FILED
08-10-12
04:59 PM

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

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.	Rulemaking 09-11-014 (Filed November 20, 2009)

**WOMEN'S ENERGY MATTERS
COMMENT ON CCA/ REN PROPOSAL PROCESS**

August 10, 2012

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WOMEN'S ENERGY MATTERS
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Women's Energy Matters (WEM) appreciates this opportunity to comment on the process laid out in the June 20, 2012 Ruling in this proceeding, "Regarding Procedures for Local Government Regional Energy Network Submissions for 2013-14 and for Community Choice Aggregators to Administer Energy Efficiency Programs."

Introduction

WEM has been involved in the development of Community Choice Aggregation for more than a decade. We supported passage of the law in 2001 and 2002, and worked to ensure that energy efficiency was included in the law. WEM has been active in mobilizing community support for the formation of California's first CCA program, Marin Clean Energy, and the agency that operates it, the Marin Energy Authority (MEA), as well as other CCAs that are still in development.

WEM has extensively documented PG&E's use of ratepayer funded energy efficiency to undermine local energy and energy efficiency self-determination, including Marin Clean Energy, Clean Power SF (the CCA effort in San Francisco), and the municipalization efforts in Yolo County and San Francisco. We have reported on PG&E's misuse of EE funds in multiple proceedings before this Commission.

WEM is mindful that for the first time since 2003, the Commission is providing an opening for CCA EE programs to exist. Interestingly, it provides opportunities for CCAs to apply for funding under the provisions of §381.1(a) *or* to elect to administer EE funds under § 381.1(e) and (f). [1] Ruling, p. 8. It also notes:

> When applying under § 381.1(a), CCAs may propose programs within or even beyond their geographic areas, to serve their own electricity customers or to serve those who may have opted out of CCA service within their geographic areas… Ruling, p. 8.

It also notes, "Under the provisions of subsection (f), the Commission's role appears to be limited to certifying that the CCA's plan meets all of the objectives listed." WEM believes that that the Commission's role under 381.1(a) is only slightly less

[1] The Commission should fully address the provisions of AB 117 for "any party" to apply to administer EE funds.

limited, providing mainly for the Commission to "weigh the benefits of the party's proposed program to ensure that the program meets the following objectives…."

The clause "In determining whether to approve an application" suggests that the Commission may or may not approve the application — but beyond that, the CCA program parameters and operations are the business of the CCA board, not the Commission.

Other provisions in the Ruling wrongly erected major barriers to CCA EE programs, as described below.

We are concerned that the upside down process, which includes the Ruling, has created problems for CCAs that may be very difficult to unravel.

Ruling wrongly shrinks EE funds for CCAs to a fraction of what they deserve

WEM believes that the Ruling wrongly shrinks EE funding for CCAs to a fraction of what they should rightfully have.

Previous actions by CPUC's Energy Division (ED) regarding 2012 EE programs proposals of the Marin Energy Authority (MEA), set up certain troublesome patterns that persist in the Ruling. Resolution E-Draft (addressing MEA's 2012 programs) said that it wasn't setting a precedent, but in fact procedural tangles have been created that will be difficult to unravel, setting a de facto precedent. Whatever Ruling or decision comes out of the current process should provide a clear path to reversing these precedents.

Ruling violates principles of common sense and fairness, as well as law and record

The Ruling ignored or violated basic principles of common sense, fairness, law, and the record in EE proceedings.

CCA customers should be spared paying for utility programs that are used to undermine and compete with CCAs.

The Commission itself has suggested other options. D0501055 noted that the Commission might relieve CCA customers of the EE surcharges. Presumably, that would mean that the CCA could levy its own EE surcharge, for its own programs, rather than being forced to participate in the IOU programs.

The Ruling proposed a definition of "regional programs" that has no basis in law or record, and also conflicts with the definition of "Regional Energy Networks."

"Regional programs" – Programs offered to all eligible

> customers throughout an individual IOU's service territory in which a CCA is offering service, but not necessarily offered in other IOU service territories. This includes state and institutional government partnerships. This does not include any programs that are offered only in a geographic subset of an IOU territory. Ruling, p. 11.

Regional Energy Networks (RENs) will the first "regional" programs, but the definition of "Regional" in the Ruling would disqualify RENS, which are currently offered only in a "geographic subset" of an IOU territory. However, "state and institutional government partnerships" which are included, only exist in certain communities.

"Regional" programs were not mentioned in the description of types of programs in the May 2012 decision:

> Statewide programs are implemented consistently statewide, in terms of the program's name, design, incentive structure, etc., with restrictions to limit variation among the IOUs. (The IOUs may, and often do, contract the delivery of these programs to other firms.) Each statewide program has one or more sub-programs targeting specific measure groups, market segments, or program strategies. Third-party programs are those that the IOUs competitively bid to outside firms, which then deliver these programs under performance contracts. Pursuant to D.05-01-055, the IOUs must devote at least 20% of their portfolio budgets to competitively bid third-party implementers. Government partnerships are implemented through state, regional or local government entities; these are typically acquired through open solicitations, as well. Finally, local programs are those that an individual IOU implements exclusively in its service territories, and include such programs as On Bill Financing. The 2010-2012 portfolio budgets are allocated approximately as follows: statewide programs 60%, third-party programs 20%, government partnerships 10%, and local programs 3%. This decision does not speak to local programs, other than On Bill Financing. D1205015, p. 9, fn. 6.

There are competing definitions of "statewide" EE programs that have more validity than the definition in the ruling.

WEM believes that the proper interpretation of "statewide" in AB117 is the "generic" definition, which refers to EE programs offered by various publicly owned entities as well as investor-owned entities in the state. The *2009 Integrated Energy Policy Report* of the California Energy Commission, used the proper, generic meaning of "statewide" — i.e. throughout the whole state — for example in the following passage:

> As required by AB 2021, each year the publicly owned utilities report their efficiency expenditures and energy savings to the Energy Commission, which evaluates progress. In addition, every three years, publicly owned utilities identify all potentially achievable cost-effective electricity energy savings and establish annual targets for energy efficiency savings and demand reduction for the next 10-year period. Coordinating with the CPUC for the IOUs and the publicly owned utilities, the Energy Commission develops statewide energy efficiency potential estimates and adopts targets for California's IOUs and publicly owned utilities. 2009 IEPR pp. 187-88.

CCAs should receive 100% of EE funds, and be able to choose how to "accommodate statewide and regional programs"

I believe the correct interpretation of AB117 would be for CCAs to get 100% of the EE funds paid by customers in the areas where they choose to run EE programs. They should be able to choose how to "accommodate statewide and regional programs," potentially contracting with publicly-owned utilities, IOUs, or others, for "statewide" or regional programs — or offering similar programs themselves.

Currently, each utility offers its own version of "statewide" programs, and they're not exactly the same.

At a minimum MEA should receive at least 40%, rather than 14 or 15% of the EE money that their ratepayers paid, as draft Resolution E-4518 allows.

The Ruling used private interpretations of SB790

SB790, passed in 2011, attempted to restrain utility interference with CCAs in a number of ways. The Commission was tasked with the implementing the law, but there has been no decision as yet in that proceeding (R1202009) — indeed, a scoping memo was only issued this week. Thus, SB790 has yet to complete a public process at CPUC.

Even before the Ruling, back in February, 2012, when MEA submitted its first "election" for energy efficiency funds (for 2012), CPUC staff asked MEA to refrain from making a request at all for 2012 – i.e., to wait to apply for 2013-14 at the same time as utilities. MEA pushed ahead, since SB790 allowed them to "elect" to administer EE funds.

The June 20, 2012 Ruling pushed CCAs to submit proposals for 2013-14 EE funds on July 16. We note that this gave LESS THAN ONE MONTH FOR CCAS TO PREPARE A VERY COMPLEX PROPOSAL. This was extremely unfair.

Based on their private interpretation of SB790, CPUC staff insisted that MEA subtract not only the so-called "statewide" programs of the utilities (60%), but also utility programs offered throughout their territories, which staff suddenly defined as "regional."

CCAs should not have to wait for the end of an EE cycle to start administering EE (which could be as much as 3 - 5 years after they begin to serve customers.)

WEM's comments in the EE applications relevant here

We include some of our introductory comments on EE applications, below, which addressed some of the flaws in the processes proposed by the Ruling, and some of the procedural background in this and other proceedings.[2]

Historic initiatives marred by clumsy, unfair, and potentially destructive process

This is the first time that Community Choice Aggregators (CCAs) and Regional Energy Networks (RENs) have been given a chance to propose independent programs. WEM celebrates this little chink finally opening up in the prison wall of investor-owned-utility EE monopolies, but we have serious concerns about the Commission's irregular, unduly compressed processes forcing CCAs to present hurried proposals, and to engage in backroom struggles with uncooperative utilities wherein CCAs were robbed of most of their funding.

Today's comments are supposed to be focused on the CCA, REN and IOU proposals, while comments on the application *process* put forward in the June 20, 2012 Ruling in R0911014 are scheduled *later*. This alone is a troubling and unusual reversal,

[2] WEM requested an extension of time to file today's comments, because we have been very busy with evidentiary hearings in the long-term procurement plans in addition to commenting on EE applications. We have not heard back on the request. We regret the partial overlap with earlier comments that we have not had time to edit out.

but is impossible to comment properly on the single CCA proposal without considering the context — including the fact that there has been no recent opportunity to discuss the Commission's relationship with CCAs and EE, and much has changed since 2010; and the fact that the ruling gave CCAs *less than one month's notice* of the opportunity to file very complex proposals (due July 16th). Local governments have previously commented in EE proceedings that they need time to vet things through their processes, which operate on regular schedules, require public notice, and are difficult to change.

D1205015 mentioned that REN proposals would be due around the same time as utilities. Although this lacked specificity, at least there was some notice. CCA EE proposals were not mentioned at all in D1205015; the first notice for CCAs was the June 20th ruling. It's only because the MEA was prepared to jump on any opportunity that it was able to produce a proposal at all. Even, so, the proposal had to be put together so quickly that there was scant opportunity for public review in Marin and the Board was forced to call a special meeting to approve it.[3]

The July 13, 2012 Ruling asked us to comment on all of these proposals on an expedited timeline — less than one-month for utility proposals and barely two weeks for CCA and REN proposals.

Presumably these irregularities were inadvertent, but the Commission will need to provide for considerable modification, enhancement, and protection of the CCA and REN proposals to see that utilities are not allowed to further cripple their competition because of the Commission's clumsy, unfair and potentially destructive process.

CCA proposals

It is debatable whether CCA proposals should even be considered in IOU Applications

WEM believes it is debatable whether the CCAs proposals should be considered in the Application proceeding. The AB117 criteria for EE and CCA are different from the Commission's criteria for utility programs (and RENs). Furthermore, a CCA has its own

[3] Since February, Marin Energy Authority (MEA) has been trying to get CPUC approval for a CCA EE program starting in 2012 and potentially extending through the bridge period. ED staff has been working on it since then, trying to get data from PG&E to back up the budget figures, and requiring MEA to make modifications. The only inkling to other parties that this was happening was Draft Resolution E-4518, served on July 23, 2012. It's likely that most parties didn't even realize what this was, and missed the opportunity to comment.

governing board, which has the authority to determine everything it does, with few exceptions. The Commission has recognized that it has virtually no role in determining how a CCA procures its resources, or what resources it procures — other than checking that it meets the minimum Renewable Portfolio Standard.[4]

WEM believes that energy efficiency, which is after all "number one in the loading order of *resources"* should be treated the same way, as we discuss further below.

However, because utilities are so incredibly possessive around energy efficiency, lawmakers were pressured to include provisions in the Community Choice statute, AB117 (2002) called on the Commission to ensure that CCA programs met certain criteria, which were vague and open to various interpretations:

> PU Code Section 381.1 (a) …In determining whether to approve an application to become administrators *and subject to an aggregator's right to elect to become an administrator pursuant to subdivision (f)*, the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the party's proposed program to ensure that the program meets the following objectives:
> (1) Is consistent with the goals of the existing programs established pursuant to Section 381.
> (2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.
> (3) Accommodates the need for broader statewide or regional programs.

CCAs must be able to decide how to "accommodate the need for broader statewide or regional programs"

WEM believes that the AB117 requirement to "accommodate the need for broader statewide or regional programs" could be met in different ways — and most importantly, *it must be up to the CCA to decide how to do that*. It's the Commission's job only to review a CCA's EE proposal to see that the CCA has such a plan.

Energy efficiency is a resource that the CCA must have full rights to use in procurement, like all other resources. For many years, IOUs have squandered the funding for the EE resources on extraneous objectives, like trying to obliterate efforts to

[4] See, for example, the major CCA decision D0512041.

form CCAs or municipalize. IOUs have failed to support the use of EE to meet any particular need in procurement — instead, they have supported barriers, such as making EE ineligible to serve as capacity resources. By contrast, ISO-New England allows EE and other demand resources to serve as capacity.

Marin Energy Authority plans to pioneer the use of EE as a "demand reduction" procurement resource in California:

> Rather than targeting property owners, this program will be tailored to third party vendors who bid energy savings to MEA as a way to reduce MEA resource adequacy procurement.
> The Standard Offer will establish a cost to be paid for demand reduction in the MEA region and will provide the opportunity for third party vendors to submit a bid to sell the demand reduction to MEA. MEA PIP, p. 82.

Preventing CCAs from deciding how to "accommodate the need for statewide or regional programs" prevents CCAs from being able to use EE as a resource. It is only possible for a CCA to make its own choices about resources to serve its customers if it controls 100% of its customers' resource-related payments — which includes energy efficiency.[5]

California currently lacks true "statewide" or "regional" programs

No matter what name the Commission attaches to IOU programs, California currently lacks true "statewide" programs. Other states do have EE programs that are truly "statewide" — i.e. offered to all ratepayers in the state, for example Oregon, Vermont or New York. That type of program is clearly what the AB117 intended by that term. By contrast California is balkanized, with 75% investor-owned and 25% publicly-owned utilities offering different EE programs. For example, the only sense that a residential EE program in California could be properly called "statewide," would be a generic program category— *i.e. a program that saves energy in residential settings.*

A CCA could easily "accommodate the need" for each of the categories of programs that the investor-owned utilities currently offer, which the Commission falsely calls "statewide." A CCA should be able to offer such programs itself, or

[5] WEM believes that SB790's language "except those funds collected for broader statewide and regional programs *authorized by the commission*" is in conflict with AB117 and would not stand up in court.

<u>contract with publicly-owned utilities (POUs) — or contract with IOUS — to whatever extent it chooses to participate in their programs.</u>

<u>A CCA would have a similar range of choices for "regional" program, which also exist only in a generic sense.</u>

MEA's PIP offers examples of how this would work, in its relationship with BayREN. In some areas it chooses to participate in BayREN programs, in others it chooses to operate separately. For example:

> The MFEEP has and will continue to coordinate closely with BayREN for planning and project execution to ensure that both parties share best practices and experiences to date, and to ensure there is no duplication of funding. **Customers within the MEA service area (County of Marin and City of Richmond) will not be served by the BayREN multi-family program.** MEA PIP, p. 15.

The definition of "regional" programs in Draft Resolution E-4518 (i.e. an IOU's programs offered throughout its territories) *does not exist in the record*. Interestingly, "Regional Energy Networks" were authorized in D1205015 but they weren't defined as regional programs in that decision — which did not even define "regional programs" as a program category:

> Statewide programs are implemented consistently statewide, in terms of the program's name, design, incentive structure, etc., with restrictions to limit variation
> among the IOUs. (The IOUs may, and often do, contract the delivery of these programs to other firms.) Each statewide program has one or more sub-programs targeting specific measure groups, market segments, or program strategies. Third-party programs are those that the IOUs competitively bid to outside firms, which then deliver these programs under performance contracts. Pursuant to D.05-01-055, the IOUs must devote at least 20% of their portfolio budgets to competitively bid third-party implementers. Government partnerships are implemented through state, regional or local government entities; these are typically acquired through open solicitations, as well. Finally, local programs are those that an individual IOU implements exclusively in its service territories, and include such programs as On Bill Financing. The 2010-2012 portfolio budgets are allocated approximately as follows: statewide programs 60%, third-party programs 20%, government partnerships 10%, and local programs 3%. This decision does not speak to local programs, other than On Bill Financing. D1205015, p. 9, fn. 6.

Brief procedural background

WEM provided a detailed procedural history of the CCA/EE issues in our 10-29-10 Comments on the Workshop Report in R0911014. Briefly: D0307034 met the statutory deadline to set up a process for CCAs to apply for EE funds under the procedures in place for independent programs in 2002-2006, but eliminated that process two years later when it returned control of all EE back to utilities. D0307034 noted that it was a very narrow decision that would need to be revisited after other CCA issues were decided, which happened two years later. That decision, D0512041 determined among other things that CCAs have autonomy to make decisions on procurement.

In part because of PG&E's seemingly never-ending stream of dirty tricks involving energy efficiency funds, only one CCA has managed to get up and running, in ten years. That CCA, the Marin Energy Authority, along with other local governments and public entities that were trying to create CCAs, went back to the legislature in 2011 to seek improvements and protections for CCA formation and development.

In late 2010, the Commission held a brief and incomplete phase devoted to EE and CCAs in the R0911014 Rulemaking. During that process, CCAs were under great pressure to accept more restrictions on CCA EE programs — which they mostly refused. Lawmakers were under similar pressures when the bill, SB790, went through the legislature in 2011.

Marin Energy Authority's Motion and PIP

Pursuant to the June 20, 2012 Ruling, MEA submitted a proposal under the provisions of 381.1(a) — in other words, the original CCA EE mandate. However, the Ruling also required CCAs to meet the criteria for RENs, adopted in D1205015. MEA Motion, p. 2. WEM believes that this requirement was without foundation in the record or CCA law.

After many years of enduring PG&E and other IOUs battering against CCA-EE programs, MEA wanted to get *some* EE programs up and running to demonstrate what it could do, without having to spend more months, or years, arguing before a Commission that has displayed little interest in CCAs rights regarding EE. This was evident in the 2010 process in R0911014, and the six months that MEA has been trying to get approval for 2012 programs, wherein it has met with unreasonable and illegal demands by uncooperative utilities and ill-supported ED staff.

Thus MEA attempted to craft a limited proposal for 2013-14, hoping that it could more easily obtain CPUC support. WEM thinks the proposal could and should be considerably expanded, to provide the benefits that MEA customers deserve — especially after all the years of PG&E misuse of EE funds to fight MEA.

The Commission's proper role under AB117, and confirmed under SB790, is to control IOUs to keep them from interfering with and harming CCAs.

What happened instead, in the past few months, was that *CPUC staff imposed restrictions on MEA's EE program, to prevent little MEA from interfering with the behemoth PG&E.* First it eliminated the 60% of the IOU funds that were designated "statewide" and then, with no basis in the record, defined "regional" programs as the utility programs offered throughout their territories — and on that basis shrank MEA's funding to just 14% for its 2012 program.[6]

(Note that AB117 said that CCAs should accommodate the need for broader statewide OR regional programs – *not both.)*

MEA's first EE proposal, which was submitted in February 2012, anticipated MEA fully taking charge of EE in Marin beginning in 2013, including absorbing the roles of Marin Energy Watch partnership, which would be discontinued. There is no good reason why Marin ratepayers should have to spend EE funds on a duplicative process under utility control that restricts rather than enhances Marin's ability to offer more comprehensive and innovative EE programs.

MEA offers important things that PG&E and other utilities resist or refuse to provide

In addition to pioneering EE as a genuine demand reduction resource in the Standard Offer as well as the Single Family programs,[7] MEA plans to get started right away on its On-Bill-Repayment (OBR) financing plan, including single and multi-family residential properties.

By contrast, PG&E wants to restrict OBR to commercial properties, and plans to delay full rollout of even that program until 2015. Edison is also resistant to providing financing programs, as discussed below.

MEA is prioritizing EE for residential customers, who have been short-changed for years by utilities, as WEM discusses below in the IOU section. Not only that, MEA

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[6] See Draft Resolution E-4518, 7-23-12.
[7] The Single-Family Utility Demand Reduction Program will save both utility and water. MEA PIP, p. 11.

is *starting* with multi-family programs — which utilities always leave to last, and which got the very short end of the stick in federally-funded EUC programs.

WEM recommendations regarding MEA's proposal

- *The Commission should award 100% of the 2013-14 EE funds from Marin ratepayers to MEA* (and 100% of Richmond ratepayers by mid-2013, when those customers will be rolled into MEAs system).
- The Commission should provide an opportunity (with sufficient time to take advantage of it) for MEA to revise and expand its EE proposal if it so desires.
- To the extent that MEA *chooses* to contract with other entities to conduct programs in MEA territory, including PG&E, BayREN and others, it should be able to do so — and it should be able to consider other options if it prefers.

MEA holds the record for the highest renewable portfolio standard (RPS) in California — 27% in its very first year, and 50% today. It blew far past all the IOUs from day one. It should be encouraged to show the state what it could do with energy efficiency programs. MEA customers who have witnessed and fought years of dirty tricks at the hands of PG&E's energy efficiency organization should not be forced to have their EE funds administered by the utility or be deprived of non-utility EE options.

Dated: August 10, 2012

Respectfully Submitted,

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