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REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S PROPOSED DECISION PROVIDING GUIDANCE ON 2013-2014 ENERGY EFFICIENCY PORTFOLIOS AND 2012 MARKETING, EDUCATION, AND OUTREACH

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I. INTRODUCTION AND BACKGROUND

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these Reply Comments on the Proposed Decision Providing Guidance On 2013-2014 Energy Efficiency (EE) Portfolios and 2012 Marketing, Education, and Outreach of Administrative Law Judge (ALJ) Farrar (PD).[1]

II. DISCUSSION

A. Energy Upgrade California

1. Market transformation plan and expert

DRA shares National Association of Energy Service Companies' (NAESCO) concerns about the current Energy Upgrade California (EUC) market and stress on the need for a market transformation plan and expert to ensure EUC to success. Most parties, in fact, recognize the need for deep retrofit programs in accomplishing EE and Greenhouse Gas (GHG) reduction goals,[2] while acknowledging what the California Center for Sustainable Energy (CCSE) articulates as the "inherent complications that arise as these deeper savings efforts meet with the realities of near-term cost-effectiveness requirements."[3] DRA understands the practical concern that, "the problem that a Deep Retrofit program is asking the building owners to put substantial capital at risk in a bet that the market valuation of EE improvements will be transformed in the near future."[4]

NAESCO raises another valid concern of a Regulator-run EE program: "The Energy Division (ED) is a research and policy organization, staffed with people that are highly skilled at those functions. It is not a business management organization."[5] DRA would add that this, coupled with the fact that IOUs are not a competitive market business, highlights the need for a *true market expert* to guide the EUC programs. These gaps point to the dire need for a market transformation guiding plan to guide Energy Upgrade California (EUC) to success. The value of a market expert provides both a reality check and a strategic direction to overcome the significant market barriers to EUC in the residential sector. A high degree of focus and commitment to deep building retrofits is necessary to progress;

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[1] The PD provides guidance to Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas), (collectively referred to as the 'Utilities') in developing the applications that they must submit for their energy efficiency portfolios for 2013-2014.

[2] These parties include, among others, PG&E (p. 13), SDG&E/SoCalGas (p.1), CCSE (p. 3), Solar City (p. 1), California Building Performance Contractors Association (CBPCA) (p. 2), Local Government Sustainable Energy Commission (LGSEC) (p. 2), and Natural Resources Defense Council (NRDC) (pp. 1-2).

[3] CCSE, Opening Comments, p.3.

[4] NAESCO, Opening Comments, p. 6.

[5] NAESCO, Opening Comments, p. 8.

Therefore DRA emphasizes its recommendation that utilities jointly hire and manage a third party like NEEA to develop and implement a market transformation plan.

2. Attribution disputes should not inhibit the statewide EUC effort and the collaboration this effort requires

In its comments, the LGSEC raises concerns about how "retrofit savings [will] be attributed if they are the result of: combined IOU and local government marketing, IOU incentives, local government private financing [and] local government workforce programs."[6] While answering this question can provide insights to program improvement, DRA cautions the Commission and stakeholders not to become preoccupied with the pursuit of achieving accuracy of the answers (which are rough estimates by nature). The Commission should not allow attribution disputes to inhibit the statewide EUC effort and the interdisciplinary collaboration that this depends on.

The bigger question is how can the EE industry collectively work towards the same goal: achieving long-lasting, sustainable energy savings through deep building retrofits at lowest cost to ratepayers. The Commission and parties must think differently to modify an increasingly unwieldy and contentious institutional framework in order to facilitate advancement of this shared goal. The Commission will need to decide the fundamental question of whether the Risk Reward Incentive Mechanism (RRIM), which was originally intended to reward or penalize Utilities based on their EE performance, helps or impedes the advancement of this goal.

B. Financing

1. DRA agrees that the PD's timeframe for implementing financing is unrealistic

As is clear from the IOUs' and DRA's comments,[7] the PD's timeframe for implementing financing, particularly On Bill Repayment (OBR), in pilot form by 2013 and in full form by 2014 is not realistic or prudent.[8] DRA agrees with SCE's comments that "[to] hastily move forward may prove to be counter-productive to the PD's important goals and could substantially jeopardize ratepayer funds and deter lenders and end users from participating in a reasonable, helpful, and confident manner."[9] DRA agrees that the time for implementing financing to support EUC is now, and proposes revisions to its CAEATFA proposal to reflect LGSEC's insights.

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[6] LGSEC, p. 11.
[7] PG&E (p. 8), SCE (pp. 14-15), SDG&E (p.5), DRA (pp.6-7).
[8] In the New York Energy Research and Development Authority (NYSERDA) example referenced in the PD, it took roughly five years to get an OBR program up and running.
[9] SCE Opening Comments, p. 15.

As DRA, LGSEC, and San Francisco (CCSF) stated, and many parties have recognized, the time for implementing financing to support EUC is now.[10] DRA recommends requiring IOUs to contract with the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), which has the basic competencies and authority to administer and/or provide credit enhancements to a residential sector financing initiative and already has a residential financing program (the Clean Energy Upgrade Program) that will be rolled out by the summer of this year.

DRA recognizes that CAEATFA alone is not a silver bullet; it requires administrative supports. LGSEC points to these gaps in the CAEATFA program, primarily the need for lender institution support, and recommends the use of local government regional network resources to fill in these needs as they do in existing PACE programs.[11] Presumably, LGSEC refers to, among other things, the cumbersome requirements that the CAEATFA Proposed Regulations implementing ABX1 14[12] demand of lending institutions in areas that are beyond their expertise, particularly Section 10054 (c)[13] These functions are typically outside the lender's expertise and are therefore unrealistic to expect of the larger financing market.

DRA recognizes that there are certain roles to be filled before the CAEATFA programs can be rolled out and expanded successfully, such as the responsibility of loan servicing. DRA recognizes that Local Governments (LGs) have fulfilled the roll of loan servicing for lending institutions and customers through their PACE programs and welcomes specific proposals in LG Program Implementation Plans for overcoming the gaps in the CAEATFA-administered financing option such that financing can be rolled out concurrently with the expansion of the EUC program. Local governments can "act on CAEATFA's behalf to attract, educate, and engage lenders and further streamline[] the enrollment and reporting processes."[14]

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[10] As TURN noted in its comments, "the ACR highlighted that financing would enable deeper energy retrofits in the residential sector." p. 8.

[11] LGSEC Comments: "CAEATFA model will not be viable absent support for the lenders to perform a variety of administrative, origination, management and technical duties which local governments currently provide to participating lenders under Energy Upgrade California." p. 5.

[12] www.treasurer.ca.gov/caeatfa/abx1_14/workshops/20120403/clean.pdf.

[13] In CAEATFA's Proposed Regulations, for example: "In order to enroll a Qualified Loan, a Participating Financial Institution must submit a Loan Enrollment Application, a Certificate of Completion, an Eligible Improvements Specification Report, a copy of the pre-project energy efficiency assessment and a copy of the post-project energy assessment conducted on the Eligible Property. CAEATFA Draft Proposed Regulations, p. 4, Section 10054 (c). See: www.treasurer.ca.gov/caeatfa/abx1_14/reserve.asp.

[14] LGSEC Opening Comments, p. 5

2. DRA agrees that financing programs should be built on the momentum and expertise of Local Government financing programs

DRA agrees with Build it Green's (BIG) general comments that roles should be apportioned to implementing parties in keeping with their unique strengths and core competencies.[15] LGs are among the few entities that have the expertise and have shown the commitment on financing, pooling their resources and learning and adjusting their programs as needed. It is important to learn from and leverage the momentum of existing LG financing programs and LG expertise, instead of reinventing the wheel and starting from scratch as the PD's contractor proposal seems to suggest. It would be a waste of ratepayer, stakeholder, and contractor resources not to engage local governments in current financing efforts. DRA agrees with CCSF and LGSEC that LGs should play a central role and provide expertise on financing.[16] DRA agrees that the financing contractor hired by IOUs should work with LGSEC and LGs with successful finance programs (LGSEC, p. 4).

The PD's statement about the inconsistency of current LG PACE programs is incomplete and therefore inaccurate.[17] The PD recognizes that the strength of LG regional networks is their potential to provide program consistency. In fact, LGs having initiated financing, learned from the market and are constantly making improvements, including collaborating to make the programs more consistent.[18] This is a mark of a well-functioning, committed market actor. As LGSEC notes, "there is a great deal of sharing of best practices currently underway within the broader PACE community to develop consistent program standards designed to increase acceptance from the banking industry."[19] The Commission should not confuse uniformity with scalability.

DRA agrees with CCSF and LGSEC that real market financing (unlike the 'zero interest' rate OBF program) is not part of IOU core function or mission.[20]

DRA also recommends that instead of having IOUs select ARRA projects, which they may not understand, the Commission should require that LGs select and defend the ARRA-funded programs that should be continued in their Program Implementation Plan.

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[15] BIG Opening Comments, p. 2.
[16] CCSF, p. 2, "Financing programs are outside the IOUs' core competencies. Moreover, the IOUs, particularly Pacific Gas and Electric Company (PG&E), have been sluggish rolling out and implementing on-bill financing and have stated they do not wish to enter the financing business."; LGSEC, p. 5: "The IOUs operate no financing program except for On Bill Financing."
[17] "Each has its own set of rules surrounding eligible measures, interest rates, loan terms, credit score requirements, etc." PD, p. 113.
[18] The CA First PACE program and the LA, SF, and Placer County, Sonoma, Sacramento currently build on LG financing program momentum and are working toward gaining more consistency.
[19] LGSEC Opening Comments, p.8.
[20] CCSF Opening Comments, p. 3.

3. Mission-driven lending institutions should play a critical role in financing

The PD acknowledges the critical role that mission-driven lending institutions such as credit unions and community development financing institutions can play in financing EE retrofits.[21] These institutions have proven their interest, commitment and expertise in financing EE.[22] Mission-driven lending institutions represent early adopters, so it would be strategic to capture and leverage this segment before placing extraordinary resources in attempting to interest 'big banks' in EE financing. DRA recommends that 2013-2014 financing initiatives leverage, target and engage this sector as a first step in transforming the market for financing EE.

4. DRA and NCLC agree that if OBR is implemented for the Multifamily Residential Sector certain ratepayer protections are necessary

If OBR is rolled out for the multifamily sector at any point, DRA agrees with NCLC (NCLC, p. 4) consistent with DRA's past recommendation that: (1) "Partial payments will first be directed towards the energy bill before the efficiency loan, and that (2) "The loan obligations will not be transferred to the next tenant unless there is express written consent by the tenant to assume the loan obligation."

C. Codes and Standards

DRA agrees with CCSF and Women Energy Matters (WEM) that the roles of Codes and Standards (C&S) adoption should transfer to the appropriate entities: local governments and the CEC. CCSF (pp. 2-3) and WEM (and TURN in response to the Ruling) share the valid concern about central role of IOUs in C&S advocacy, particularly when that role is appropriately placed with LGs and the CEC. That IOUs have provided these services in the past, should not be the basis for them to continue in this role. As CCSF notes "This structure is flawed."[23] DRA emphasizes its recommendation in its Opening Comments that while the PD does not support funding C&S compliance staff for LGs, it should be open to request to receive proposal to address these issues in the LG program implementation plans.

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[21] *See,* CHP (p. 10), PD (p. 113), DRA, Opening Comments on Financing Ruling, February 22, 2012, p. 9.

[22] PD, p. 113: "Some programs have shown a great deal of success at reaching target markets, offering reasonably low interest rates, and achieving real energy-saving projects. In many cases, the programs were designed by or with local governments, utilizing local credit unions that serve particular, usually local, populations." CHP (p.10): *CDFIs are mission-driven locally based organizations dedicated to economic development, affordable housing and/or community-based financial services and are the appropriate lenders to help develop responsible.* In personal communication with CAEATFA (4/12/12), DRA learned that it was simply credit unions and other mission-driven banks that showed interest in participating in the Clean Energy Upgrade financing program that will be rolled out in the summer of this year.

[23] CCSF Opening Comments, p. 3.

D. SCE misinterprets the PD's proposal for Local Government Regional Energy Pilots

SCE contends that the PD would authorize local government regional pilots "absent utility support or intervention"[24] and that such pilots would be inconsistent with the Commission's "statutory duty to oversee the use and expenditure of ratepayer funds..."[25] SCE claims that the PD proposals "to shift program administration to nonutility administrators are unlawful because they would divest the CPUC of such jurisdiction."[26] SCE misconstrues the PD's proposal for Local Government Regional pilots, in which the administration of such pilots would remain under the Commission's jurisdiction through contracts between the Utilities and the selected regional pilots.

The PD recognizes the significant expertise of many local governments in delivering energy efficiency programs, as well as their efforts to expand energy efficiency financing and to leverage other sources of funding.[27] The PD encourages local governments to submit program implementation plans and budgets for proposed regional pilots, so that Commission staff and parties can review the proposals to see whether the pilots are likely to achieve deep energy savings and deliver the benefits described by the LGSEC. If there are proposals that appear likely to achieve energy efficiency worthy of ratepayer funding, then the PD requires that:

> Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall contract for selected regional pilots and Commission staff shall serve as joint contract manager in the contract.[28]

SCE observes that D.05-01-055 found that non-utility administration of energy efficiency would interfere with the Commission's ability to oversee ratepayer energy efficiency funds and would require statutory authorization to implement.[29] The Commission in D.05-01-055 recognized the legal challenges and the statutory authorization that would be necessary for independent administration to occur, and therefore rejected the proposal for independent administration of energy efficiency at that time. While D.05-01-055 determined that the Utilities should administer energy efficiency portfolios, the PD's proposal that the Utilities contract with selected regional pilots does not amount to independent administration as contemplated in D.05-01-055.[30]

None of the problems that SCE conjectures would materialize under the PD's proposed contractual arrangement between the Utilities and selected regional pilots. The Commission would not

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[24] SCE Comments, p. 3, citing PD p. 46.
[25] SCE Comments, p. 4.
[26] SCE Comments, p. 5.
[27] PD, p. 144.
[28] PD, Ordering Paragraph 34
[29] SCE, p. 4.

"lose control" over a non utility administrator because the Commission regulates the Utilities. The contractual arrangement would not require the transfer of funds to selected regional pilots,[31] but would involve contractual payments for energy efficiency services similar to those that Utilities make to current third party contractors and local government programs. For this reason, there is no risk that the energy efficiency payments would be "vulnerable to borrowing for local government uses other than CPUC-authorized EE programs."[32] Directing the Utilities to enter into contracts with selected regional pilots would not raise issues of "illegal taxation" pursuant to Sinclair Paint, [33] or violate California's civil service requirements. Contracts to deliver energy efficiency savings already exist between the Utilities and third parties, including local governments, without requiring legislative tax authorization or interfering with work that would otherwise be done by civil servants.

The PD's proposal for administration of selected regional pilots via contracts with the Utilities is similar to the current successful model of the CCSE's administration of the California Solar Initiative in SDG&E's service territory.[34] The Commission should reject SCE's efforts to conflate the PD's proposal for contracts between the Utilities and selected regional pilots with the full-scale independent administration of energy efficiency that the Commission declined to pursue in 2005, and should adopt the PD's proposal for allowing selected regional pilots to go forward during the transition period.

III. CONCLUSION

The Commission should adopt the PD, but should modify the PD as detailed in DRA's opening and reply comments.

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[30] D.05-01-005, p. 44 (describing possible administrative structures in which the Utilities do not select energy efficiency programs or manage the program portfolio.)
[31] SCE Comments, p. 7.
[32] SCE Comments, p. 6.
[33] SCE Comments, p. 7 (citing Sinclair Paint Co. v. State Board of Equalization, 15 Cal. 4th 866 (1997) (requiring that taxes be approved by the legislature).
[34] http://energycenter.org/index.php/incentive-programs/california-solar-initiative.

Respectfully submitted,

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