



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Examine
the Commission's Post-2008 Energy
Efficiency Policies, Programs, Evaluation,
Measurement, and Verification, and
Related Issues.

R.09-11-014
(Filed November 20, 2009)

**OPENING COMMENTS OF THE BERKELEY CENTER FOR LAW, BUSINESS AND
THE ECONOMY**

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Dated: January 25, 2012

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Pursuant to the *Administrative Law Judge's Ruling Regarding Energy Efficiency Financing*, filed January 10, 2012 ("ALJ Ruling"), The Berkeley Center for Law, Business and the Economy ("BCLBE") hereby submits its opening comments in the above captioned proceeding.

I. PROCEDURAL BACKGROUND

On November 20, 2009 the California Public Utilities Commission ("CPUC") initiated Rulemaking ("R.")09-11-014 to address, among other matters, the post-2008 energy efficiency policies and programs.¹ On January 10, 2012 assigned Administrative Law Judge Julie Fitch issued a ruling requesting comment on various energy efficiency financing proposals.² The ALJ Ruling requests immediate comment regarding the general policy goals that will guide the development of the 2013-2014 energy efficiency program portfolios and comment regarding certain strategic policy questions to help staff develop content for February workshops.³ Responses to program design and operational questions and detailed program implementation questions will be submitted after the February workshops.

¹ R.09-11-014, *Order Instituting Rulemaking*, filed November 20, 2009.

² R.09-11-014, *Administrative Law Judge's Ruling Regarding Energy Efficiency Financing*, filed January 10, 2012.

³ ALJ Ruling, p. 16.

II. ABOUT BCLBE

BCLBE is a research center of the University of California, Berkeley School of Law. BCLBE serves as a hub for rigorous, relevant, empirically based research and education on the interrelationships of law, business, and the economy. BCLBE's work includes study and analysis of financial markets and securitization of asset backed loans.

III. COMMENTS OF BCLBE IN RESPONSE TO STRATEGIC POLICY QUESTIONS

The ALJ Ruling requests comment regarding the proposed general policy goals as well as comment regarding certain high level questions, including whether there are any technical or financial barriers to the proposed on bill repayment mechanism for loans made by lenders other than borrower's utility.⁴ BCLBE generally supports the CPUC staff goals identified in the ALJ ruling and applauds the CPUC for its initiative in examining the energy efficiency financing issue.⁵ BCLBE is concerned, however, that, within the context of commercial energy efficiency retrofits, current commercial mortgage underwriting techniques are not sufficiently developed to effectively leverage private funds.⁶

BCLBE supports staff's OBR proposal and supports the general approach advocated by the Energy Division staff proposal on Desired Energy Efficiency Financing Activity in 2013-14. BCLBE is concerned, however, that the magnitude of private investment needed to reach the state's energy efficiency goals dwarfs the amount of capital that will be made available to the market using current underwriting and efficiency savings calculation techniques. We respectfully submit that to attract large private capital pools to the energy efficiency improvement market the CPUC, the IOUs and private financial institutions will have to work together to: (1) develop better underwriting standards and tools that evaluate the energy consumption profiles of buildings, instead of or in addition to the approach that evaluates a

⁴ ALJ Ruling, p. 18.

⁵ ALJ Ruling, p. 18.

⁶ BCLBE's comments are addressed to questions 2, 4, and 12 in the ALJ's Ruling.

device by device retrofit and selects retrofits which, based on current rates and usage, are predicted to be able to self-amortize a subsidized loan through billed usage reductions; (2) develop better underwriting standards and tools that evaluate whether industry segments, such as large campus and institutional based users, big box users, and electricity intensive technology users, are willing and able to alter consumption profiles through operational management; and (3) develop standards for underwriting, disclosure and documentation to securitize retrofit loans. Absent modification of the private lender underwriting process, OBR is unlikely to have a significant impact on energy efficiency retrofits in the commercial sector.

Dated: January 25, 2012

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