 2% of the energy savings. Moreover, even if WEM's argument were correct in the extreme with

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[31] *Ibid.*, p. 4.

[32] WEM's Comments in Response to PG&E's Motion, May 4, 2005, p. 5.

respect to PG&E's 1999-2001 energy milestone-related claims--i.e., that we should attribute zero savings from all CFL installations in those years—PG&E calculates that the impact on these earnings claims would only be on the order of $2.6 million.[33]

With respect to the recent DEER updates to non-CFL useful lives, we similarly find no basis for setting aside the record in this proceeding based on those updates, as WEM's comments suggest. Attachment 6 specifically compares the updated DEER non-EUL values with (1) the values contained in the previous version of DEER and (2) the *ex ante* EUL assumptions contained in the EM&V protocols established for pre-1998 program activities. These updates are based on the review of recent *ex post* persistence studies--including the ones reviewed by SERA in this proceeding.[34]

Contrary to WEM's assertions, these updated EUL assumptions do not suggest that PG&E's pending earnings claims are based on unrealistic savings persistence assumptions. Again, WEM draws inappropriate conclusions from the data. The bulk of the earnings claims presented in the pending AEAPs were based on the EUL assumptions contained in the pre-1998 EM&V protocols, and not those contained in the previous version of DEER. With few exceptions, *the 2005 updated EUL assumptions for non-CFL energy efficiency measures have generally remained the same or increased* relative to those used to calculate savings and

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[33] *Reply Comments of PG&E and ORA to WEM Comment*, Attachment, p. 1.

[34] The DEER updates that WEM refers to in its comments were posted to the DEER website on July 14, 2005. (Exhibit 155).

associated net resource benefits for the AEAP earnings claims. (See Attachment 6.)

In sum, we find that WEM's objection to the ORA/PG&E settlement agreement based on the results of recent 2003 program evaluations and DEER updates is without merit.

5.2.2.2. PG&E's Calculation of Earnings Claims

In its comments, WEM contends that PG&E's calculation of a $206.7 million earnings claims is inaccurate because it does not reflect the benefit of the time value of money. In particular, WEM argues that the reference point for the settlement agreement should be $182.897 million. We disagree.

As the ORA/PG&E settlement agreement notes, the 10% discount of the total claim for settlement purposes is intended to reflect *both* the benefit of the time value of money associated with collecting some earnings claims before their scheduled recovery period *and* uncertainty about future recoveries.[35] WEM's calculations imply that the benefit of the time value of money alone should have produced a settlement amount that was 12.6% lower than PG&E's claim. However, upon closer inspection, we find that WEM's calculations are based on unsupported assumptions.

To understand the basis for WEM's calculations, it is important to keep in mind that PG&E's claim of $206.7 million is made up of two components: (1) Earnings claims already submitted for recovery in the pending AEAPs and (2) Earnings claims associated with pre-1998 programs that would have been

[35] ORA/PG&E Settlement Agreement, p. 8.

recovered in future AEAPs (e.g., the 4th installment associated with 1996 and 1997 program activities).

Earnings claims already submitted by PG&E for recovery amount to approximately $143 million. This calculation includes accruing interest for historic payments due through 2004. In AEAPs, the utilities are permitted to earn interest on their shareholder incentives, calculated at the 90-day commercial paper rate, beginning on July 1 of the year following the program year. For example, for the 3rd claim for the 1995 program year in the 2000 AEAP, interest began accumulating as of July 1, 1996. There is no apparent disagreement over this interest rate calculation.

Earnings claims associated with later installments for pre-1998 programs are calculated at $63.579 million in the settlement document. This calculation also includes an interest carried forward to the projected year when the claim would be made

Based on the settlement worksheets, the timing for recovery of the full $63.579 million would be as follows:

AEAP	**Amount (Million $)**
2005	32.753
2006	13.044
2007	13.743
2008	0.071
2009	3.035
2010	0.933
Total:	63.579

WEM and PG&E/ORA disagree over the present value of the $63.579 million associated with these future earnings installments. The critical difference between them concerns the timing of the payments. WEM assumes

that payments will not be made until 2010, and that the future payment will be discounted at 8.5%. This assumption results in a significant reduction for the time value of money since it assumes that the bulk of the payments that are due to PG&E in early years accrue interest at a relatively low rate, less than 1.4% per annum, while they are discounted at a relatively high rate, 8.5%.

WEM provides no basis for the underlying assumption that the earnings installments due in each of the years between 2005 and 2010 will not be recovered by PG&E until the end of 2010. Although the Commission's processing of AEAP applications in recent years has been delayed due to the energy crisis and other unanticipated factors described in Section 2, this is certainly not the norm nor a reasonable expectation for the future. We agree with PG&E and ORA that a more reasonable assumption would be that the AEAPs would be processed each year as expected. Therefore, the present value of the $63.579 million should be calculated from the end of the year in which the installment is due, back to the end of 2004.

In addition, WEM provides no basis for using a discount rate of 8.5%. We agree with PG&E and ORA that the discount rate applied to utility cash flow streams, the weighted cost of capital, should be used instead. For PG&E, the weighted cost of capital is currently 7.9%.

If PG&E's future claims had been discounted, using a proper starting time and the appropriate discount rate, the total claim would have been $198.574 million. As indicate in Table 1, applying the proper discounting approach to the nominal earnings claims reveals that the settlement amounts for all utilities are lower than the resulting discounted claims, contrary to WEM's contention. Moreover, we note that the utilities will be amortizing the authorized earnings over time without adding interest as these amounts are

amortized.[36] This will dampen the time value of money benefit associated with the settlements that these discounting calculations attempt to capture.

5.2.2.3. Results of Financial and Management Audit

The "Financial and Management Audit of Utility Public Goods Charge Energy Efficiency Programs from 1998-2002" (audit) prepared by blueConsulting was issued on July 9, 2004.[37] We ordered this comprehensive audit in D.03-04-055 for the purpose of (1) verifying Public Goods Charge (PGC) collections and expenditures on energy efficiency-related programs and services, (2) investigating and verifying the level of administrative expenditures associated with PGC-funded programs, and (3) assessing the effectiveness of oversight, accounting and financial funds management.

In its comments on the ORA/PG&E settlement agreement, WEM alleges a number of conclusions from the audit without reference to or citation to specific pages of the audit. Based on these conclusions, WEM argues that the Commission should set aside the settlement agreement in order to evaluate how the audit results should impact on shareholder incentives. In particular, WEM asserts that the audit found: (1) widespread negligence in contract oversight; (2) failure to meet energy savings targets; (3) failure to track and report "commitments," resulting in inflated savings claims; (4) excessive administrative costs and confusion over what constitutes those costs; and (5) refusal to provide auditors with adequate, timely information. WEM simply lists these points as a

[36] Exhibit 141.

[37] Exhibit 153.

summary of the audit findings, without any further elaboration or reference to the audit documents.[38]

Before addressing the merits of WEM's allegations, we note that it is far from clear how the audit findings could or should impact the pending AEAP earnings claims, given the specific scope and timeframe of the evaluation. The purpose of the audit was to provide forward-looking recommendations to the Commission in order to "improve the effectiveness of PGC fund management and expenditures by the utilities."[39] The audit examines expenditure data and management/financial systems in place for program years 1998-2002. WEM provides no explanation of how the audit results relate to the specific earnings claims in this proceeding, which encompass a much broader timeframe. In contrast, the activities we described under the "AEAP-related studies" that we also authorized in D.03-04-055 clearly relate to the review of the utility earnings claims. As described in that decision, these activities consist of the independent verification of milestone achievements and the independent review of retention and persistence studies, and cover a timeframe that encompasses all pending AEAP claims.[40]

In short, even if some or all of WEM's allegations concerning the audit findings were accurate, it does not necessarily follow that the ORA/PG&E settlement agreement should be set aside, as WEM urges. We note, in particular, that ORA takes the position based on a comprehensive review of the applicable

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[38] WEM Comment on Joint Parties Settlement Agreement, p. 5.

[39] D.03-04-055, pp. 21-22.

[40] *Ibid., p. 22.*

policy rules, and the results of both the blueConsulting audit report and SERA reports on milestone accomplishments that the issue of truing up commitments would actually have no impact on the earnings associated with the outstanding milestone claims in this proceeding. (See Section 5.1.2 above.)

Moreover, we have reviewed the ORA/PG&E joint rebuttal to WEM's comments, and agree with their assessment that WEM mischaracterizes the audit findings. In particular, the auditor found PG&E to be adequate and reasonable in contract oversight. The report specifically lists two findings (conclusions #5 and #6) directly addressing contractor oversight. (Executive Summary, page I-17.) Conclusion #5 states that "PG&E's policies and procedures over the contractor selection process provide a reasonable level of assurance that such contractors are selected in accordance with sound business practices." Conclusion #6 states that "PG&E has adequate processes to monitor and control contractor activities and to verify work performed by contractors."

Contrary to WEM's assertions, the auditor found no discrepancies regarding commitments in any program except Savings By Design (SBD) for program year 1999 only (conclusion #13, page I-19). The auditor also concluded that the audit only "identified possible instances of non-compliance in the enforcement of commitment terms for program year 1999" (page IV-32, conclusion C-13, volume II). Upon further examination they found that the SBD projects in question were actually completed within the appropriate timeframes of the program (third bullet, page IV-34).

With respect to administrative costs, the auditor found that the utilities received very limited guidance regarding the classification of administrative costs. Consequently administrative costs cannot be compared from utility to utility (page I-23, Executive Summary, conclusions 1 through 5) or to other

programs throughout the country. In our view, this does not constitute "confusion" nor does it imply PG&E's costs are "excessive." In fact, the auditor found that PG&E correctly accounted for these costs (page I-23, Executive Summary, conclusions 6 through 9).

We also could find no basis for WEM's objection to the ORA/PG&E settlement because of "refusal to provide auditors with adequate, timely information." PG&E responds that it did not refuse any of the auditor's requests and even made space available to them in PG&E offices and allowed them access to PG&E computer systems. As noted on page I-1 of the Executive Summary, PG&E answered all of the data requests from the auditors. Some of the requests were for data or files up to 6 years old (1998 program files asked for in 2004) which had to be retrieved from off-site storage.[41]

Finally, with respect to WEM's assertion that the audit found "failure to meet energy savings targets," we note that the auditor did not even audit this aspect of the programs and, therefore, drew no such conclusion. In sum, contrary to WEM's assertions, we find nothing in the audit findings to suggest that the ORA/PG&E settlement agreement is unreasonable and should be rejected by this Commission.

5.3. Conclusions

The utilities and ORA have presented us with settlements on pending AEAP earnings claims that would award a total of approximately $315 million to the four utilities combined, including accrued interest and FF&U. Overall, the

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[41] *Reply Comments of PG&E and ORA to WEM Comment on Joint Parties Settlement Agreement*, May 25, 2005, p. 8.

settlement amounts represent a level of awards to utility shareholders that is approximately $37 million lower than these pending earnings claims. Our consideration of the record in this proceeding convinces us that this level of discount from the pending claims is reasonable and in the public interest. In particular, we note that the record in this proceeding provides considerable support for awarding the full amount of the earnings installments due under the pre-1998 shared-savings mechanism, and close to the full amount for 1999-2001 milestone-related earnings.

With respect to the shared-savings earnings claims, ORA's review of earnings documentation and measurement studies resulted in few disputes, all of which were resolved during the Case Management Statement process. The resulting downward adjustments to PG&E's 1999 first year claim is already reflected PG&E's total shared-savings earnings claim. SERA's analysis of the retention and persistence studies submitted in this proceeding, including results pertaining to technical degradation factors, fully support ORA's conclusions that the savings levels underlying the pending shared-savings claims are reasonable. The only adjustments that SERA's analysis suggests are small *increases* to the shared-savings earnings claims. More specifically, the SERA report presents a net adjustment of +$398,802 in shared-savings earnings for SDG&E, +$42,702 for PG&E and +$1,000 to +$2,000 for SCE. SERA's report does not present any adjustments to the shared-savings earnings claims for SoCalGas. (See Table 6.)

SERA's review of the shared-savings claims did not encompass the last round (related to the fourth earnings installment) of persistence/retention studies that will be submitted for some of the program years in future AEAPs. However, it seems unlikely that the results would be so dramatically different from the first round (third installment) studies that they would result in major

downward adjustments to current estimates. This is one risk, however, that should be considered in reviewing the terms of the settlement. On the other hand, there is also the possibility that an additional round of studies would conclude that assumptions for technical degradation and other measure retention parameters actually underestimate savings persistence to a greater degree than SERA's analysis of current studies has found.

With respect to the 1999-2001 milestone-related earnings claims, we note that the earnings claims in Table 1 already reflect downward adjustments made to those claims for SCE, PG&E and SDG&E during the development of the Case Management Statement. However, SERA's analysis suggests that additional downward adjustments would be supported by the record. In particular, netting out the adjustments already reflected in Table 1, SERA's evaluation produces the following earnings claims at risk: $1,247,000 for PG&E, $262,000 for SCE, $873,072 for SDG&E and $655,312 for SoCalGas. (See Table 6.)

In sum, the record in this proceeding with respect to the pre-1998 shared savings and 1999-2001 milestone-related earnings claims suggests, at most, downward adjustments in earnings of approximately $1.2 million for PG&E, $260,000 for SCE, $474,270 for SDG&E and $655,312 for SoCalGas. In addition, as noted in Section 5, even if WEM's argument regarding CFL savings persistence were correct in the extreme—i.e., that we should attribute zero savings from PG&E's CFL installations during the more recent program years (1999-2001), the impact on PG&E's earnings for the milestone-related claims would only be on the order of $2.6 million. Even deducting this additional amount from PG&E's earnings claims, the settlement amount would still be significantly lower than the resulting calculation—by over $23 million in nominal dollars.

If we also assume in the extreme that all LIEE pending earnings claims are potentially at risk pending the results of Energy Division's verification efforts, the settlement amounts would still be significantly less than the adjusted earnings claims, both in nominal and discounted dollars for each of the utilities. Moreover, Energy Division's verification of the LIEE claims could also result in higher earnings for the utilities, if actual installations in 2000 were higher and/or if recorded costs for 1999-2001 were lower than originally projected at the start of each program year.

Therefore, based on the whole record, we conclude that the utilities are settling for significantly less than would likely be due them for energy efficiency and LIEE activities undertaken through program years 2001 and 2003, respectively. This represents a real cost savings to ratepayers or, put another way, allows ratepayers to retain a larger share of the net benefits from energy efficiency than anticipated.

Moreover, the settlement agreements address concerns over potential rate impacts by proposing rate recovery mechanisms that will amortize these earnings over time or consolidate them with other rate changes, in order to minimize or completely eliminate the need for any rate increases. In addition, the utilities have clarified that no additional interest will accrue as these earnings are amortized for rate recovery purposes. As noted in the settlement agreements, each AEAP application before us to date has included a forecast of the total future incentives for the affected program years, and the gross cost of these future claims has been explicitly considered in this record. We also presented a forecast of these amounts and considered them in our interim

opinion, D.03-10-057.[42] Hence, there are no "surprises" in either the existence or amounts of the future claims that are now being included in the AEAP settlements for recovery in rates.

In addition, the settlement agreements eliminate any risk of the utilities not performing future tasks that would be a prerequisite for collection of the final incentive payments. Under those agreements, the utilities will still perform the various measurement and evaluation studies required under the pre-1998 protocols and established by Commission decisions.

Finally, the settlement agreements are fully consistent with law and prior Commission decisions, which have endorsed settlements as an "appropriate method of alternative ratemaking" and express a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.[43] As we have acknowledged in the past, this policy supports many goals, including not only reducing the expense of litigation, and conserving scarce Commission resources, but also allowing parties to reduce the risk that litigation will produce unacceptable results.[44] Implementing the terms of the settlement agreements before us today will also allow this Commission to consider future

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[42] See D.03-10-057, Attachment 4 and related discussion of these forecasts on pp. 28-29. See also the consolidated tables presented to ALJ Walwyn on December 21, 2001 in response to her request for information at the November 20 prehearing conference, and served on all parties to the 2001 AEAP (Exhibit 9A), as well as the utility-specific submittals served on December 18, 2001 with total earnings claims by year in which the claim would be made for all programs subject to the 1998 shared-savings mechanism. See also all E-tables included in the utility applications and testimony.

[43] See, for example, D.88-12-083 (30 CPUC 2d 189, 221-223) and D.91-05-029 (40 CPUC 2d 301, 326).

[44] D.92-12-019 (46 CPUC 2d 538, 553.)

risk/reward incentive mechanisms for energy efficiency unencumbered by the remnants of past incentive mechanisms and associated earnings claims.

For the reasons stated above, we find the settlement agreements to be in the public interest and approve them in their entirety. The shareholder earnings that we authorize today via the settlement agreements total $271.6 million for the four utilities combined, not including interest and FF&U. Conservatively, we estimate that the energy efficiency programs undertaken to generate this level of earnings have produced $670 million in total net resource benefits to all ratepayers, i.e., resource benefits minus costs. This level of net resource benefits is derived by applying the shared-savings formula to the pending earnings claims associated with programs subject to the pre-1998 shared-savings mechanism. It does not reflect the savings or net resource benefits associated with the pending low-income energy efficiency programs or non-low income energy efficiency programs subject to milestone incentives from 1999-2001.[45] In keeping with the concept of a shared-savings incentive mechanism, the utility earnings we authorize today via the settlements are much less than the savings ratepayers have already received by deferring or avoiding more costly supply-side investments with energy efficiency.

Today's decision resolves all outstanding issues in the above-captioned proceedings. Therefore, by order today, we close this consolidated docket.

Based on the earnings we authorize today, the utilities are required to present updated calculations of total net resource benefits and the benefits to

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[45] Table 1 subtotal for Pre-1998 EE ("principal") = $201.197 million, divided by .30 (the shared savings percentage) yields $670.657 million in net resource benefits total.

ratepayers over and above program costs and the payout of shareholder incentives from these past energy efficiency activities. In D.03-10-057 (Attachment 4), we presented a format that facilitated these calculations for program activities implemented or initiated during the 1994-1997 period. This same format may be useful with respect to programs subject to the shared-saving incentive mechanism.[46] The utilities should jointly file and serve the updated calculations together all underlying work papers as a compliance filing in R.01-08-028 within 30 days from the effective date of this decision. The assigned ALJ will provide further direction to the utilities on how to report this information in a consistent format, and may for good cause modify the filing date for this information.

6. Comments on Draft Decision

The draft decision of ALJ Gottstein on this matter was mailed to the parties in accordance with Public Utilities Code Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on October 3, 2005 by WEM, PG&E, SCE and jointly by SDG&E/SoCalGas. Replies to WEM's opening comments were filed on October 11, 2005 by PG&E, SCE and jointly by SDG&E/SoCalGas.

We have reviewed the comments on the draft decision. The utilities' opening comment briefly discuss their support for the draft decision. With respect to the comments submitted by WEM, we find no basis for modifying the determinations in that decision, as WEM urges. WEM's comments reargue the

[46] See also page 29 discussion of those calculations.

positions it has taken throughout this proceeding, as well as in other energy efficiency-related proceedings. We are still unpersuaded by its arguments.

We note that WEM has impermissibly exceeded the 15-page limitation of Rule 77.3. Further, WEM's comments constitute no more than reargue of its previous positions during the proceeding. Accordingly, WEM's comments do not comply with Commission Rule 77.3, which require that comments be limited to 15 pages and that there be no reargument of previous positions. As to the latter, Rule 77.3 provides that such comments *"will be accorded no weight and are not to be filed."* (Emphasis added.)

Moreover, the last five pages of WEM's comments argue that it has substantially contributed to the proceeding. Comments on draft decisions are not the appropriate place to present a request for intervenor compensation

WEM makes a number of unsupported and speculative allegations, of which the most egregious is WEM's allegation that PG&E wrote parts of the draft decision.[47] We reject these allegations as untrue, and thus, they have no merit. We note that such untrue, unsupported and speculative allegations could be considered disrespectful conduct. We remind WEM that in participating in Commission proceedings, a party is subject to requirements set forth in Rule 1 of the Commission's Rules of Practice and Procedure, and a party must act accordingly. Any violation or violations of Rule 1 may subject a party to

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[47] In addition, as noted in the utilities' reply comments, WEM makes several unfounded accusations about program measurement, including the allegation that "sweetheart deals severely tarnishes the credibility of the savings claims." WEM also continues to allege that the audit findings revealed serious wastefulness in utility programs, yet still provides no reference to any audit finding that supports this allegation. See *WEM Comments on AEAP 2005 Draft Decision,* October 3, 2005, pp. 5-6, 9.

sanctions, including but not limited, to prohibiting a party from participating in a Commission's proceeding, disallowing intervenor's compensation for unreasonable conduct, rejecting pleadings, holding a party in contempt under Public Utilities Code Section 2113, and any other sanctions permitted under the law.

7. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Meg Gottstein is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission's review of earnings claims associated with the pending AEAPs have been delayed due to (1) limited resources in the wake of the electric crisis, (2) the Commission's inquiry into whether to reopen and reconsider the pre-1998 shared-savings mechanism, and (3) the necessary process undertaken to supplement the record with Energy Division's verification of retention and persistence study results, technical degradation factor assumptions and program milestone accomplishments.

2. The proposed settlements would resolve all pending earnings claims in this consolidated proceeding. In addition, for energy efficiency programs subject to the pre-1998 shared savings mechanism, the settlement agreements would resolve the earnings claims for energy efficiency activities undertaken in program years that are scheduled to receive their final earnings installments in future AEAPs.

3. The record in this proceeding provides an extensive review of the earnings claims associated with the pre-1998 shared savings mechanism. No aspect of this review refutes the reasonableness of these claims and, in fact, the review by

Energy Division's consultant indicates that the utilities may have slightly underestimated the lifecycle savings associated with these energy efficiency programs, and therefore underestimated their earnings claims.

4. The record in this proceeding provides an extensive review of the 1999-2001 milestone-based incentive earnings claims by Energy Division's consultant, as well as by the CEC for selected milestones. As described in this decision, those reviews conclude that a very small percentage of the earnings claims would be potentially at risk, i.e., subject to downward adjustments.

5. WEM's contention that the 2005 DEER updates for CFL expected useful life (EUL) assumptions should be retroactively applied to PG&E's pre-1998 shared-savings earnings claims is not supported by the record. PG&E's residential CFL program was exclusively an information-only program during those program years. PG&E's non-residential CFL installations during the program years covered by the settlement agreement have significant technological differences and applications from those included in the studies that WEM cites, and composed a very small percentage (on the order of 2%) of the energy savings.

6. Contrary to WEM's assertions, the 2005 updated (EUL) assumptions for non-CFL energy measures also do not suggest that PG&E's earnings claims are based on unrealistic savings persistence assumptions. With few exceptions, the 2005 updated EUL assumptions for non-CFL energy efficiency measures have generally remained the same or increased relative to the pre-1998 EM&V protocol assumptions used to calculate savings and associated net resource benefits for the bulk of PG&E's pending AEAP earnings claims.

7. Discounting the stream of earnings claims that would be recovered in future AEAP installments back to the present captures the benefit of the time

value of money associated with settling these claims today. The discounts from nominal earnings claims proposed in the settlement agreements are intended to reflect both the benefit of the time value of money associated with collecting some earnings claims before their scheduled recovery period and uncertainty about future recoveries.

8. WEM's approach to the discounting of PG&E's earnings claims assumes that payments to PG&E for future earnings installments will not be made until 2010, and that the future payment will be discounted at 8.5%. This results in a significant reduction in the nominal earnings claims for the time value of money, since it assumes that the bulk of the payments that are due to PG&E in early years accrue interest at a relatively low rate (less than 1.4% per annum), while they are discounted at a relatively high rate, 8.5%.

9. WEM provides no basis for the assumptions underlying its calculations.

10. A more reasonable assumption for this calculation would be that the AEAPs would be processed each year as expected, and that the discount rate would equal PG&E's weighted cost of capital (7.9%).

11. Applying the proper starting time and the appropriate discount rate to the nominal earnings claims reveals that the settlement amounts for PG&E, as well as for the other utilities, are lower than the resulting discounted claims.

12. The utilities' plans to amortize the authorized earnings over time without adding interest as these amounts are amortized will dampen the time value of money benefit associated with the settlements.

13. Contrary to WEM's assertions, none of the July 9, 2004 financial and management audit findings suggest that the ORA/PG&E settlement agreement is unreasonable and should be rejected by this Commission.

14. With respect to both the pre-1998 shared savings and 1999-2001 milestone earnings claims, the record suggests downward adjustments in earnings of approximately $1.2 million for PG&E, $260,000 for SCE, $475,000 for SDG&E and $655,000 for SoCalGas. This does not include the uncertainty with respect to the last round (related to the fourth earnings installment) of persistence/retention studies that would be submitted for some of the program years in subsequent AEAPs.

15. Even if WEM's argument regarding CFL persistence assumptions were correct in the extreme for PG&E's 1999-2001 milestone-based earnings claims—i.e., that zero savings should be attributed to all CFLs installed during those years, PG&E calculates that the impact on its earnings for these program years would only be on the order of $2.6 million. This is far less than the discount to pending earnings claims ($37 million in nominal dollars) that ORA and PG&E have agreed to in their settlement.

16. Even also assuming in the extreme that all LIEE pending earnings claims are potentially at risk pending the results of Energy Division's verification efforts, the settlement amounts would still be significantly less than the adjusted earnings claims, both in nominal and discounted dollars for each of the utilities. Moreover, Energy Division's verification of the LIEE claims could also result in higher earnings for the utilities if actual installations in 2000 were higher and/or if recorded costs for 1999-2001 were lower than originally projected at the start of each program year.

17. The whole record in this proceeding suggests that the utilities are settling for significantly less than would likely be due them for energy efficiency and LIEE activities undertaken through program year 2001 and 2003, respectively.

18. This represents a real cost savings to ratepayers or, put another way, allows ratepayers to retain a greater share of the net benefits from energy efficiency investments than anticipated.

19. The applications in this consolidated proceeding have included forecasts of total future incentives for the program years addressed in each filing, and the gross costs of these future claims has been explicitly considered in the record.

20. The settlement agreements address concerns over potential rate impacts associated with the payout of earnings by proposing rate recovery mechanisms that will amortize these earnings over time or consolidate them with other rate changes, in order to minimize or completely eliminate the need for any rate increases.

21. The utilities have clarified that no additional interest will accrue as the authorized earnings are amortized for rate recovery purposes.

22. Under the settlement agreements, the utilities will still perform the various measurement and evaluation studies required under the pre-1998 protocols and established by Commission decisions.

23. The settlement agreements are fully consistent with law and prior Commission decisions.

24. In addition to other benefits described in this decision, approval of these settlements agreements will reduce the expense of litigation, conserving scarce Commission resources, and also allow parties to reduce the risk that litigation will produce unacceptable results.

25. Implementing the terms of the settlement agreements will also allow this Commission to consider future risk/reward mechanisms for energy efficiency unencumbered by the remnants of past incentive mechanisms and associated earnings claims.

26. In keeping with the concept of a shared-savings incentive mechanism, the utility earnings authorized today via the settlements are much less than the savings ratepayers have already received by deferring or avoiding more costly supply-side investments with energy efficiency.

27. WEM's comments on the draft decision exceed the page limitations for comments and reargue positions WEM has already taken in this and other energy efficiency proceedings.

28. Pursuant to Rule 77.3, comments that merely reargue previous positions will be accorded no weight and are not to be filed.

29. As discussed in Section 6, WEM's unsupported and speculative allegations that the Commission permitted PG&E to draft portions of the draft decision is untrue.

30. Today's decision addresses all remaining issues in this consolidated proceeding.

Conclusions of Law

1. As discussed in this decision, WEM's submittals in response to the utilities' 2000/2001 AEAP applications were not responsive to the issues in this proceeding.

2. WEM's objections to the ORA/PG&E settlement agreement are without merit. As discussed in this decision, WEM's comments on the draft decision violate Rule 77.3 and should be accorded no weight.

3. The settlement agreements are reasonable in light of the whole record, consistent with law and in the public interest. They should be approved in their entirety.

4. This consolidated proceeding should be closed.

FINAL ORDER

IT IS ORDERED that:

1. The December 30, 2004 Settlement Agreement attached to the Motion of Joint Parties (Southern California Gas Company and San Diego Gas & Electric Company and Office of Ratepayer Advocates) for Adoption of Settlement Agreement, dated December 30, 2004, is approved.

2. The April 4, 2005 Settlement Agreement attached to the Motion of Pacific Gas and Electric Company and the Office of Ratepayer Advocates for Adoption of a Settlement Agreement, dated April 4, 2005, is approved.

3. The June 10, 2005 Settlement Agreement attached to the Motion of the Office of Ratepayer Advocates and Southern California Edison Company for Adoption of a Settlement Agreement, dated June 13, 2005, is approved.

4. No additional interest shall accrue as the authorized earnings approved today are amortized for rate recovery purposes.

5. As discussed in this decision, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company ("the utilities") shall update the calculations of total net resource benefits and the benefits to ratepayers over and above program costs and the payout of shareholder incentives from energy efficiency activities, based on the earnings authorized by today's decision. The utilities shall jointly prepare this updated information and file and serve it as a compliance filing in Rulemaking 01-08-028 within 30 days from the effective date of this decision. The assigned Administrative Law Judge shall also provide further direction to the utilities on how to report this information in a consistent format and may, for due cause, modify the due date for this filing.

6. Application (A.) 00-05-002, A.00-05-003, A.00-05-004, A.00-05-005, A.01-05-003, A.01-05-009, A.01-05-017, A.01-05-018, A.02-05-002, A.02-05-003, A.02-05-005, A.02-05-007, A.03-05-002, A.03-05-003, A.03-05-004, A.03-05-009, A.04-05-005, A.04-05-008, A.04-05-010, A.04-05-012 are closed.

This order is effective today.

Dated October 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

Gottstein Tables 1-6 and Attachments 1-6